

I.R. NO. 96-14

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF ATLANTIC  
(DEPARTMENT OF CORRECTIONS),

Respondent,

-and-

Docket No. CO-96-189

FRATERNAL ORDER OF POLICE LODGE #34,

Charging Party.

SYNOPSIS

A Commission Designee grants the County's motion to deny an application for interim relief. The charging party Local #34, failed to file a brief as required by the order to show cause.

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Appearances:

For the Respondent,  
Paul J. Gallagher, County Counsel  
(Kenneth M. Shumsky, of counsel)

For the Charging Party,  
A.J. Fusco, Jr., Attorney  
(Richard S. Robinson, of counsel)

INTERLOCUTORY DECISION

On January 11, 1996, Fraternal Order of Police Lodge #34 filed an unfair practice charge with the Public Employment Relations Commission alleging that the County of Atlantic, Department of Corrections violated N.J.S.A. 34:13A-5.4(a)(1), (2), (3), (4), (5) and (7)<sup>1/</sup> when on December 21, 1995, Lodge 34 President Frank

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<sup>1/</sup> These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (3) Discriminating in regard to

Footnote Continued on Next Page

Kovach was charged with a preliminary notice of disciplinary action and specifications alleging that he violated County Rules and Regulations by releasing information to the press in his capacity as union president. The County also alleged that Officer Kovach made certain statements regarding the Warden.

Lodge 34 denies that Kovach made statements concerning the Warden and alleges that the County's actions attempt to dominate and interfere with the union and states in its charge that it was applying for interim relief and a stay of disciplinary action.

On January 29, 1996, the Lodge filed a formal request for interim relief. An order to show cause was executed and made returnable for February 14, 1996. A hearing was conducted on that date. Lodge 34 also failed to file a brief as required by the Order to Show Cause. The County moved to have the application for interim relief denied on that basis. The County's motion is granted. Even if the motion were denied, Lodge 74 has not demonstrated that it has a substantial likelihood of prevailing on the merits of this matter.

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1/ Footnote Continued From Previous Page

hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative. (7) Violating any of the rules and regulations established by the commission."

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when addressing similar applications. The moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegations in a final Commission decision and that irreparable harm will occur if the requested relief is not granted. Further, in evaluating such requests for relief, the relative hardship to the parties in granting or denying the relief must be considered.<sup>2/</sup>

The record does not reflect what was printed in the newspaper, what might or might not have been said by Officer Kovach in regard to information concerning the jail, nor any comments concerning the Warden.

The degree to which a public employees statements are protected by the Act, depends upon the nature of the statements and the context in which they were made. Compare Black Horse Pike B/E, P.E.R.C. No. 82-19, 7 NJPER 502 (¶12223 1981); and City of Hackensack, P.E.R.C. No. 78-70, 4 NJPER 215 (¶4107 1978); with City of Asbury Park, P.E.R.C. No. 80-24, 5 NJPER 389 (¶10199 1979); City of East Orange, P.E.R.C. No. 84-70, 10 NJPER 28 (¶15017 1983); and Atlantic County Judiciary v. Derek Hall, P.E.R.C. No. 93-25, 19

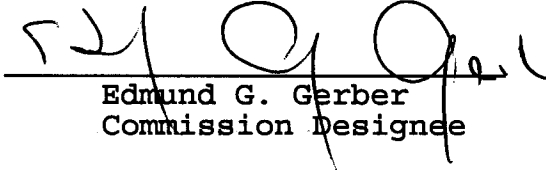
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<sup>2/</sup> Crowe v. DeGioia, 90 N.J. 126 (1982); Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975).

NJPER 55 (¶24025 1992), aff'd N.J. Superior Court, App. Div. Dkt No. A-3290-92T1, 19 NJPER 321 (¶26209 1994).

Absent a clear record, Lodge 34's request for interim relief is denied. It has failed to establish it has a substantial likelihood of prevailing on the facts in this matter.

BY ORDER OF THE COMMISSION

  
Edmund G. Gerber  
Commission Designee

DATED: February 23, 1996  
Trenton, New Jersey