

P.E.R.C. NO. 2003-32

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF MORRIS,

Respondent,

-and-

Docket No. CO-H-2002-39

COMMUNICATIONS WORKERS OF
AMERICA, LOCAL 1040, AFL-CIO,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the County of Morris violated the New Jersey Employer-Employee Relations Act when it refused to provide the Communications Workers of America, Local 1040, AFL-CIO with the addresses of all employees in Local 1040's negotiations unit. The Commission concludes that the union has a right under the New Jersey Employer-Employee Relations Act to request and receive a list of home addresses of temporary assistance employees in its negotiations unit.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Respondent, Courter, Kobert, Laufer & Cohen,
attorneys (Stephen E. Trimboli, of counsel and on the
brief)

For the Charging Party, Weissman & Mintz, attorneys
(Judian Chartier, on the brief)

DECISION

On August 10, 2001, the Communications Workers of
America, Local 1040, AFL-CIO, filed an unfair practice charge
against the County of Morris. The charge alleges that the County
violated 5.4a(2) and (7)^{1/} of the New Jersey Employer-Employee
Relations Act, N.J.S.A. 34:13A-1 et seq., when it refused to
provide Local 1040 with a list of the names and addresses of all
employees in the negotiations unit represented by Local 1040.
Local 1040 seeks this list to communicate with all unit employees
and to fulfill its statutory duty to represent them fairly.

^{1/} These provisions prohibit public employers, their
representatives or agents from: "(2) Dominating or
interfering with the formation, existence or administration
of any employee organization. (7) Violating any of the
rules and regulations established by the commission."

The parties filed statements of position. They also exchanged these statements with each other.

The County stated that it did not object to providing the names of unit employees, but did object to providing their addresses. The County also asserted that a Complaint should not issue because a refusal to provide addresses would not violate N.J.S.A. 34:13A-5.4a(2) or 5.4a(7). It then asserted that even if Local 1040 had pleaded a violation of 5.4a(5),^{2/} the County would not be obligated to provide addresses given the reasons and cases discussed in its statement and also presented to the agency in another case involving the same issue and the same employer but a different majority representative, Morris Cty. and Morris Council No. 6, NJCSA, IFPTE, AFL-CIO, Dkt. No. CO-H-2000-74 ("Morris I"). That case had already been heard by the time the instant charge was filed so it was not consolidated with this one.^{3/}

Local 1040 did not contest the employer's assertion that it had cited the wrong provisions and it stated that it would file a separate letter amending its charge to allege a violation of

^{2/} This provision prohibits public employers, their representatives or agents 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."

^{3/} On September 26, 2002, we issued our Morris I decision requiring disclosure of home addresses, P.E.R.C. No. 2003-22, NJPER (2002).

5.4a(1) and (5). Addressing the employer's arguments with respect to 5.4a(5), Local 1040 argued that the cases relied upon by the employer were distinguishable and that it was entitled to receive the addresses so it could fulfill its duty of fair representation towards all negotiations unit employees. Local 1040 did not file a separate letter amending its charge.

On February 11, 2002, a Complaint and Notice of Hearing issued. The County's Answer admitted that the County had refused to provide the addresses, but asserted various defenses.

With the assistance of Hearing Examiner Wendy L. Young, the parties stipulated the facts and presented the case directly to the Commission. The stipulations provide:

1. Respondent, County of Morris, is a public employer within the meaning of the New Jersey Public Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.
2. The Communications Workers of America, AFL-CIO, is an employee representative organization within the meaning of the New Jersey Public Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq.
3. The CWA is the majority representative of certain County employees assigned to the County Office of Temporary Assistance, as more specifically defined in the Recognition Clause of the most recent collective negotiations agreement between the County and the CWA, attached hereto as Exhibit A.
4. Prior to January 1, 2000, the individuals now employed in the County Office of Temporary Assistance were employees of the Morris County Board of Social Services, an entity separate from and independent of the County of Morris. On January 1, 2000,

the Morris County Board of Social Services was disbanded, and its functions and employees absorbed by the County of Morris.

5. The CWA was the majority representative of the employees employed by the Morris County Board of Social Services. The CWA bargaining unit continued intact when the Board of Social Services was absorbed by the County, and continues to function as a separate bargaining unit within the County.
6. The main office of the County Office of Temporary Assistance is 1719 Route 10, Parsippany, New Jersey. There is also one satellite office located at 8 South Morris Street, Dover, New Jersey.
7. The Parsippany office of the County Office of Temporary Assistance is budgeted for 156 positions. Of these, 135 are positions included in the CWA bargaining unit.
8. The Dover satellite office of the Office of Temporary Assistance is budgeted for seven positions, of which six are included in the CWA bargaining unit.
9. All bargaining unit employees of the County Office of Temporary Assistance work Monday through Friday, 8:30 a.m. to 4:30 p.m. In addition, one social worker is assigned to be on call for evenings and weekends in connection with the homeless "hotline" maintained by the County Office of Temporary Assistance.
10. The CWA has one shop steward assigned to the Dover satellite office, named Bianca Godoy. The CWA has four shop stewards assigned to the Parsippany office; Dot Smythe, Linda Ross, Debbie Fine, and Ezra Buchwald.
11. On or about July 31, 2001, the CWA requested a list of all bargaining unit employees, including home addresses, from County Labor Relations Director John R. McGill. The County provided employee

names, but declined, and has continued to decline, to provide home addresses.

12. The current collective negotiations agreement between the CWA and the County expired on December 31, 2001. The parties are in negotiations concerning a successor agreement. A copy of the expired collective negotiations agreement is attached hereto.
13. There are two bulletin boards in Parsippany office for use by the CWA; one on the first floor by the facilities, and one on the second floor in the hall next to the personnel boards. There is also a table in the kitchen on the second floor that the CWA may use for displays and communications with employees.

The stipulations further provide:

In so stipulating, the parties recognize that the facts as stipulated constitute the complete record to be submitted to the Commission. The Charging Party is placed on notice that to the extent that the stipulated facts are insufficient by a preponderance of the evidence, the Complaint may be dismissed by the Commission. Similarly, the Respondent is advised that it too must rely on the sufficiency of the stipulated record to sustain any affirmative defenses it has asserted or to rebut or disprove the existence of a prima facie case established by the Charging Party.

The County filed its brief on September 6, 2002. It asserts that the Complaint must be dismissed because the stipulated record does not show a violation of 5.4a(2) or (7) and because Local 1040 did not amend its charge to state violations of 5.4a(1) or (5). It also argues that mandatory disclosure of addresses would unduly infringe upon the County's constitutional right to regulate access to its property and that the employees'

right to privacy in their addresses outweighs the union's interest in obtaining the addresses. It raises all the arguments pressed in Morris I and also seeks to distinguish the facts in that case evidencing communications problems from the facts in this one not showing such problems.

Local 1040 filed its brief on September 9, 2002. It asserts that the Act requires the County to provide majority representatives with addresses upon request and that the County violated 5.4a(1) and (5) by not doing so.

We first consider whether we should dismiss the Complaint given that Local 1040 did not amend its charge. We agree with the County that the refusal to provide addresses does not violate the only two provisions cited in the charge -- 5.4a(2) and (7). Ordinarily, failure to amend a charge to cite the pertinent provisions will result in dismissal of a Complaint. Nevertheless, we may decide an issue, even though not specifically pleaded, if that issue has been fairly and fully litigated. See, e.g., Commercial Tp. Bd. of Ed., P.E.R.C. No. 83-25, 8 NJPER 550 (¶13253 1982), aff'd 10 NJPER 78 (¶15043 App. Div. 1983). Under all the circumstances, we invoke that exception. Although it miscites the appropriate statutory provisions, the charge specifies the facts underlying the alleged violation. The parties have essentially tried this case from the beginning as if it raised the same issue as Morris I and as if a violation of 5.4a(1) and (5) had been pleaded. The issues have been extensively and excellently

briefed. Local 1040 notified the agency and the County of its intent to amend the charge even though it neglected to do so. Finally, this case presents a labor relations problem which should be resolved now rather than kept in limbo.

We now turn to the question of whether the Employer-Employee Relations Act requires the County to give Local 1040 the addresses of the temporary assistance employees in its negotiations unit. We answer this question yes.

The parties have presented essentially the same arguments as in Morris I so we incorporate our analysis in that case. Based on that analysis, we reject the County's arguments that it has a constitutional right to withhold the addresses from a majority representative; that the various executive orders prohibit disclosure;^{4/} and that the employees' interest in privacy outweighs the majority representative's interest in receiving the addresses.

We agree with the County that the stipulated record does not show the communications problems present in Morris I (e.g. lack of confidentiality in the workplace and problems with the internal mail system and with calling employees at their work stations). Nevertheless, we believe that sound labor relations

^{4/} We decline to wait until the Privacy Study Commission issues its report since the question before us under our Act is much narrower than the question before that commission under the Open Public Records Act -- i.e., should addresses be considered a public record disclosable to the public at large. See Reed v. NLRB, 927 F.2d 1249, 136 LRRM 2803 (D.C. Cir. 1991), cert. den. 502 U.S. 1047 (1992) (that NLRB orders disclosure of lists of employee home addresses to unions participating in representation elections does not make such lists public records for other purposes).

precedents and policies favor disclosure of home addresses absent a likelihood (not demonstrated here) that employees will be harassed or endangered if their majority representative has that information. NLRB v. CJC Holdings Co., 97 F.3d. 114, 153 LRRM 2580 (5th Cir. 1996); see generally Hardin and Higgins, The Developing Labor Law at 865-866 (4th ed. 2001). Compare N.J.A.C. 19:11-10.1 (requiring employers to provide unions participating in representation elections with election eligibility lists of employees and their last known mailing address). Some union-employee communications may be too sensitive to post on a bulletin board or leave on a lunch room table. Providing addresses to a majority representative allows for a secure channel of communication of union-employee confidences and eliminates any possibility that the confidences will be disclosed to the employer or interfered with at the workplace. It makes better labor relations sense to provide this secure channel absent a showing of potential danger rather than to deny that secure channel until confidences are breached or interferences occur.

Finally, we reject the County's reliance on Metropolitan Edison Co., 330 NLRB No. 21, 163 LRRM 1001 (1999), and its holding that the majority representative and the employer had to negotiate over alternatives to the requested disclosure of information. That employer declined to disclose the names of two informants who had tipped off the employer about an employee's alleged workplace thefts. The employer asserted a business need to keep the

informants' names confidential and that business need was presumed to be legitimate. No such business need is present in this case -- the only interests involved are the interests of the majority representative and the employees it represents. Once it is determined that employee addresses are relevant to the majority representative's representational duties and are not confidential for purposes of disclosure to the majority representative, disclosure is required and the majority representative need not negotiate over alternatives to that disclosure.

For these reasons, we order disclosure of the addresses.

ORDER

The County of Morris is ordered to:

A. Cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, in particular by refusing to provide the Communications Workers of America, Local 1040, AFL-CIO with the addresses of all employees in its negotiations unit.

2. Refusing to negotiate in good faith with Communications Workers of America, Local 1040, AFL-CIO, in particular by refusing to provide it with the addresses of all employees in its negotiations unit.

B. Take this action:

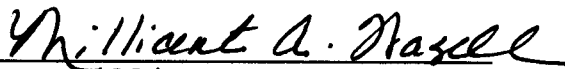
1. Provide Local 1040 within 20 days with a list of the addresses of all employees in its negotiations unit.

2. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice on forms to be provided by the Commission shall be posted immediately upon receipt thereof, and, after being signed by the Respondent's authorized representative, shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

3. Notify the Chair of the Commission within thirty (30) days of receipt what steps the Respondent has taken to comply herewith.

The remaining allegations in the Complaint are dismissed.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Mastroiani, McGlynn, Ricci and Sandman voted in favor of this decision. Commissioner Katz abstained from consideration. None opposed.

DATED: October 31, 2002
Trenton, New Jersey
ISSUED: November 1, 2002



NOTICE TO EMPLOYEES
PURSUANT TO
AN ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION
AND IN ORDER TO EFFECTUATE THE POLICIES OF THE
NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,
AS AMENDED,

We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by refusing to provide Communications Workers of America, Local 1040, AFL-CIO with the names and addresses of all employees in its negotiations unit.

WE WILL cease and desist from refusing to negotiate in good faith with Communications Workers of America, Local 1040, AFL-CIO, in particular by refusing to provide it with the names and addresses of all employees in its negotiations unit.

WE WILL provide Local 1040 within 20 days with a list of all negotiations unit employees and their home addresses.

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Docket No.

COUNTY OF MORRIS

(Public Employer)

Date: _____

By: _____

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, P.O. Box 429, Trenton, NJ 08625-0429 (609) 984-7372