

I.R. NO. 92-3

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF CLIFTON,

Respondent,

-and-

Docket No. CO-91-361

CLIFTON PBA, LOCAL 36,

Charging Party.

SYNOPSIS

The Clifton PBA, Local 36 sought to restrain the City of Clifton from implementing certain measures including furloughs without pay and layoffs. It was further alleged that these actions were motivated by anti-union animus. The question of involuntary furloughs was a subject of a companion case before the New Jersey Department of Personnel and the Commission Designee requested that the parties submit additional information as to that aspect of the case.

I.R. NO. 92-3

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of
CITY OF CLIFTON,

Respondent,

-and-

Docket No. CO-91-361

CLIFTON PBA, LOCAL 36,

Charging Party.

Appearances:

For the Respondent
Ruderman and Glickman, attorneys
(Mark S. Ruderman, of counsel)

For the Charging Party
Schneider, Cohen, Solomon, Leder & Montalbano, attorneys
(David S. Solomon, of counsel)

INTERLOCUTORY DECISION

On June 26, 1991, Clifton PBA Local 36 ("PBA") filed an unfair practice charge with the Public Employment Relations Commission ("Commission") alleging that the City of Clifton ("City") violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1.1 et seq.; specifically, subsections 5.4(a)(1), (3) and (5)^{1/} by:

^{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. (3) Discriminating in regard to hire or tenure of employment or any term or

1. Sending a notice to each member of the police department that they would be furloughed without pay for five days for reasons of economy and budgetary restraints.

2. Announcing on June 18, 1991, that nine bargaining unit members would be laid off from permanent positions in the police department.

3. Advising certain PBA members that if the PBA accepted the City's economic offer, lay-offs would be avoided.

It was further alleged that the stated reasons for the lay-offs were pretextual. Rather, the Charging Party alleges that the lay-offs were intended to punish the PBA and its unit members for exercising their rights protected by the Act in violation of subsection (a)(3). The PBA claims that on January 21, 1991, an interest arbitration award was rendered in its favor. The City refused to comply with the award. The PBA filed a complaint to confirm the award and the City sought to vacate the award. These matters are still pending. The PBA alleges that the City used the threat of furloughs and lay-offs in an attempt to unlawfully force the PBA to agree to terms less favorable than those awarded in

1/ Footnote Continued From Previous Page

condition of employment to encourage or discourage 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."

interest arbitration and that such action constitutes bad faith negotiations.

On July 23, 1991, the PBA filed an Application for an Order to Show Cause. The Order was executed and made returnable on July 31, 1991. The City of Clifton filed its brief on July 30, 1991. It admits that it had scheduled the furloughs, demotions and lay-offs but denies that it was motivated by anti-union animus. It cites City of Paterson, 87 N.J. 79 (1981), and maintains that its actions were for economic reasons and therefore, non-negotiable.

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 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 affidavits submitted by the parties raise substantial material and factual disputes about the motivation of the City. For example, the PBA, by way of affidavit, maintains that the City is

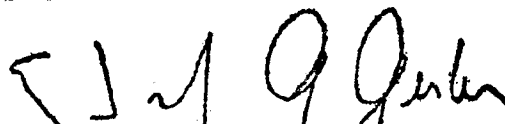
^{2/} Crowe v. DeGioia, 90 N.J. 126 (1982); Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975).

not in financial difficulty and is only using the claim of financial difficulty as a pretext for the lay-offs. Affidavits submitted by the City of Clifton state that the New Jersey Department of Community Affairs has not approved the City's Municipal Budget for 1991. Community Affairs claims that the City's budget is 1.2 million dollars over the New Jersey cap law amount and that this affects determinations concerning furloughs, demotions and lay-offs. These disputes can only be resolved after a full hearing.

With regard to the allegations in the charge that the City unlawfully changed certain terms and conditions of employment -- reduction of work year and compensation -- I understand that a proceeding contesting the legality of what the PBA has termed to be "involuntary furloughs" has been filed with the New Jersey Department of Personnel. The Department of Personnel case would appear to involve ostensibly the same parties as those named in the charge and arises from the same set of events as stated in the charge. Accordingly, I am hereby directing the parties to submit to me all of the documentation submitted to the Department of Personnel and/or the Office of Administrative Law concerning the Department of Personnel case. Until I have received and evaluated those materials, I will reserve judgment on this aspect of the interim relief matter.

Based upon the foregoing, at this juncture, the PBA has not met its burden of showing a substantial likelihood of success on the legal and factual issues in a final Commission decision and that

irreparable harm will occur absent the relief sought. Accordingly, the application for interim relief is denied at this time. Charging Party may seek further consideration of its interim relief application upon my receipt of the above-referred materials. Absent receipt of those materials and a request for further consideration of its interim relief application by the close of business (5 p.m.) on August 19, 1991, this matter will proceed to a plenary hearing and decision before the full Commission.



Edmund G. Gerber
Commission Designee

DATED: August 14, 1991
Trenton, New Jersey