

I.R. No. 2005-13

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MONMOUTH COUNTY (DEPARTMENT
OF CORRECTIONS AND YOUTH SERVICES)
AND MONMOUTH COUNTY SHERIFF,

Respondents,

-and-

Docket No. CI-2005-031

PATRICK PANELLA, ANTHONY ANDERSON,
MARK TOMASIELLO,

Charging Parties.

SYNOPSIS

A Commission Designee denies an application for interim relief filed by three individuals seeking to restrain the County from implementing discipline against them during negotiations, and during a campaign for the election of union officers. The Designee found that the standards for a grant of interim relief were not met.

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Appearances:

For the Respondents, Scarinci & Hollenbeck, attorneys
(Matthew J. Giacobbe, of counsel, Mitchell H. Levine,
on the brief)

For the Charging Parties, Charles J. Sciarra, L.L.C.

INTERLOCUTORY DECISION

On March 10, 2005, an unfair practice charge was filed with the Public Employment Relations Commission (Commission) and amended on April 20, 2005, by Patrick Panella, Anthony Anderson and Mark Tomasiello (Charging Parties), alleging that the Monmouth County Department of Corrections and Youth Services and the Monmouth County Sheriff (County) violated 5.4a(1), (2), (3), (4), (5), (6) and (7)^{1/} of the New Jersey Employer-Employee

^{1/} 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
(continued...)"

Relations Act, N.J.S.A. 34:13A-1 et seq., (Act). The Charging Parties alleged that the County has initiated disciplinary actions against them for engaging in activity protected by the Act; and/or because they are officers in PBA Local No. 240 (PBA or Local 240).

The unfair practice charge(s) was accompanied by an application for interim relief. An Order to Show Cause was executed on March 14, 2005, originally scheduling a return date for April 5, 2005. That date was rescheduled for April 12, 2005 to accommodate the parties requests, then rescheduled for May 11, 2005 to allow for the charging parties amendment and the County's response. Both parties submitted briefs, affidavits and exhibits

1/ (...continued)
interfering with the formation, existence or administration of any employee organization. (3) Discriminating in regard to 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. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (7) Violating any of the rules and regulations established by the commission."

in support of their respective positions in accordance with Commission rules and argued orally on the return date.^{2/}

The Charging Parties seek to restrain the County from suspending Panella and implementing minor/non-suspension discipline on Anderson and Tomasiello because it may adversely affect their ability to run for union office and/or to participate in negotiations with the County on behalf of the PBA. The County opposes any restraint arguing the standards for interim relief have not been met.

The following relevant facts appear.

Patrick Panella, a County Corrections Officer, is President of Local 240. On or about January 28, 2005, he was accused of making remarks about Undersheriff Clifford Daniels including:

I wish nothing but death on the big man. I wish him dead.

Panella has denied making that and similar remarks.

A Preliminary Notice of Disciplinary Action was issued against Panella on February 7, 2005 assessing him with a 45-day suspension for his comments. A hearing on the discipline was held on March 1, 2005 upholding the suspension. No final notice of disciplinary action issued pending this proceeding, and the suspension has yet to be imposed. The PBA is currently in

^{2/} Additional documents provided by the Charging Party after receipt of the County's answering documents were considered as part of this application at the hearing.

negotiations for a successor agreement, and an election for Local #240's officers is being held in June 2005. The County has not imposed any impediments on Panella's, Anderson's or Tomasiello's participation in negotiations, and it represented at hearing that if Panella runs for re-election he would be given, upon request, the same campaign access as requested and provided to other candidates.

Anthony Anderson, a County Corrections Officer, is the PBA Vice President. On March 10, 2005, a Preliminary Notice of Disciplinary Action was issued against Officer Anderson proposing a 15-day suspension regarding an incident where he left his post allegedly to conduct union business. Captain Riggs disputed whether he left his post to conduct union business. After a hearing on April 15, 2005, a Final Notice of Disciplinary Action was issued on or about April 19, 2005, reducing the proposed suspension to a written warning.

Mark Tomasiello, a County Corrections Officer, is an executive board member of Local 240. On January 21, 2005, he was served with a Notice of Minor Disciplinary Action, a five day suspension, for an alleged unauthorized absence. Lt. Glen Bongiovi denied granting Tomasiello a day off. After a hearing, a Final Notice of Minor Disciplinary Action was issued on April 1, 2005 reducing the proposed suspension to an oral reprimand.

ANALYSIS

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).

The Charging Party contends that whether it has fully established a substantial likelihood of success and irreparable harm, the County should be restrained from implementing the above discussed disciplines because they were assessed as part of a pattern of harassment against union officers, and has a chilling effect upon them and Local 240 going into negotiations and campaigns for union office. While that argument presents serious issues for consideration, they are matters which require a thorough review of all the evidence presented at a plenary hearing. Interim relief is not the appropriate forum within which to consider those arguments. A grant of interim relief is

an extraordinary remedy, one which must be supported by meeting the above standards.

With respect to Officer Panella, the record before me shows a dispute over material facts. Panella denies the poignant remarks about Undersheriff Daniels attributed to him in the Notice of Discipline, and in several police reports. A dispute over such fundamental material facts necessitates a plenary hearing to resolve that dispute, and makes it impossible to conclude that the Charging Party has a substantial likelihood of success (emphasis added) on Panella's case. The Charging Party argues, nevertheless, that even if Panella made the remarks attributed to him it would still meet the substantial likelihood of success standard because Panella's speech would have been protected. That argument still cannot result in finding a substantial likelihood of success in Panella's case because the Commission has found that offensive and disrespectful speech may not be protected. Atlantic County Judiciary, P.E.R.C. No. 93-52, 19 NJPER 55 (¶24025 1992), aff'd 21 NJPER 321 (¶26206 App. Div. 1994); See also New Jersey Dept. Ed., P.E.R.C. No. 85-85, 11 NJPER 130, 131 (¶16058 1985); City of Hackensack, P.E.R.C. No. 78-74, 4 NJPER 214, 215 (¶4107 1978).

The facts before me similarly do not support a finding that if Panella's suspension was implemented it would result in irreparable harm. There is no impediment to Panella's

participation in negotiations during a suspension, and there is no showing that his access rights will be adversely affected if he engages in a re-election campaign.

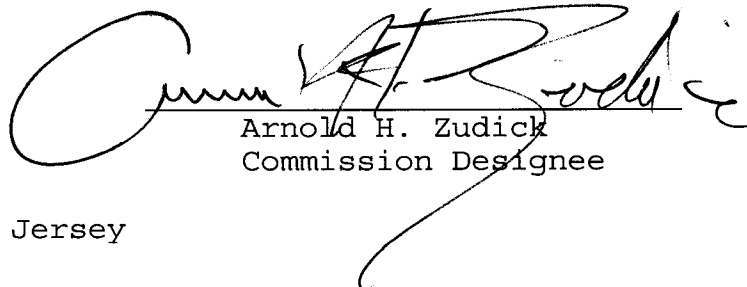
With respect to Officers Anderson and Tomasiello, there is a dispute as to certain facts regarding the particular events leading to their respective receipt of disciplinary notices which prevents me from concluding that either of them have a substantial likelihood of success on their merits. More significant, however, is that the written and oral reprimands they respectively received do not meet the irreparable harm standard.

Having considered all of the information and arguments before me, I find the Charging Party's were unable to meet the heavy burden required to justify a grant of interim relief. This charge will be returned to the division of unfair practices for further processing.

Accordingly, based upon the above facts and analysis, I issue the following:

ORDER

The Charging Party's application for interim relief is denied.


Arnold H. Zudick
Commission Designee

Dated: May 13, 2005
Trenton, New Jersey