

P.E.R.C. NO. 89-56

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ATLANTIC CITY,

Respondent,

-and-

Docket No. CO-H-88-54

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL NO. 331

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the City of Atlantic City violated the New Jersey Employer-Employee Relations Act when it refused to provide to the International Brotherhood of Teamsters, Local No. 331 copies of disciplinary notices provided to employees. The Complaint was based on an unfair practice charge filed by Local No. 331.

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Appearances:

For the Respondent, Murray & Murray, Esqs.
(Karen A. Murray, of counsel)

For the Charging Party, Markowitz & Richman, Esqs.
(Joel G. Scharff, of counsel)

DECISION AND ORDER

On August 10, 1987, the International Brotherhood of Teamsters, Local No. 331 ("Local 331") filed an unfair practice charge against the City of Atlantic City ("City"). The charge alleges that the City violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4 (a)(1), (2) and (5),^{1/} by refusing to provide to Local 331 copies of disciplinary notices provided to employees.^{2/}

^{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; (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/} Local 331 withdrew its allegation that the City violated subsection 5.4(a)(2).

On March 7, 1988, a Complaint and Notice of Hearing issued. On March 22, the City filed its Answer asserting that neither the Act nor the parties' agreement requires the City to forward disciplinary notices to Local 331. The City contends that providing the union with disciplinary notices is a procedural matter that must be negotiated rather than achieved through an unfair practice proceeding.

On May 16, 1988, the parties stipulated facts, introduced joint exhibits, waived a hearing and a Hearing Examiner's report, and asked that the Commission decide this matter upon the stipulated record. N.J.A.C. 19:14-6.7. Briefs and reply briefs were filed by August 23,. These are the verbatim stipulated facts:

1. The Teamsters, Local 331 is an employee representative within the meaning of the New Jersey Employer-Employee Relations Act.
2. The City of Atlantic City is an employer within the meaning of the New Jersey Employer-Employee Relations Act.
3. The City and the Teamsters are party to a collective negotiations agreement which runs from January 1, 1986 through December 31, 1988 (J-1).
4. The Parties have not commenced negotiations for a successor agreement.
5. The City provides written notifications of all disciplinary actions and proposed disciplinary actions to the employee or employees involved.
6. On or about April 20, 1987, Local 331 first requested that the City provide it with simultaneous notice of disciplinary action (J-2).

7. Local 331 presently requests that the City provide such notice to its Local office in Pleasantville, New Jersey. Local 331 is not currently requesting that such notice be provided to its shop stewards.

8. The City has never provided simultaneous notice of discipline to Local 331 since certification as the exclusive representative by the Commission. The Commission will take notice of its Certification records.

9. The City has never provided simultaneous notice of discipline to any other majority representative of its other negotiations units, except AFSCME, Local 2303.

10. With regard to Local 2303, the City follows the provisions of the respective collective negotiations agreement which expired on December 31, 1987 (J-3). During current negotiations with AFSCME, neither the City nor AFSCME has proposed a change in the provisions concerning notice of discipline.

11. During negotiations between the City and Local 331 for the 1986-1988 agreement, the issue of simultaneous notice of disciplinary actions was never raised by either party.

12. In cases of minor discipline, the City serves the New Jersey Department of Personnel Minor Disciplinary Action notice form upon the employee. If the employee files a grievance as a result of the notice she or he will be granted a hearing. Such hearings usually occur at step 3 of the parties' grievance procedure. Employees are entitled to representation by Local 331 at this hearing. Requests for such representation have never been denied by the City (J-4).

13. In cases of major discipline, the City either personally or by registered mail serves the employee with a Department of Personnel Preliminary Notice of Disciplinary Action (CS-31A) (J-5) which provides for a right to a hearing. The employee must request a hearing within ten days of the date of service. Employees are entitled to representation by Local 331 at this hearing. Requests for such representation have never been denied. Following a hearing, the City serves upon the employee the Final Notice of Disciplinary Action (CS-31B) (J-6) and the disciplinary hearing report and decision. The City simultaneously sends the disciplinary hearing report and decision to the shop steward and Local 331's business agent.

14. In only one instance [has] an employee insisted upon proceeding at a formal hearing without representation. In this instance, the City insisted upon Union representation being available. The report of the hearing and decision is attached as J-7.

15. The procedures set forth in stipulations 13 and 14 are the same for all employees in the City's bargaining units including Local 331.

The parties have introduced contracts, disciplinary notices and the report mentioned in paragraph 14 of the stipulated facts.

These facts are relevant:

Notices of Minor Disciplinary Action inform employees that they are being penalized by a fine, demotion or suspension of up to five working days (J-4). Major discipline results in a penalty exceeding a five day suspension. The Preliminary Notice of Disciplinary Action advises employees that they have ten days to seek a departmental hearing (J-5).

Article IV of the parties' agreement defines a grievance to include discipline, but does not provide for disciplinary notices to the union (J-1). Under Article IV, grievances must be filed within five days (J-1). Article 21.5 of the City's agreement with AFSCME, Local 2303 requires the City to provide the union with notice of a unit member's discharge (J-3).

The record also contains the hearing report of a unit member discharged for incapacity due to a disability. The individual received a Preliminary Notice of Discipline and apparently requested a departmental hearing but refused representation by Local 331. The hearing officer advised the

individual of the procedures and her right to union representation. The individual refused, but was represented by a shop steward at the hearing officer's behest. The hearing officer found the individual incapable of completing her duties.

N.J.S.A. 34:13A-5.4(a)(5) makes it an unfair practice for an employer to refuse to negotiate in good faith with the majority representative over the terms and conditions of employment of unit employees. Refusal to provide information relevant to contract administration is a refusal to negotiate in good faith. Burlington Cty., P.E.R.C. No. 88-101, 14 NJPER 327 (¶19121 1988), app. pending App. Div. Dkt. No. A-4698-87T1; Downe Tp. Bd. of Ed., P.E.R.C. No. 86-66, 12 NJPER 3 (¶17002 1985); Shrewsbury Bd. of Ed., P.E.R.C. No. 81-119, 7 NJPER 235 (¶12105 1981). Compare NLRB v. Acme Industrial Co., 385 U.S. 432 (1967); NLRB v. Truitt Mfg. Co., 351 U.S. 149 (1956); Safeway Stores v. NLRB, 691 F.2d 953, 111 LRRM 2745 (10th Cir. 1982); Westinghouse Electric Corp., 239 NLRB 106, 99 LRRM 1482 (1978); enf. as mod. 648 F.2d 18, 105 LRRM 3337 (D.C. Cir. 1981). See also Gorman, Basic Text on Labor Law, at 409-418 (1976); Morris, The Developing Labor Law, at 606-621 (2d ed. 1983). Disciplinary notices are relevant to contract administration. See C & P Telephone Co. v. NLRB, 687 F.2d 633, 111 LRRM 2165 (2d. Cir. 1982) (names of disciplined employees during preceding five years); West Point Pepperell, Inc., 200 NLRB No. 147, 82 LRRM 1239 (1972) (reasons for discharges); Food Employer Council, Inc., 197 NLRB No. 98, 80 LRRM 1440 (1972) (periodic request for classification and

wage data); Oliver Corp., 162 NLRB No. 68, 64 LRRM 1092 (1967) (information about termination of probationary employees).

Local 331 negotiated a grievance procedure with the City requiring that grievances be filed within five days of the occurrence. In cases of major discipline, a request for a departmental hearing must be made within ten days of the Preliminary Notice of Discipline. In order to inform unit members of their contractual and statutory rights, Local 331 must be aware of the charges while review procedures are timely.^{3/}

Local 331 also claims that its right to pursue organizational grievances requires that it receive disciplinary notices. Red Bank Reg. Ed. Ass'n v. Red Bank Reg. H.S. Bd. of Ed., 78 N.J. 122 (1978) and Fair Lawn Bd. of Ed. v. Fair Lawn Ed. Ass'n, 174 N.J. Super. 555 (App. Div. 1980) establish a representative's right to pursue organizational grievances. Notice of disciplinary actions might assist Local 331 in exercising that right.

Local 331 did not waive its right to receive copies of disciplinary notices by failing to negotiate over their receipt. The duty to furnish information relevant to contract administration is a statutory obligation independent of any contract. NLRB v. Acme Industrial Co.; see State of New Jersey (Department of Higher Ed.), P.E.R.C. No. 87-149, 13 NJPER 504 (¶18187 1987).^{4/}

^{3/} Using the employee discharged for incapacity as an example, Local 331 asserts that it needs notice of discipline to advise unit members who may not otherwise seek its assistance.

^{4/} A contractual provision, however, may validly call for less or more information than statutorily required.

ORDER

The City of Atlantic City is ordered to:

A. Cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of rights guaranteed to them by the Act, particularly by refusing to provide the International Brotherhood of Teamsters, Local 331 with copies of disciplinary notices sent to unit members.

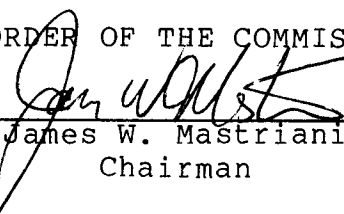
2. Refusing to negotiate in good faith with the International Brotherhood of Teamsters, Local 331 concerning terms and conditions of employment, particularly by refusing to provide Local 331 with copies of disciplinary notices sent to unit members.

B. Take the following affirmative action:

1. Provide the International Brotherhood of Teamsters Local 331 with copies of disciplinary notices sent to unit members.

2. Notify the Chairman of the Commission within (20) days of receipt what steps the Respondent has taken to comply herewith.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey
November 22, 1988
ISSUED: November 23, 1988