

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HUDSON COUNTY COMMUNITY
COLLEGE,

Respondent,

-and-

Docket No. CO-86-7-25

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO,

Charging Party.

SYNOPSIS

The Hearing Examiner denies Hudson County Community College's ("College") motion for summary judgment and grants CWA's motion to compel answers to interrogatories. The College contends that the instant charge should be dismissed because it merely repeats the allegations of an earlier charge that has been withdrawn pursuant to a settlement agreement. The Hearing Examiner denies the summary judgment motion for two reasons. First, while the charge does repeat allegations of reprisals against two college employees active in a CWA organizing campaign, it also raises additional allegations of reprisals against a third CWA supporter. Thus, at a minimum, the "repeated" allegations are relevant as background and there is no basis for dismissing the new allegations. Second, it may be that the alleged reprisals against the third CWA supporter work a repudiation of the settlement agreement.

The Hearing Examiner applies the appropriate Office of Administrative Law rules in granting the discovery motion.

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Appearances:

For the Respondent, Murray & Granello, Esquires,
(Robert E. Murray, of Counsel and Stephen E. Trimboli,
On the Brief)

For the Charging Party, Stephen P. Weissman, Esquire

RULING ON MOTION FOR SUMMARY JUDGMENT AND
MOTION TO COMPEL ANSWERS TO INTERROGATORIES

On July 9, 1985, the Communications Workers of America, AFL-CIO ("CWA") filed an unfair practice charge against Hudson County Community College ("College"). The charge alleges that the College violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (2),

(3) and (4),^{1/} when, allegedly in retaliation for their organizing on CWA's behalf, it denied reemployment to Evelyn Del Toro, Charles Curtis and Ada Nieves. The charge also alleges that the College interfered with an organizational campaign conducted by CWA and certain employees and retaliated against employees for supporting a representation petition CWA filed on January 16, 1985.

On August 8, 1985, a Complaint and Notice of Hearing issued.

On September 4, 1985, CWA served interrogatories on the College and on October 23, 1985, filed a motion to compel the College to answer them.

On October 29, the College moved for summary judgment and filed a brief in opposition to CWA's motion to compel answers to the interrogatories. The College alleges that CWA is barred from pressing the unfair practice charge because it merely repeats the allegations (with the exception of those allegations concerning the

^{1/} 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 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; and (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."

non-renewal of Nieves' contract) of a previous charge which CWA withdrew pursuant to a settlement with the College.^{2/}

2/ That settlement provided:

1. Given that Evelyn DelToro was not offered reemployment as an Academic Counselor in the Special Services Program for the 1985-86 school year due to funding problems, and given that while employed by the College as an Academic Counselor, Ms. DelToro performed in a satisfactory manner:

(a) The College agrees that if an Academic Counselor position in the Special Services Program should become available during the 1985-86 school year, such position will be offered to Ms. DelToro;

(b) The College further agrees that if during the 1985-86 school year an Academic Counselor position becomes available in any other program, the College will make a good faith effort to rehire Ms. DelToro as an Academic Counselor, provided she is qualified for such position.

2. It is further agreed that the Notice attached to this Agreement will be posted in all places where notices to employees are usually posted to ensure that College employees are aware of their right to join unions and engage in union activity, free from retaliation or reprisals.

3. Nothing in this Settlement Agreement shall be construed as an admission of guilt or liability by either party.

4. Upon execution of this Agreement all pending Unfair Practice Charges filed by the parties and the Representation Petition filed by CWA shall be deemed to be withdrawn.

The College asserts that CWA is not entitled to have its interrogatories answered because it failed to demonstrate good cause to compel discovery. The College also asks dismissal of those portions of the Complaint alleging a violation of §§5.4(a)(2) and (4).

CWA opposes the College's motion for summary judgment. It asserts that dismissal of the entire Complaint would be inappropriate because the Complaint's allegations concerning the non-renewal of Nieves' contract were not part of the charge previously settled. It also asserts that the College's failure to rehire Nieves, allegedly a principal CWA organizer, violated the College's promise in the settlement agreement not to interfere with the exercise of organizational rights. It stresses that her non-renewal occurred within four weeks of the settlement agreement.

The College has filed a response asserting that the settlement agreement was an enforceable contract.

Pursuant to N.J.A.C. 19:14-4.8(d), summary judgment may be granted:

"[i]f it appears from the pleadings, together with the briefs, affidavits and other documents filed, that there exists no genuine issue of material fact and the movant or cross-movant is entitled to its requested relief as a matter of law..."

A motion for summary judgment will be granted with extreme caution. The moving papers are to be considered in the light most

favorable to the party opposing the motion and all doubts are to be resolved against the movant. The summary judgment procedure is not to be used as a substitute for a plenary trial. Baer v. Sorbello, 177 N.J. Super. 182, 185 (App. Div. 1981). In light of these principles, the Commission has been reluctant to grant summary judgments. See, Essex County Educational Services Commission, P.E.R.C. No. 83-65, 9 NJPER 19, 20 (¶14009 1982).

In this case, summary judgment is inappropriate. First, the Complaint's allegations concerning the non-renewal of Nieves' contract were not part of the previously-settled charge so there is no basis for dismissing these allegations even if I accept the College's theory. Second, resolving all doubts against the College as moving party, I am not persuaded that a refusal to renew the contract of CWA's principal organizer might not work a repudiation of the settlement agreement, thus permitting CWA to seek relief on the settled allegations. Third, even if those portions of the Complaint repeating portions of the settled charge could not be bases for finding of liabilities and ordering remedies, they could be relevant as background to the allegations concerning the non-renewal of Nieves' contract. Finally, viewing all the allegations of the Complaint together and assuming their truth, I cannot say without doubt that CWA could not prove that the College interfered with the formation of an employee organization in violation of §5.4(a)(2) or that it discharged employees because they supported a representation petition.

In opposing the discovery motion, the College relies on Board of Education of Willingboro, H.E. No. 79-24, 4 NJPER 482 (14219 1978) where a Commission Hearing Examiner said in a footnote that: "... the granting of discovery under these rules [N.J.A.C. 19:10-3.1 and 19:14-6.3] is not a matter of right but should be granted only where good cause is shown."^{3/} Ibid. at p. 483.

Consistent with N.J.S.A. 34:13A-5.4(c) ^{4/} the Commission looks to the rules of the Office of Administrative Law ("OAL") when dealing with discovery requests. The applicable OAL rules follow:

N.J.A.C. 1:1-11.1:

(a) Discovery methods are means designed to assist parties in preparing to meet their responsibilities and protect their rights during hearings without unduly delaying, burdening or complicating the hearing process and with due regard to the rights and responsibilities of other parties and persons affected. Accordingly, parties are obliged to exhaust all less formal opportunities to obtain discoverable material before utilizing this subchapter.

N.J.A.C. 1:1-11.2:

(a) Subject to the limitation of N.J.A.C. 1:1-11.1(a), (b) and (c) any party in a contested

^{3/} The College also asserted that the discovery motion should be denied because of the instant motion for summary judgment was pending.

^{4/} N.J.S.A. 34:13A-5.4(c) provides in pertinent part that, "In any such [unfair practice] proceeding, the provisions of the Administrative Procedure Act ... shall be applicable." The OAL rules were promulgated pursuant to the rule making authority vested in the Director of the OAL by Chapter 14F of Title 52. (L. 1978, c. 67, §5) and did not, of course, exist when the Hearing Examiner issued his Willingboro decision.

case by notice may obtain discovery by one or more of the following methods:

(1) Written interrogatories

(b) ...In considering a discovery motion the judge shall weigh the specific need for the information; its relevance and materiality; the extent to which the information is within the control of the party; undue hardship; and matters of expense, privilege and oppressiveness.

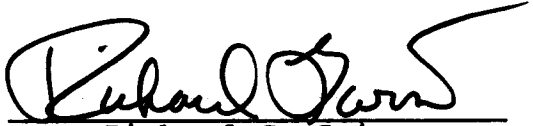
CWA requested the information from the College in early September and had no response by late October. The College does not claim that the information sought by CWA is irrelevant, not within the College's control, or that its production would result in undue hardship or expense. On balance the interrogatories request information that could lead to admissible relevant evidence.

In light of the absence of any dispute concerning the relevance or materiality of the information sought by CWA or of any claim of undue hardship or lack of control, I grant CWA's motion to compel answers to its interrogatories.

ORDER

The College's motion for summary judgment is denied.

CWA's motion to compel answers to interrogatories is granted.


Richard C. Gwin
Hearing Examiner

DATED: January 21, 1986
Trenton, New Jersey