

I.R. NO. 87-31

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,
OFFICE OF EMPLOYEE RELATIONS,

Respondent,

-and-

Docket No. CO-87-364

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO,

Charging Party.

SYNOPSIS

A Commission Designee denies a request for an interim relief order compelling the State of New Jersey to provide certain information to the Charging Party in connection with an upcoming grievance arbitration. The grievance concerned the denial of a vacation day in November 1986. The Commission Designee found, based upon the nature of the underlying grievance and the material which the Charging Party requested from the Respondent, that the materials requested are relevant to the grievance arbitration. Accordingly, it appears that the Charging Party established a likelihood of success on the merits.

The Charging Party's argument concerning irreparable harm was that a further delay of the arbitration occasioned by a plenary hearing and final Commission decision would be detrimental to fair and harmonious labor relations and would interfere with the union's ability to properly represent its unit members. The Commission Designee noted that Charging Party has other, potentially more appropriate avenues through which it may compel the timely production of information needed to process grievances through arbitration. The Commission Designee concluded that under the specific circumstances of this matter, any further delay which may be occasioned by an unfair practice hearing and Commission decision would not rise to the level of irreparable harm. Accordingly, as the Charging Party failed to demonstrate that irreparable harm would occur if an interim relief order failed to issue in this matter, the request for interim relief is denied.

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Appearances:

For the Respondent, Maureen Adams, Deputy Attorney General

For the Charging Party, Steven P. Weissman, Esq.

INTERLOCUTORY DECISION

On June 16 and 22, 1987, the Communications Workers of America, AFL-CIO ("Charging Party" or "CWA"), filed an amended unfair practice charge with the Public Employment Relations Commission ("Commission") against the State of New Jersey, Office of Employee Relations ("Respondent" or "State"), alleging that the State had violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). More specifically, the CWA alleged that the State had violated §§ 5.4(a)(1) and (5) of the Act when it refused to provide to the CWA certain requested documents and information which the CWA sought to use in preparation for an

upcoming arbitration.^{1/} Also on June 16, 1987, the CWA submitted an Order to Show Cause to the Commission, asking that the State show cause why an order should not be issued requiring the State to provide the information requested by the Charging Party in connection with the arbitration proceeding scheduled on June 25, 1987.

On June 16, 1987, Commission Designee Edmund G. Gerber executed the Order to Show Cause making it returnable on June 22, 1987. On that date, I conducted an Order to Show Cause Hearing, having been delegated such authority to act upon requests for interim relief on behalf of the full Commission. Each party submitted a certification and several exhibits in support of their respective positions. Both parties submitted briefs and argued orally at the hearing.

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when addressing similar applications. The moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegations in a final Commission

^{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; (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."

decision and that irreparable harm will occur if the requested relief is not granted. Further, in evaluating such requests for relief, the relative hardship to the parties in granting or denying the relief must be considered.^{2/}

The CWA states that on February 18, 1987, it requested information from the State relative to a grievance scheduled for arbitration on June 25, 1987. The issue to be decided in the arbitration is whether or not a grievant's vacation request was unreasonably denied. In correspondence dated March 24, 1987, the State provided some of the materials requested by the CWA, but refused to provide the balance of the requested materials.

The CWA argues that, as part of its collective negotiations responsibilities, an employer must provide relevant information needed by a union to properly evaluate and litigate grievances through arbitration. The CWA argues that there is a clear likelihood of success on the merits of this case and moreover, that if interim relief is denied, CWA will suffer irreparable harm. Essentially, CWA argues that it will be irreparably harmed by the delay which would be occasioned by having to postpone the scheduled arbitration until after the Commission has rendered a final determination herein. CWA notes that arbitration is designed to be

^{2/} Township of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Township of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); and Crowe v. DeGioia, 90 N.J. 126 (1982).

an expeditious process so that disputes over the meaning and application of a collective bargaining agreement do not linger. It argues that to await a final Commission decision before proceeding with the arbitration will lead to a delay in resolving the grievance of up to six to eight months.

The State opposes the CWA's request for interim relief, contending that the CWA has not demonstrated a substantial likelihood of success on the merits in this case and that it has not demonstrated that it would be irreparably harmed if the requested relief is not issued. The State notes that the burden of proving entitlement into interlocutory relief is a heavy one and that the requesting party must satisfy each of the requirements for entitlement to interim relief.

The State argues that the CWA has failed to establish irreparable harm in this matter. The State notes that no irreparable harm will occur by postponing the arbitration until the Commission can make a final determination in this matter because the grievant will be in no different position, vis-a-vis her grievance, if the matter proceeds to arbitration on June 25 or December 25. The State notes that any order that would issue from an arbitrator in this matter would be prospective only, inasmuch as the vacation leave date requested and denied by the State has long since passed. As to the CWA's claim that a delay of the arbitration in this matter will allow a continuation of a vacation policy which denies leave requests improperly, the State argues that such contention is speculative.

This matter concerns the denial by the State of a request filed by the CWA for information which the CWA contends is necessary for it to properly evaluate and litigate a grievance scheduled for arbitration on June 25, 1987. The grievance concerns the denial of vacation leave to a legal secretary at the Office of Administrative Law. The leave was requested and denied on October 9, 1986; the leave date requested was November 10, 1986; the grievance was filed on October 17, 1986; an informal hearing officer's report was issued on October 28, 1986; arbitration was requested by the CWA on December 30, 1986; an arbitration was scheduled for June 25, 1987; the first request for information concerning the arbitration was made on February 18, 1987; on March 24, 1987, the State provided some of the materials requested by the CWA and indicated it needed a more precise description of the balance of the information which the CWA was seeking and a demonstration of the relevance of that information to the arbitration at hand; in correspondence dated May 22, 1987, the CWA more precisely described the remaining information which it was seeking and argued that the information sought was relevant to the instant arbitration.

The information sought by the CWA and denied by the State is listed on page 2 of the Order to Show Cause executed in this matter. Those items include attendance records, documents indicating secretarial assignments to ALJs, documents reflecting secretarial vacancies at the Quakerbridge OAL office, PARs and EPEISs for certain OAL supervisory employees and organizational

charts reflecting the structure of the Office of Administrative Law.

It is clear that in the instant matter, an arbitrator's award cannot specifically remedy the denial of the grievant's requested vacation date from November 1986. Further, neither counsel was aware of any other similar pending grievances concerning the denial of vacation leave.

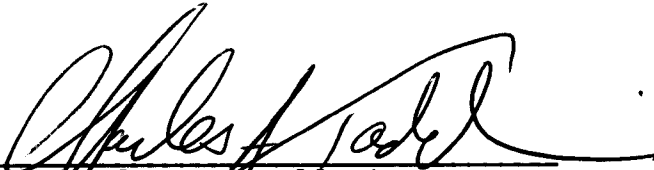
The Commission, consistent with the National Labor Relations Board and the Courts, has held that the duty to negotiate in good faith includes supplying the union, upon request, with that information which enables it to properly evaluate and, where appropriate, litigate grievances of unit members. See Shrewsbury Bd. of Ed., P.E.R.C. No. 81-119, 7 NJPER 235 (¶12105 1981); Willingboro Bd. of Ed., P.E.R.C. No. 83-91, 9 NJPER 76 (¶14041 1982); Downe Tp. Bd. of Ed., P.E.R.C. No. 86-66, 12 NJPER 3 (¶17062 1985); NLRB v. Acme Industrial Co., 385 U.S. 432, 87 S.C. 565 (1967); Detroit Edison Co. v. NLRB, 440 U.S. 304, 99 S.C. 1123 (1979). It seems clear, based upon the nature of the underlying grievance and the materials which the CWA requested from the State, that the materials requested are relevant to and have the proper nexus to the June 25 grievance arbitration. There was neither a claim nor a demonstration by the Respondent that the production of these materials would be burdensome. Accordingly, it would appear that the CWA has established a likelihood of success on the merits in this matter.

CWA's claim concerning irreparable harm is less clear. Any remedy provided to the grievant by the arbitrator in this matter can only be prospective, given the passage of time since the denial of the grievant's requested vacation date. The arbitration, presently scheduled for June 25, 1987, was scheduled eight months subsequent to the event which gave rise to the grievance. The essence of CWA's argument is that a further delay of the arbitration occasioned by a plenary unfair practice hearing and a final Commission decision in this matter would be detrimental to fair and harmonious labor relations and would interfere with the union's ability to properly represent its unit members.

While I note that, in general, delay in the resolution of workplace grievances is detrimental to the collective negotiations process, under the specific circumstances of this matter, any further delay which may be occasioned by an unfair practice hearing and Commission decision would not rise to the level of irreparable harm. I note that there are minimal, if any, factual disputes in this matter. Accordingly, a hearing should be brief and a Hearing Examiner's Report and a Commission decision would not be long in issuing.^{3/}

^{3/} I further note that Charging Party may have other avenues through which it may compel the timely production of information needed to process the grievance through arbitration.

Accordingly, Charging Party having failed to demonstrate that irreparable harm would occur should an interim relief order fail to issue in this matter, the request for interim relief is hereby denied.



Charles A. Tadduni
Commission Designee

DATED: June 23, 1987
Trenton, New Jersey