

I.R. NO. 98-14

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PUBLIC EMPLOYEES ASSOCIATION,

Respondent,

-and-

Docket No. CO-98-113

IFPTE, LOCAL 195 and SEIU, LOCAL 518,

Charging Parties.

SYNOPSIS

IFPTE Local 195 and SEIU Local 518 sought an interim order restraining the PEA from allowing a supervisory employee, Steven Kook, to participate in organizing activity. A Commission Designee declined to restrain the PEA from using Kook. He did, however, order Kook to segregate any authorization cards which he collected. If the Commission finds that Kook's organizing efforts are unlawful, the Commission could decline to consider such cards in any PEA representation election.

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Appearances:

For the Respondent,  
Steven Kook, pro se

For the Charging Parties,  
Balk, Oxfeld, Mandell & Cohen, attorneys  
(Arnold S. Cohen, of counsel)

INTERLOCUTORY DECISION

On October 16, 1997, IFPTE, Local 195 and SEIU, Local 518 filed an amended unfair practice charge with the Public Employment Relations Commission alleging that the Public Employees Association committed an unfair practice charge within the meaning of N.J.S.A. 34:13A-5.4a(1), (2) and (5)<sup>1/</sup> alleging, among other issues,<sup>2/</sup>

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<sup>1/</sup> These provisions 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. (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."

<sup>2/</sup> The charge also alleges that Nancy Webber was a confidential employee and accordingly is not an employee within the meaning of the Act. This allegation was addressed in Public Employees Association, I.R. No. 98-10, 23 NJPER \_\_\_\_ (¶ \_\_\_\_\_ 1997).

that Steven Kook is employed by the Department of Transportation of the State of New Jersey in a primary level supervisors position. Kook openly solicited co-workers and subordinates to join the PEA. Further, Nancy Webber, who also actively campaigned on behalf of the PEA, was formerly in a primary level supervisors position.

The amended unfair practice charge was accompanied by an order to show cause which was executed and made returnable for November 3, 1997. A hearing was conducted on that date. Both parties were given an opportunity to present briefs and affidavits and argue orally.<sup>3/</sup>

IFPTE and SEIU argued that an employee organization violates the Act when it allows a supervisory, a confidential or a managerial executive to hold union office for non-supervisory employees and when Kook and Webber organized workers who are non-supervisory, both violated the Act and accordingly, the unions seek to restrain Kook and Webber's further participation in organizing on behalf of the PEA.

It was not disputed at the hearing that Nancy Webber has resigned as an officer in the PEA. The unions did not provide evidence of actual job duties of Kook or Webber as supervisors. Kook maintains that the State instructed him that if he were to continue to engage in organizing activities as a supervisor, he must

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<sup>3/</sup> Although Thomas G. Tresansky, Jr had made an appearance in this matter on behalf of the PEA, Mr. Tresansky failed to appear and Mr. Kook appeared pro se.

go on unpaid leave. Accordingly, he complied with the State's directive and went on unpaid leave while he engaged in organizing activities.

To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975).

At the conclusion of the hearing, I found that the union's did not satisfy their heavy burden. I held that if I were to bar Mr. Kook from organizing and the Commission should find that Kook otherwise did have a right to organize, it would irreparably harm Mr. Kook.<sup>4/</sup> In order to protect the rights of the unions, Mr. Kook was ordered to preserve and segregate any authorization cards or other organizing signatures that he collects and keep those separate from all other material from November 3rd (the date of the hearing) forward and if that material is turned into the Commission

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<sup>4/</sup> Such action would also irreparably harm the PEA.

in support of a petition for representation, that material must be segregated. Accordingly, if Mr. Kook's organizing activities were violative of the Act, then any authorization cards which were gathered in violation of the Act could be identified and would not be considered as part of a PEA showing of interest. It was further ordered that Nancy Webber similarly segregate and preserve as separate any showing of interest materials she might collect.

The order was an interim order only pending a final Commission Decision.



Edmund G. Gerber  
Commission Designee

DATED: November 14, 1997  
Trenton, New Jersey