

I.R. NO. 99-21

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ASBURY PARK AND
INTERNATIONAL ASSOCIATION
OF FIREFIGHTERS LOCAL NO. 384,

Respondents,

-and-

Docket No. CI-99-48

ROBERT R. FARRELL, SR.,

Charging Party.

SYNOPSIS

Charging Party filed an application for interim relief against the City of Asbury Park seeking to enjoin the City from violating his due process rights and generally harassing him. The Commission Designee held that at this juncture of the case, the Charging Party has no standing to assert a 5.4a(5) claim, therefore, had not established that he had a substantial likelihood of prevailing in a final Commission decision and denied interim relief.

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Appearances:

For the Respondent - City of Asbury Park,
Murray, Murray & Corrigan, attorneys
(Karen A. Murray, of counsel)

For the Charging Party,
Robert R. Farrell, Sr., pro se

INTERLOCUTORY DECISION

On January 15, 1999, Robert R. Farrell, Sr. (Farrell) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the City of Asbury Park (City) and the International Association of Firefighters Local #384 (IAFF) committed an unfair practice within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act).

Farrell alleges that the City violated N.J.S.A. 34:13A-5.4a(1) and (5)^{1/} and that IAFF violated 5.4b(1).^{2/}

On February 19, 1999, Farrell filed an application for interim relief against only the City. On February 22, 1999, Farrell was advised that his filing lacked an affidavit in support of his application as required by the rules (N.J.A.C. 19:14-9.2(b)), and he was given an opportunity to submit an affidavit. On March 11, 1999, I executed an order to show cause setting a return date for April 6, 1999. The order directed the Charging Party to serve the order on the Respondent not later than March 18, 1999. However, Farrell never received the order mailed to him and, consequently, never served the Respondent as required. On March 24, 1999, the City requested that Farrell's application for interim relief be dismissed on the grounds that he had not complied with the order's directives. On March 29, 1999, I received a new order to show cause from Farrell concerning his application for interim relief. On

^{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 employee organizations, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act."

April 1, 1999, I dissolved the March 11, 1999 order and executed the March 29, 1999 order, scheduling a return date for April 29, 1999. The parties submitted briefs, affidavits and exhibits in accordance with Commission rules and argued orally on the return date.

During oral argument, both parties raised procedural objections. Farrell argued that he did not receive the City's responsive brief until the morning of April 27, 1999 rather than by April 26, 1999 as required by the order. The City argued that the order was not served upon it until April 19, 1999, not April 12, 1999 as required by the order. Additionally, the City objected to proceeding without the IAFF being joined as a party to the interim relief matter and being given the opportunity to actively participate. I overruled all procedural objections and heard oral argument on the merits.

In his charge, Farrell contends that he was wrongfully recorded as being late on October 10, 1998. He asserts that other employees who were late by a few seconds or a few minutes, as he was, are not similarly considered late. Additionally, the City took minor disciplinary action against Farrell arising out of an incident which took place on or about October 15, 1998. The incident pertained to the transport of an individual by ambulance to a local hospital. Farrell claims that these incidences are examples of a general course of harassment undertaken by the City against him.

Farrell further asserts that he was denied his due process rights. He claims that the IAFF did not appeal his minor

disciplinary action through the various steps of the grievance procedure. In light of the IAFF's inaction, Farrell contends that the City is required, under the terms of the collective agreement, to move grievances which have not been resolved to the grievant's satisfaction through the higher steps of the grievance procedure.

The City claims that it is not harassing Farrell and the disciplinary actions taken against him were warranted under the circumstances. Additionally, the City contends that it has complied with its obligation to observe Farrell's procedural due process rights.

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).

N.J.S.A. 34:13A-5.4a(5) provides:

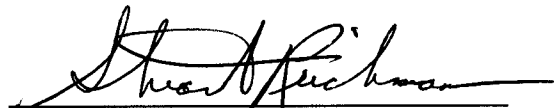
Public employers are prohibited from refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative.

Thus, an individual employee normally does not have standing to assert an a(5) violation, as the employer's duty to negotiate in good faith or to process grievances runs only to the majority representative. See Camden Cty Highway Dept., D.U.P. No. 84-32, 10 NJPER 399 (¶15185 1984). An individual employee may file an unfair practice charge and independently pursue a claim of an a(5) violation only where that individual has also asserted a viable claim of a breach of the duty of fair representation against the majority representative. See Jersey City State College, D.U.P. No. 97-18, 23 NJPER 1 (¶28001 1996). However, Farrell has chosen not to join the majority representative as a participant in this proceeding. Accordingly, Farrell's duty of fair representation claims cannot be considered at this time. Therefore, I conclude that for purposes of his application for interim relief, Farrell has no standing to allege an a(5) violation against the City.

Since Farrell lacks standing to assert an a(5) claim in interim relief, he has not carried the heavy burden required to demonstrate that he has a substantial likelihood of prevailing in a final Commission decision on his legal and factual allegations, a requisite element to obtain interim relief.

ORDER

Farrell's application for interim relief is denied. This case will proceed through the normal unfair practice processing mechanism.



Stuart Reichman
Commission Designee

DATED: May 12, 1999
Trenton, New Jersey