

I.R. NO. 2021-8

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,  
(DEPARTMENT OF LABOR AND  
WORKPLACE DEVELOPMENT)

Respondent,

-and-

Docket No. CO-2020-197

COMMUNICATION WORKERS OF AMERICA  
AFL-CIO,

Charging Party.

**SYNOPSIS**

A Commission Designee restrains a public employer from banning a local union president from the employer's premises. The Designee determined that the public employer representatives' certifications indicated that some conduct was likely not protected by the Act. A complete ban was determined to be unwarranted, in consideration of the local president's continued presence (for representational purposes) on the premises for almost one year after the principal incidents without comparable repetition of unprotected conduct.

The Designee ordered that the local union president cease all professional contact with a specified public employer representative. The Designee also retained jurisdiction to modify or rescind the Order in the event that the public employer presents evidence that the local union president repeats the same or substantially similar unprotected conduct.

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Appearances:

For the Respondent,  
Genova Burns, LLC attorneys  
(James J. McGovern, of counsel)  
(Jennifer Roselle, of counsel)

For the Charging Party,  
Weissman and Mintz, attorneys  
(Steven P. Weissman, of counsel)  
(Justin Schwam, of counsel)

**INTERLOCUTORY DECISION**

On January 28, 2020 and September 4, 2020, Communications Workers of America, AFL-CIO (CWA) filed an unfair practice charge and amended charge against the State of New Jersey (Department of Labor and Workforce Development) (State or DOL), together with an application for interim relief seeking temporary restraints, a letter brief, exhibits and a certification. The charge alleges that in 2019, CWA Local 1038, representing employees at DOL, specifically, shop stewards and unit employees David Bailey,

Shivon Harris, Carly Lamarca and Julie Beale filed grievances and other workplace complaints against DOL that were critical of Suzan Nickelson, DOL's Administrator of Employee Relations. In June, 2019, a dispute arose between the parties based in part on Nickelson denying Lamarca paid time for the use of one or more union leave days.

The charge alleges that on July 8, 2019, a meeting was convened to address the dispute. Attending on behalf of CWA were Local 1038 President Shawn Ludwig, Harris and Lamarca. Attending for the State were Assistant Commissioners Tennille McCoy and Hugh Bailey, and Workforce Data Reporting Chief Jacquelin Novatin. On July 19, 2019, another meeting was convened among the parties, including Ludwig, concerning DOL's refusal to approve shop steward/unit employee Lamarca's request for union leave to attend CWA National Union's convention.

The charge alleges that on August 28, 2019, Lamarca, Bailey and Harris filed a complaint against DOL Administrator of Employee Relations Nickelson with the Governor's Office of Constituent Relations, alleging that she wasn't processing grievances in accordance with CWA's contract and was colluding with her bosses to undermine their job security and deny them promotions. On August 29, 2019, during a DOL-sponsored Labor Day event, Harris, Bailey and other CWA shop stewards allegedly

distributed flyers critical of DOL and distributed CWA t-shirts. McCoy directed them to cease distributing flyers.

Also on August 29, 2019, Nickelson filed a workplace violence complaint alleging that "Mr. Ludwig and company (Lamarca and Harris) were harassing her by filing EEO complaints, grievances and sending her emails." On September 6, 2019, Nickelson filed a second workplace violence complaint, alleging that Ludwig and Lamarca distributed her "business information to others [in] DOL" and that Lamarca attempted to file an ethics complaint against her.

On or around November 7, 2019, DOL EEO officer Betty Ng notified CWA that Reim Nour, an Investigator of the Department of Law and Public Safety, will interview Beale, Harris, Bailey and Lamarca on specified dates in the next calendar week regarding the complaints filed by Nickelson. On November 12, before any interviews were conducted, CWA Counsel emailed Ng advising that the subject of the interviews was likely protected by the New Jersey Employee-Employer Relations Act, N.J.S.A. 34:13A-1, et seq. (Act) and that in advance of any interviews, CWA will need ". . . to understand the precise nature of the complaints against the four shop stewards and the Local 1038 President (Ludwig) to determine whether DOL was violating the Act." The email was also sent to DOL Commissioner Robert Asaro-Angelo.

On November 23, 2019, after CWA Counsel received copies of the requested complaints, he emailed McCoy, Banks, Nour, Deputy Attorney General Christopher Hammer and the Commissioner advising that the August 29<sup>th</sup> complaint that Nickelson filed set forth, “. . . no dates or specifics as to the conduct allegedly engaged in by Ludwig constituting ‘workplace violence’” and that the September 6, 2019 complaint was “devoid of details.” CWA Counsel wrote that inasmuch as the August 29<sup>th</sup> complaint alleged that Ludwig harassed Nickelson with “text messages, emails and leaflets,” he requested copies of all those constituting “workplace violence,” together with Nickelson’s statements or notes from interviews supportive of a workplace violence complaint. CWA Counsel also wrote that inasmuch as the September 6<sup>th</sup> complaint identifies Ludwig and Lamarca as “perpetrators” and accuses them of trying to file an ethics complaint against Nickelson, he requested a copy of the ethics complaint and copies of all of Nickelson’s written statements and interview notes that supported the complaint.

On November 26, 2019, McCoy denied CWA Counsel’s request for information. On the same date, CWA New Jersey Director Hetty Rosenstein wrote a letter to DOL Commissioner Asaro-Angelo, reiterating that the workplace violence complaints filed by Nickelson set forth, “. . . no specific information as to the conduct by the Local 1038 President and four CWA shop stewards

that allegedly constitutes 'workplace violence.'" She also requested that Nickelson have, ". . . no continuing involvement" with any CWA Local 1038 matters, based on Nickelson's conflict of interest related to Ludwig and her filing of workplace violence complaints against him and the CWA stewards for their engaging in protected activity.

On or about December 19, 2019, CWA Counsel emailed Ng, with copies sent to Nour, the Commissioner and McCoy, again advising that before interviews are conducted, CWA is entitled to understand "the precise nature of factual allegations which supposedly constitute workplace violence and cautioning that CWA has "ample reason" to believe that the underlying allegations involve conduct protected by the Act. Counsel wrote that if DOL refuses to provide the information, CWA would file an unfair practice charge.

On January 3, 20[20], Ng emailed CWA Counsel, refusing to provide information about "actual conduct" that Nickelson claims Ludwig and four shop stewards engaged in that constitutes "workplace violence." On the same date, CWA Counsel replied, reiterating the absence of specific factual allegations that would permit him to prepare the named offenders for interviews. Noting his three previous requests for documents that would set forth specific allegations against the shop stewards, Counsel

again requested the information and warned of an unfair practice charge filing if it wasn't provided.

The charge alleges that DOL's failure to provide the requested information violates section 5.4a(1) and (5)<sup>1/</sup> of the Act. It alleges that the filing of workplace violence complaints against Ludwig and four CWA shop stewards for engaging in protected conduct - filing grievances, EEO complaints, ethics complaints, attempting to file ethics complaints and leafletting - constitutes unlawful retaliation that violates section 5.4a(1) and (3)<sup>2/</sup> of the Act.

The amended charge alleges that in late June or early July, 2020, McCoy called Ludwig, notifying him that he was "banned" from the DOL. Ludwig allegedly replied that she must be mistaken, to which McCoy responded that she would ask the Commissioner. McCoy allegedly called Ludwig again, advising that

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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. (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.

2/ This provision prohibits public employers, their representatives or agents from: (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 the act. of the rules and regulations established by the commission.

the Commissioner has banned him and that the ban, “. . . was still in effect.”

The application for the Temporary Restraint seeks an Order prohibiting a ban of CWA Local 1038 President Ludwig from DOL premises.

On September 8, 2020, I issued an Order to Show Cause, establishing among other things, a conference call on the request for a Temporary Restraint and a date for the submission of the State's response. On September 18<sup>th</sup>, I conducted that conference call among the parties to hear argument on their respective cases.

On September 15, 2020, the State filed a letter brief, certification and exhibits. The State contends that Ludwig's conduct, including his circulation of Nickelson's home address or threats, “. . . to her significant other and/or children” are not protected by the Act. It also avers that his “opprobrious conduct - yelling, bullying and physically intimidating Nickelson and other Respondent's representatives at the bargaining table” is so egregious that it loses the Act's protection (brief at 11-12).

On September 21, 2020, I issued a Temporary Restraint, relying in particular on the State's omission to provide facts based on personal knowledge. See N.J.A.C. 1:1-15.5. The restraint prohibited the State from banning Ludwig from DOL



premises and it provided an opportunity for dissolution upon two days' notice.

On September 29, 2020, the State filed its opposition to the application together with voluminous documents, including certifications. On September 30<sup>th</sup>, the State filed a supplemental certification. On October 5, 2020, CWA filed a reply together with a certification of Ludwig. On October 8, 2020, the parties argued their respective cases on the application in a telephone conference call.

The following facts appear.

In October, 2017, the State adopted a "Violence in the Workplace Policy" that provided:

The Department of Labor and Workforce Development has a zero tolerance policy regarding violence in the workplace...Threats and threatening behavior, harassment and intimidation, physical acts of violence and/or intentional property damage committed either on Department property or in the performance of work duties inside or outside of the Department premises will not be tolerated.

\* \* \*

The policy also defines prohibited conduct including:

A threat or threatening behavior is the overt expression, verbal or nonverbal, of intent to cause physical or emotional; harm and to instill fear into another person, directly or indirectly;

Harassment or Intimidation is behavior or communication designed or intended to intimidate, menace or frighten another

person, directly or indirectly. [State Exhibit A]

In June, 2019, the State adopted a "Workplace Violence Policy" that replaced the October, 2017 policy. It reiterated a "zero tolerance" for behavior that is violent, harassing intimidating or otherwise disruptive. The new policy defined "workplace violence:"

Workplace violence is any act or threat of physical violence, harassment, intimidation or other threatening disruptive behavior that occurs at the workplace. It ranges from threats and verbal abuses to physical assaults and even homicide. It can involve employees, clients, customers and visitors.

It also provides these term definitions, among others:

Harassment or Intimidation is threats or other conduct, which in any way create a hostile environment; impair agency or department operations; or frighten, alarm or inhibit others. Physiological intimidation or harassment includes making statements which are false, malicious, disparaging, derogatory, rude, disrespectful, abusive, obnoxious, insubordinate, or which have the intent to hurt others' reputations. Physical intimidation or harassment may include holding, impeding or blocking movement, following, stalking, touching or any other inappropriate physical contact or advances.

\* \* \*

Bullying is a form of repeated aggressive humiliating and intimidating behavior over time to intentionally hurt another person, physically or mentally. Bullying is characterized by an individual behaving in a certain way to gain power over another person. Examples of this behavior include but are not limited to outburst of anger using derogatory names, withholding necessary

work information, spreading rumors, or ridiculing someone in front of another. Like any other disruptive or violent behavior, conduct that undermines an employee's right to dignity at work is a violation of this policy.

[State Exhibit A]

The State submitted a "Workplace Violence Initial Incident Report" (WPVR) ostensibly handwritten and filed by Nickelson against Ludwig on August 29, 2019. The unsworn copy of it alleges that on "8/29/19 and 3/21/19 [to] present," Ludwig had filed "false EEO complaints and grievances" and engaged in "ongoing harassment/intimidation threats via text messages, emails and bullying." In a "comments" section, Nickelson purportedly wrote:

I want to have Mr. Ludwig and company that include[s] Carlye Lamarca, Shivon Harris and other union stewards to stop harassing me at work, filing false EEO Complaints, grievances and sending emails and other harassing, demeaning, threatening correspondence to me while at work. My children and myself have been threatened. [State Exhibit A]

The State submitted another unsworn copy of a WPVR dated September 6, 2019 in which Nickelson ostensibly wrote that from "3/19 to present," Ludwig and Carlye Lamarca engaged in "threatening behavior, harassment and intimidation, bullying and emotional distress" In the "comments" section, Nickelson wrote:

I want [Lamarca] and [Ludwig] and his other stewards, such as Julie Beale, Shivon Harris, David Bailey and others to stop harassing me, my family [sic] sharing my private home address and business-related information.

They have stated they will ruin me and my family. [T]hey are sharing my significant other information as well.[State Exhibit B]

Rose Ward, a DOL Labor Relations Specialist for about three years, attends grievance meetings on behalf of DOL and is familiar with Ludwig. On the morning of March 21, 2019, Ward attended a step 1 grievance meeting regarding grievances filed by unit employees Bixler and Harvanczek against supervisor Jody Nestor. Also attending on behalf of DOL were Suzan Nickelson, Nestor, Assistant Commissioner Greg Karr and Management Assistant Lisa Tumillo. Attending on behalf of CWA were Bixler, Harvanczek, Caryle Lamarca and Ludwig (Ward cert, 9/28/20, para. 5, 6).

Ward certifies that Ludwig yelled a litany of profanity, "f-bombs," while "screaming" that management should treat employees with dignity and respect. Ludwig refused to follow Nickelson's explicit requests of him to "calm down." Ward certifies that Ludwig became, ". . . more aggressive, jumped out of his seat, banged on the table with both fists while cursing and yelling at management representatives" (Ward cert., para 14). Ward certifies that,

. . . when he jumped from his seat he pointed his finger directly at Nickelson while he screamed at her. Nickelson sat at the head of the table and he sat directly to her left [Ward cert., para. 15]

About fifteen minutes after the meeting began, Nickelson instructed her team not to respond to Ludwig's comments or questions and then ended the meeting. ". . . due to Ludwig's behavior" (Ward cert., para. 17).

Ward attended another grievance meeting on the afternoon of March 21, 2019. A grievance filed by Shivon Harris against Director David Ramsay was the subject of the meeting. In addition to Ramsay and Harris, Ludwig, Nickelson, Lamarca and Tumillo also attended.

Ward certifies that during that meeting conducted by Nickelson, Ludwig ". . . made fun of Ramsay's bowtie and the way he crossed his legs," apparently in response to a comment in Harris's grievance alleging that Ramsay had commented to her about crossing her legs. Ward certifies that Ludwig, ". . . was red in the face, angry and aggressive," verbally attacked Nickelson and Ramsay, yelled the obscenities, "fuck you, fuck you" and commented that Ramsay should "grow a set of balls" and that "he has a little dick." Ludwig "appeared out of control, banged on the table and jumped up and down from his seat" (Ward cert., para. 23, 25, 26, 27).

Ward certifies that Nickelson remained composed, though she closed her notebook, signaling her ending the meeting and she told Ludwig that he needed to leave. Ludwig replied that he

refused to leave. Nickelson told Lamarca that she needed to get Ludwig out of the room.

Ward certifies that at that time, Matthew Plumeri, DOL Security Coordinator, arrived. Ludwig was,

. . . standing only a foot or two from Nickelson, pointing, yelling and cursing in her face. Nickelson, by contrast, was backing away from Ludwig.  
[Ward cert., para. 31]

Ward certifies that after Ludwig and other CWA representatives left the room, she observed that, "Nickelson, based on her body language, was clearly shaken up by her confrontation with Ludwig" (Ward cert., para. 32).

On September 28, 2020, Plumeri certified that on the afternoon of March 21, 2019, two employees, Dana Marrazzo and Janet Dunigan notified him that a man in the twelfth floor small conference room was "screaming obscenities" and was "verbally abusive" to Nickelson. Plumeri immediately left his desk, a short distance from that conference room, and observed Nickelson standing in the small conference room doorway. As he approached, he heard, ". . . a male cursing and repeatedly yelling the word 'fuck'" (Plumeri cert., para. 6, 7). Plumeri heard Nickelson tell "the man" (later identified as Ludwig) the she didn't appreciate his speaking to her "in that way" and that Ludwig,

. . . became more belligerent and yelled louder to carry his voice over hers. I observed Nickelson backing away from Ludwig with her hands up while Ludwig continued

pointing his finger at Nickelson,  
aggressively yelling, 'fuck you, fuck this.'  
[Plumeri cert., para. 9]

Plumeri certifies that Ludwig's face, ". . . was red [and he] looked angry, still yelling and cursing. . . and appeared completely out of control and unhinged." Plumeri certifies that he positioned himself between Nickelson and Ludwig, ". . . to protect [her] in case he tried to to lunge at or otherwise strike Nickelson." (Plumeri cert., para. 11). Plumeri told Ludwig that his, "cursing, screaming and intimidating inhabitants inside and outside the conference room was unacceptable" and he directed Ludwig to leave. Plumeri observed that,

Nickelson was visibly shaken. Based on my observations of her body language and her responses during our conversation, she appeared to have felt threatened by her confrontation with Ludwig. [Plumeri cert., para. 15]

On March 25, 2019, Plumeri wrote a memorandum to Assistant Commissioner Gary Karr regarding both morning and afternoon "incidents" on March 21<sup>st</sup>. The memorandum corroborates Plumeri's attested observation of Ludwig, ". . . becoming more belligerent and yelling louder to carry his voice over [Nickelson's]." It also corroborates his having, ". . . entered the conference room and positioned himself between Nickelson and the irate [Ludwig]" and that he warned Ludwig that if he didn't "immediately calm down . . . the State Police would be dispatched to have him removed from the facility." (State Exhibit A). Plumeri wrote

that his warning did not "deter" Ludwig's conduct and he instructed a female employee (also trying to calm the situation) to escort him from the conference room to the first floor by elevator (Plumeri cert., para. 22).

The State has filed an uncontested transcript and recording of the March 21<sup>st</sup> afternoon grievance meeting in a DOL conference room (transcript; State Exhibit H). The transcript appears to corroborate some but not all certified representations of Ludwig's spontaneous remarks and conduct in the meeting. The transcript reveals Ludwig calling an attending DOL representative (Ramsay) a "liar" a "parrot," accusing him of "[not] having the fucking balls to do something" and of referring to Nickelson (and other attending DOL representatives) as a "fucking joke" and "fucking jokers." I infer from the context of the transcript that Ludwig was talking loudly or yelling because another CWA representative urged him to "calm down, calm down, alright, let's calm down." The transcript reveals that Nickelson stopped the meeting and asked Ludwig to leave the building. Ludwig then dared Nickelson:

[C]all the fuckin' police; I'm allowed to fuckin' be here, Yeah, I am, you're not the boss, get the fuck out of here with your fuckin' petty bullshit today, fuckin' petty dude. [State Exhibit H]

Ludwig certifies that on an unspecified date after March 21, 2019, the Commissioner asked him not to enter the DOL building



for four days, to which he agreed. He also certifies that on March 28, 2019, Nickelson and he (having been friends for nearly 20 years), discussed their "mutual frustrations" and "reached a detente." He certifies that, "thereafter, I resumed conducting normal business in the DOL building" (Ludwig cert., para. 4, 11, 12, 13, 14).

Tennille McCoy is the Assistant Commissioner of DOL in the Division of Human Capital Strategies. She certifies her receipt and review of the February 20, 2020 "Deliberative Draft of the Investigation Report prepared by Investigator Reim Nour of the Office of Attorney General" and attached exhibits regarding Nickelson's WPVRs (McCoy cert., para 1-3).

She certifies that in June or July, 2020, DOL adopted the findings of Nour's report and that Commissioner Asaro-Angelo later concluded there was sufficient evidence to establish that Ludwig violated the DOL Workplace Violence Policy and that Ludwig's access to DOL premises is revoked. (McCoy cert., para. 17, 21). On September 25, 2020, the Commissioner issued a letter to Ludwig, sustaining findings of his "threats and threatening behavior" on March 21, 2019, in particular. He also wrote of Ludwig's ". . . threats, intimidation and bullying" of security guards on June 28, 2019 and of DOL staff in another incident on September 18, 2019. A directive in the letter prohibits Ludwig from all contact with Nickelson; he instead must redirect all

communications about "grievances, workplace issues or terms and conditions of employment" to Rose Ward (CWA Exhibit A). Similar investigations of other CWA representatives regarding their alleged harassment and/or intimidation of Nickelson resulted in findings of "insufficient evidence" of such charges and were dismissed (See, e.g., State Exhibit D).

Lisa Tumillo is a senior management assistant at DOL who processes "releases" for CWA to gain access to DOL premises. She often interacts with Shawn Ludwig. She certifies that on September 18, 2019, Ludwig called her to discuss shop steward releases and to reserve certain conference rooms. She certifies that Ludwig began, ". . . screaming and cursing at me that I did not know what I was doing and was incompetent." She certifies that he became so "aggressive and vicious," causing her to be "upset and to cry." She certifies that a personnel assistant, Dianne Barrett, took the phone to continue the conversation and Ludwig "continued to scream and curse at Barrett." (Tumillo cert., para. 1, 2, 4, 8).

Ludwig certifies that on September 18, 2019, Local 1038 was scheduled to have reserved DOL conference room to "sign up" new members. When he arrived at DOL, Ludwig was informed that the room hadn't been reserved for the whole day and that "releases" hadn't been processed for CWA members. Ludwig certifies that in the summer of 2019, he had experienced frustration with DOL

regarding the scheduling of grievance meetings (Ludwig cert., para 16-21).

Ludwig certifies that all such frustrations "animated" his September 18<sup>th</sup> phone call responses, even as he asserted that the releases had been sent to DOL in late August, 2019. He certifies that Tumillo later informed him that she erred in the scheduling and apologized for the resulting inconvenience (Ludwig cert., para. 28).

### **ANALYSIS**

A charging party may obtain interim relief in certain cases. To obtain 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. DeGioia, 90 N.J. 126, 132-134 (1982); Whitmeyer 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).

In negotiations and grievance discussions, management officials and union representatives meet as equals and exchange views freely and frankly. State of New Jersey (Dept of

Treasury), P.E.R.C. No. 2001-51, 27 NJPER 167, 173 (¶32056 2001); Crown Central Corp. v. NLRB, 420 F. 2d 724, 74 LRRM 2855 (5<sup>th</sup> Cir. 1970); Black Horse Pike Reg. Bd. of Ed., P.E.R.C. No. 82-19, 7 NJPER 502 (¶12223 1981); Hamilton Tp. Bd. of Ed., P.E.R.C. No. 79-59, 5 NJPER 115 (¶10068 1979). The Commission observed:

Passions may run high and epithets and accusations may ensue so courts have refused to impose a 'rigid standard of proper and civilized behavior' on participants and have allowed leeway for adversarial and impulsive behavior.

[State of N.J. (Dept. of Treasury)]

The Commission has simultaneously acknowledged that representational conduct may lose its statutory protection if it indefensibly threatens workplace discipline, order and respect. Id; NLRB v. Thor Power Tool Co., 351 F. 2d 584, 60 LRRM 2237 (7<sup>th</sup> Cir 1965); American Telephone and Telegraph Co. v. NLRB, 571 F. 2<sup>nd</sup> 1159, 89 LRRM 3140 (2d Cir. 1975); Atlantic Steel Co., 245 NLRB No. 107, 102 LRRM 1247 (1979)<sup>3/</sup>. To determine whether conduct is indefensible in the context of the dispute involved, it is necessary to balance the employees' heavily protected right

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<sup>3/</sup> The NLRB has recently rejected standards set forth in Atlantic Steel Co. in favor of those in Wright Line, 251 NLRB 1083 (1980), enf'd 662 F. 2d 899 (1<sup>st</sup> Cir. 1981), cert. denied 453 U.S. 989 (1982). See General Motors LLC, 369 NLRB No. 127 (2020). The Commission has declined to follow NLRB precedents when its assessment of policies behind the Act differ from the NLRB's assessment of the purposes behind the LMRA. State of NJ (Dept of Public Advocate), P.E.R.C No. 94-89, 20 NJPER 184 (¶25083 1994). The Commission has not reconsidered its application of Atlantic Steel Co. in appropriate cases.

to representation in negotiations and grievance discussions against the employer's right to maintain workplace discipline. State of N.J. (Dept of Treasury) at 27 NJPER 174.

Ludwig's zealous advocacy on behalf of grievants/unit employees/shop stewards in grievance meetings at DOL in March, 2019 occasionally careened into personal invective toward DOL representatives, including Nickelson and Ramsay. The limited record before me also indicates that Ludwig's close physical proximity to Nickelson in the afternoon grievance meeting of March 21, 2019, together with his simultaneous gesticulations and unbridled, loud (enough to cause disturbance elsewhere on the twelfth floor) protests and accusations caused Nickelson to physically recoil from him and/or invited the intervention of Security Coordinator Plumeri. Such conduct does not appear to be protected under the above-cited Commission standard.

Ludwig apparently continued to perform his representational duties at DOL from late March, 2019 until March, 2020 (when the Governor declared a health emergency in the wake of the COVID-19 pandemic) with two alleged incidents of unprotected conduct, one each in June and September, 2019. The latter incident occurred in a telephone conversation; although Ludwig's conduct appears to be consistent with his unprotected, March, 2019 behavior, his certification indicates that DOL representative Tumillo later conceded an error resulting in the dispute or misunderstanding.

Commission cases in the specific context of representational conduct aim to preserve the rights of both parties. Atlantic County Judiciary, P.E.R.C No. 93-52, 19 NJPER 55 (¶24025 1992), aff'd 21 NJPER 321 (¶26206 App. Div. 1994); Atlantic County P.E.R.C. No. 98-8, 23 NJPER 466 (¶28217 1997) (Commission finds in the former that employee was lawfully transferred due to offensive and disrespectful speech outside the bounds of protected activity; in the latter, Commission finds violation of the Act after County denied access to terminated union president; absolute ban on access interfered with protected rights); Salem County, I.R. No. 86-23, 12 NJPER 546 (¶17206 1986); State of New Jersey (Office of Employee Relations), I.R. No. 2000-14, 26 NJPER 266 (¶31103 2000).

If Ludwig's conduct or any union representative's conduct in a meeting falls outside the bounds of activity protected by the Act, the State may properly discontinue the meeting, take appropriate disciplinary action or seek an unfair practice remedy before the Commission. A union representative's egregious behavior warranting the termination of a grievance meeting adversely affects the unit employee(s) who is/are not receiving the representation to which they are lawfully entitled. In such circumstances, the State may lawfully have the representative escorted from the premises and condition future access upon

assurances that future conduct will not be improper. State of New Jersey (OER), 26 NJPER at 269.

I do not believe that Ludwig's conduct in March, 2019 warrants a total ban from DOL premises, particularly in light of his continued access for about one year with but two incidents that are of concern but are not as egregious as his earlier conduct. In light of the apparently continuing and difficult relationship between Ludwig and Nickelson, I find it appropriate to prohibit his professional interactions with her at DOL; Ludwig may instead pursue his representational duties with other DOL representatives, including Ward.

I shall retain authority to limit this order to allow a return date on short notice to dissolve the restraint if Ludwig engages in conduct outside the bounds of protected activity. Ludwig may elect to engage in conduct protected by the Act; if he elects not to so engage by repeating the same or similar conduct as averred in the DOL representatives' certifications, his right to perform representational activities on DOL premises may be restricted or lost. See City of Hackensack, P.E.R.C. No. 78-74, 4 NJPER 214 (¶4107 1978).

**ORDER**

The Temporary Restraint issued on September 21, 2020 shall remain in effect, together with a prohibition on Ludwig's professional contact with Nickelson on DOL premises. Such contacts regarding grievances and contract administration shall be with other DOL representatives, including Ward, instead. This Order is subject to a motion for dissolution or modification on two days' notice, based on new or changed circumstances, as described above. The Order shall remain in effect, pending further disposition.

The case shall be processed in the normal course.

/s/Jonathan Roth  
Jonathan Roth  
Commission Designee

DATED: October 15, 2020  
Trenton, New Jersey