

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

In the Matter of

BOARD OF EDUCATION OF WILLINGBORO,

Respondent,

-and-

Docket No. CO-78-178-72

WILLINGBORO EDUCATION ASSOCIATION AND
EMPLOYEES' ASSOCIATION OF WILLINGBORO,

Charging Parties.

ORDER ON MOTION FOR DISCOVERY

The Willingboro Education Association and the Employees' Association of Willingboro ("Associations") brought the instant action before the Public Employment Relations Commission ("Commission") claiming that the Board of Education of Willingboro ("Board") terminated 15 employees who belonged to the units represented by the Charging Parties because the Associations were the only designated majority representatives who did not support the Board's position during a work stoppage from November 4 to December 5, 1977. That is, membership of the units represented by the Charging Parties struck the Board during this period.

The Charging Party claims that "By terminating said employees for the reasons referred to above the Respondent has discriminated with respect to the tenure of employment which action has the effect of discouraging employees in the exercise of the rights under the Act on behalf of Charging Parties."

The Respondent admits that it took action to reduce in force certain of its employees and further does admit that employees within the units represented by the Charging Party engaged in an illegal strike but denies all other allegations of the Charging Parties and interpose a number of separate defenses. The substantive (as opposed to procedural) defenses are that there are no protected rights involved in this action and the Charging Parties have failed to state a claim upon which relief can be granted.

It appearing to the Director of Unfair Practice Proceedings that the allegations of the Complaint, if true, might constitute an unfair practice, a Complaint was issued in the instant matter whereupon the Charging Parties filed a motion to compel discovery seeking to depose members of the Willingboro Board of Education and its superintendent.

The Charging parties' position in this matter is that the reduction in force took place solely among those employees represented by the two units and were not discharged on the basis of whether these employees engaged in an unlawful work stoppage nor on the basis of educational policy but rather solely on the basis of the identity of the labor organizations representing these units.

It is argued that for the Charging Parties to prevail, they would have to establish the existence on the part of the Respondent of an intent to discriminate against the unit members on the basis of the identity of each representative organization. Such intent is, of course, a matter of knowledge on the part of members of the respondent Board.

The Respondent opposes the motion arguing that pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., the rules of court do not apply in an administrative proceeding and, therefore, any court rules relating to discovery are inapplicable. Further, the Commission Rules do not provide for discovery. Accordingly, it is argued there can be no basis for the granting of discovery.

Admittedly the Commission's Rules do not expressly provide for discovery. However, Rule 19:14-6.3 governs the duties and powers of a hearing examiner and in general govern his or her powers during the course of a hearing; but the rule goes beyond the timeframe of the hearing itself and states, "The Hearing Examiner shall have authority with respect to cases assigned to him or her, between the time of designation as Hearing Examiner and transfer of the case to the Commission, subject to these rules and the Act: ... (c) To take or cause to be taken depositions whenever the end of justice would be served thereby." (Emphasis supplied) Further, Rule 19:10-3.1 provides for the liberal construction of the Rules.

It is clear therefore that the right to order the taking of depositions is not limited to the taking of depositions during the hearing in lieu of testimony but may be ordered at any time whenever the ends of justice would be served. ^{1/}

^{1/} It is equally clear that the granting of discovery under these rules is not a matter of right but should be granted only where there is good cause shown.

As to the desirability of an administrative agency granting discovery, see Howard Savings Institution v. Francis, 133 N.J. Super. 54 (App. Div. 1975). In the instant matter only the Board of Education and its officers can know of their motivations here and said motivations are the essence of the Charging Parties' case.

To deny discovery in the instant action might force counsel for the Associations to subpoena Board members and have them testify as the Associations' own witnesses without ever knowing beforehand the nature of their testimony. This would be a heavy and unnecessary burden. Further, by permitting the taking of depositions before the hearing date, counsel for the Charging Parties can determine whether or not to call the Board members and officers as witnesses, and if he does, can focus his examination to a few pertinent areas thus shortening the actual time of hearing.

Accordingly, the undersigned is satisfied that good cause has been shown and will therefore ORDER that all members of the Board of Education of the Township of Willingboro (both those currently holding office and those who so held office on December 19, 1977) as well as the Superintendent of Schools of the Board of Education of the Township of Willingboro to ~~submit to the taking of depositions~~ by counsel for the Willingboro Education Association and the Employees' Association of Willingboro.



Edmund G. Gerber
Hearing Examiner

DATED: Trenton, New Jersey
November 17, 1978