

I.R. No. 2008-1

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY STATE JUDICIARY,

Respondent,

-and-

Docket No. CO-2007-354

PROBATION ASSOCIATION OF  
NEW JERSEY,

Charging Party.

SYNOPSIS

A Commission Designee denies an application for interim relief seeking to restrain the Judiciary from conducting an investigation of events regarding a PANJ officer, and from using hearing officers from the Administrative Office of the Courts to hear an appeal of a Notice of Minor Disciplinary Action. The Commission Designee found that a dispute over material facts existed that prevented a finding that the charging party had a substantial likelihood of success on the merits of the case.

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Appearances:

For the Respondent, R. Brian McLaughlin, Acting Counsel  
to the Administrative Director of the Courts (Nancy  
Mahony, of counsel)

For the Charging Party, Fox and Fox, LLP, (David I Fox,  
of counsel)

INTERLOCUTORY DECISION

On June 7 and July 9, 2007, the Probation Association of New  
Jersey (PANJ) filed an original and an amended charge,  
respectively, with the Public Employment Relations Commission  
(Commission) alleging that the New Jersey State Judiciary at the  
Camden Vicinage (Judiciary) violated 5.4a(1) and (3)<sup>1/</sup> of the New  
Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

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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. (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."

(Act). In the original charge, PANJ alleged that the Judiciary violated the Act by its conduct of an investigation regarding the actions of PANJ First Vice-President/Local 109 President Peter Tortoreto at an April 11, 2007 meeting concerning a grievance. In the amended charge, PANJ alleged the Judiciary violated the Act by issuing Tortoreto a Notice of Minor Disciplinary Action on June 28, 2007 for the actions he allegedly engaged in on April 11, 2007 while representing PANJ regarding the grievance matter.

The unfair practice charge was accompanied by an application for interim relief seeking to restrain the Judiciary from interfering with officials of PANJ in the exercise of their protected rights, more specifically from continuing to investigate the events that occurred at the April 11 meeting, and seeking to restrain the Judiciary from conducting a hearing on Tortoreto's Notice of Minor Disciplinary Action with a hearing officer employed by the Administrative Office of the Courts. An order to show cause was executed on June 12, 2007, scheduling a return date for July 17, 2007. Both parties submitted briefs, affidavits and exhibits in support of their respective positions and argued orally on the return date.

The following pertinent facts appear:

A meeting on a grievance was scheduled for April 11, 2007. The meeting was held in a conference room of the Human Resource office in the Camden Vicinage. James Grazioli, Human Resources

Division Manager in the Camden Vicinage was present for the Vicinage, and Peter Tortoreto, his attorney, and two other individuals were present for PANJ. A discussion occurred over whether one of the other PANJ attendees was entitled to be at the grievance meeting. When the parties could not resolve that issue, Grazioli got up to leave the room. Grazioli alleged that Tortoreto at first prevented him (Grazioli) from leaving the room, and that Tortoreto had to be asked several times to leave the room himself. Tortoreto alleged that no one substantiated Grazioli's claim.

The Judiciary conducted an investigation into the events of April 11, 2007, and on or about June 28, 2007, Tortoreto was served with a Notice of Minor Disciplinary Action, a three-day suspension, because of his alleged actions on April 11, 2007.

PANJ argued that Tortoreto did not engage in misconduct, it sought to prevent the Judiciary from completing the investigation of the events of April 11, and it sought to restrain the Judiciary from using hearing officers employed by the Administrative Office of the Courts (AOC) to hear the merits of the April 11 events.

The Judiciary opposed the application, argued that the investigation of the April 11 events had been completed, and defended the impartiality of its hearing officers. It also

argued that any hearing officer recommendation was subject to further review.

#### 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).

Through their briefs, affidavits and oral argument, the parties have demonstrated that a dispute over material facts exists regarding events leading up to the April 11 meeting, the actions taken or conduct engaged in at that meeting and regarding the series of events surrounding the investigation of that meeting. The dispute over such pertinent facts can only be resolved through a plenary hearing.

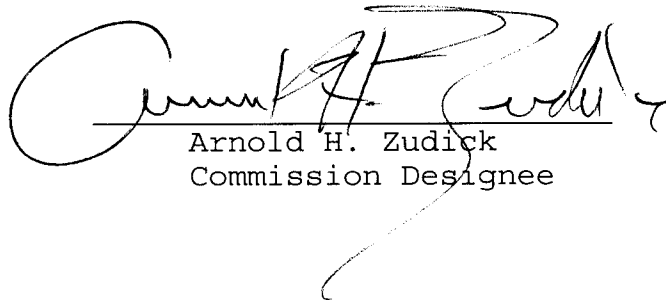
Noting the need for a plenary hearing to resolve a dispute over material facts, I cannot conclude at this stage of the proceedings that PANJ has a substantial likelihood of success on

the merits of its application. Additionally, I note that the issue raised regarding the impartiality of AOC hearing officers raises both factual and legal issues that cannot be resolved in this proceeding.

Accordingly, based upon the above, I issue the following:

ORDER

The application for interim relief is denied.



Arnold H. Zudick  
Commission Designee

DATED: July 27, 2007  
Trenton, New Jersey