

D.U.P. NO. 93-11

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of
COUNTY OF ESSEX,

Respondent,

-and-

Docket No. CO-92-77

C.W.A., AFL-CIO,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge and its first amendment regarding the County's refusal to satisfy the CWA's request for information. The Director finds that the County's delay in providing the information did not breach the employer's statutory duty to supply information.

However, the Director issues a Complaint and Notice of Hearing with respect to the 2nd amendment to the charge, alleging that the County interfered with the CWA's ability to police the administration of the contract and to carry out its duty as the negotiations representative, by withholding health benefits information from it.

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Appearances:

For the Respondent,
Office of the Essex County Counsel
(Lucille LaCosta-Davino, attorney)

For the Charging Party,
Lisa Morowitz, attorney

DECISION

On September 16, 1991 and February 7, 1992, the Communications Workers of America, AFL-CIO, filed an unfair practice charge and amended charge against the County of Essex. The original charge, and the February 7 amendment, allege that the County violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1) and (5),^{1/}

^{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."

when, in August 1991, it refused to provide information which CWA requested relating to the reimbursement of health benefits claims under the parties' negotiated agreement.^{2/}

On June 23, 1992, the CWA filed a second amendment to its unfair practice charge which alleges that the County violated subsections (a)(1) and (5) of the Act when it withheld information regarding the administration of the County's health benefits plan. The CWA claims that the County interfered with the CWA's ability to police the administration of the agreement and to carry out its duty as the employees' negotiations representative.

CWA filed a grievance against the County alleging that, through its self-insured health benefits plan, the County was failing to reimburse claimants in a timely fashion. On August 19, 1991, CWA requested all correspondence between or by County officials relating to problems with the timely payment of claims, and a list of the submission and reimbursement dates of medical claims of affected employees from June 1989 to June 1991. The County allegedly refused this request. On September 16, 1991 an arbitration hearing was held. The CWA was informed that the requested correspondence did not exist. It then requested a subpoena duces tecum for the list of dates. The arbitrator signed the subpoena and, at the County's request but over CWA's objections,

^{2/} The parties agreed to postpone the exploratory conference set for October 24, 1991 pending an arbitrator's decision on a subpoena duces tecum.

signed a protective order, limiting access to the information to CWA's counsel and those members participating in the preparation of the union's brief. The County provided the requested list of dates.

In the original charge and the first amendment, the CWA seeks a finding that the County's initial refusal was a violation of the Act and an order that the information be made available to the entire CWA membership.^{3/}

Based upon the particular facts alleged in the September 16 charge and its February 7 amendment, I find that the Commission's complaint issuance standard has not been met and decline to issue a complaint on the allegations contained therein. It is well-settled that a majority representative is entitled to information needed to carry out its statutory duty of contract administration and employee representation. Failure to provide grievance information is a

^{3/} CWA notes that it is not asking the Commission to overturn the arbitrator's protective order; but it appears to seek an order that the entire membership should have access to the information. In its brief, at page 2, CWA states:

"CWA is thus, still seeking access to the health benefits data. The union does not presently have the opportunity to use this information in the negotiation or administration of the agreement and has been unable to share this information with its membership." CWA construes the County's request for a protective order as an attempt to "further deprive the Union of its statutory rights." (CWA brief at page 5)

refusal to negotiate in good faith.^{4/} However, the Commission distinguishes between a refusal to supply information and a single instance of initially failing to provide information. Here, the County refused to provide the information after the CWA's first request, but it provided the information after the arbitrator signed a subpoena with a protective order. Absent other evidence of bad faith, the Commission has not determined that such delay in providing the information as occurred here breached the employer's statutory duty to supply information. Accord, State of New Jersey (Trenton State College), P.E.R.C. No. 92-100, 18 NJPER 172 (¶23084 1992)

Therefore, I find that the Commission's complaint issuance standard has not been met and decline to issue a complaint on the allegations of the September 16 charge and its February 7 amendment, involving the County's initial refusal to satisfy the CWA's request for information. N.J.A.C. 19:14-2.3. Accordingly, they are dismissed.

There is a material factual dispute concerning the June 23 second amendment to the charge. This amendment alleges that the County has interfered with the CWA's ability to police the administration of the contract and to carry out its duty as the

^{4/} New Jersey Transit Bus Operations, Inc., P.E.R.C. No. 89-127, 15 NJPER 340 (¶20150 1989); Burlington Cty., P.E.R.C. No. 88-101, 14 NJPER 327 (¶19121 1988), aff'd App. Div. Dkt. No. A-4698-87T1 (4/28/89); see also, NLRB v. Acme Industrial Co., 385 U.S. 432 (1967).

negotiations representative by withholding health benefits information from it. Accordingly, a Complaint and Notice of Hearing will be issued as to these allegations against the County.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: October 21, 1992
Trenton, New Jersey