

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

In the Matter of

COUNTY OF BERGEN,

Respondent,

-and-

Docket No. CO-83-149

NEW JERSEY EMPLOYEES UNION,  
LOCAL 1,

Intervenor,

-and-

LOCAL 29, RETAIL, WHOLESALE  
AND DEPARTMENT STORE UNION,  
AFL-CIO,

Charging Party.

SYNOPSIS

A Commission designee grants interim relief restraining the Respondent from negotiating or implementing any collective negotiations agreement between it and the Intervenor pending the resolution of a question concerning representation raised by the Charging Party in filing a representation petition for a "blue collar" collective negotiations unit: See Middlesex County (Roosevelt Hospital), P.E.R.C. No. 81-129, 7 NJPER 266 (1981).

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

In the Matter of

COUNTY OF BERGEN,

Respondent,

-and-

Docket No. CO-83-149

NEW JERSEY EMPLOYEES UNION,  
LOCAL 1,

Intervenor,

-and-

LOCAL 29, RETAIL, WHOLESALE  
AND DEPARTMENT STORE UNION,  
AFL-CIO,

Charging Party.

INTERLOCUTORY DECISION AND ORDER

The above matter having been opened to the Public Employment Relations Commission on December 21, 1982 by Victor J. Parsonnet, Esq., attorney for the Charging Party, and the Commission's named designee, Alan R. Howe, having read the Unfair Practice Charge, supporting Affidavit and Brief, and an Order To Show Cause with temporary restraints having been issued on the same date, returnable December 30, 1982; and said Order having enjoined the Respondent from giving effect to a collective negotiations agreement reached between the Respondent and the Intervenor as long as a question concerning representation remains; and the return date having been extended by agreement to January 6, 1983; and Michael B. Ryan, Esq., attorney for the Respondent and Thomas A. Hogan, Esq., attorney for the Intervenor, having appeared on January 6, 1983 in opposition to the grant of temporary restraints; and the undersigned having considered the moving papers and the oral argument of counsel for the parties on January 6, 1983; and it appearing that the Charging Party has satisfied the two standards for the grant of interim relief, namely, the substantial likelihood of success on the

merits as to the facts and the law and the suffering of irreparable harm if relief is not granted, for the following reasons:

1. The Commission in Middlesex County (Roosevelt Hospital), P.E.R.C. No. 81-129, 7 NJPER 266 (1981) adopted the doctrine of the NLRB in Midwest Piping & Supply Co., Inc., 63 NLRB 1060, 17 LRRM 40 (1945), as modified by Shea Chemical Corporation, 121 NLRB 1027, 42 LRRM 1486 (1958), which requires an employer to remain neutral in the face of a "real question concerning representation."
2. The Commission in Middlesex, supra, held that the proper course for a public employer faced with a pending question concerning representation "...is not to begin, or if begun, to cease negotiations with the incumbent union until the representation issue has been properly determined..." (7 NJPER at 267).
3. The Commission in Middlesex, supra, also resolved the question of irreparable harm as to the petitioning organization as well as to the employer's employees when it said that: "It is very possible that an employee could be swayed by the fact that his employer had already executed an agreement with one of the organizations currently running for election, to the detriment of the rival union..." (7 NJPER at 267).
4. The undersigned cannot speculate on whether or not the Commission will in this case modify its holding in Middlesex, supra, in view of a change in the Midwest Piping doctrine by the NLRB in RCA Del Caribe, Inc., 262 NLRB No. 116, 110 LRRM 1369 (July 16, 1982).

Accordingly, it is HEREBY ORDERED that the Charging Party's request to enjoin the Respondent from giving effect to any collective negotiations agreement reached between the Respondent and the Intervenor, or to negotiate, so long as a question concerning representation remains is GRANTED, pending the disposition of the instant Unfair Practice Charge by the Commission or the resolution of the question concerning representation, which ever occurs first; and it is

FURTHER ORDERED that the foregoing restraint upon the Respondent is limited to those employees in the "blue collar" collective negotiations unit, it being made clear herein that this Order has no effect on the "white collar" collective negotiations unit.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



---

Alan R. Howe  
Hearing Examiner

Dated: January 7, 1983  
Trenton, New Jersey