I.R. NO. 2006-1

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF CAPE MAY,

Respondent,

-and- Docket No. CO-2005-338

AMALGAMATED LOCAL 2327 UAW,

Charging Party.

SYNOPSIS

Amalgamated Local 2327 UAW claimed that the City of Cape May violated the Act when it hired seasonal and temporary employees for the 2005 summer season at a wage rate exceeding that of permanent, negotiations unit employees serving in the same job title and performing the same work assignments. The UAW claimed that the City's action violated an express provision in the parties' collective negotiations agreement during ongoing negotiations for a successor collective agreement. The City, relying on a differing interpretation of the same provision in the collective agreement, contended that its actions were in compliance with the collective agreement and not violative of the Act. The Commission Designee found that a significant and material dispute of fact existed regarding the competing interpretations of the contract article. Accordingly, he found that the UAW had not established the requisite likelihood of success to obtain interim relief. Interim relief was denied.

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Appearances:

For the Respondent, Monzo Catanese, attorneys
Ronald J. Gelzunas, Jr., of counsel

For the Charging Party, Cleary Josem, attorneys
Regina C. Hertzig, of counsel

INTERLOCUTORY DECISION

On June 28 and June 29, 2005, the Amalgamated Local 2327 UAW (UAW) filed an unfair practice charge and amended charge, respectively, with the Public Employment Relations Commission alleging that the City of Cape May (City) violated 5.4a(5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.,[1/] when it hired seasonal and temporary employees for the 2005 summer season at a wage rate above that of permanent,

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1/ These provisions prohibit public employers, their representatives or agents from: "(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."

negotiations unit employees serving in the same job title and performing the same work assignments. The UAW contends that the unilateral increase in the wage rate occurred during the course of ongoing collective negotiations for a successor agreement between the parties.

The charge was accompanied by an application for interim relief pursuant to N.J.A.C. 19:14-9, requesting that the City be restrained from paying seasonal and temporary employees an hourly wage rate exceeding that of the minimum prorated hourly wage rate of permanent, negotiations unit employees in the comparable job title. On June 30, 2005, I executed an order to show cause and established a return date for oral argument on July 13, 2005. The parties submitted briefs, affidavits and exhibits and argued orally on the scheduled return date. The following facts appear.

The parties' most recent collective negotiations agreement covered the period January 1, 2001 through December 31, 2004. The current agreement provides a starting salary for the position of laborer at $18,318. This salary equates to an hourly wage rate of $8.81 per hour. Article 11, paragraph E, Salaries and Compensation, states that: "Temporary or seasonal employees who are compensated at an hourly wage rate shall be paid no more than the pro-rate of permanent full-time employees in the same job title."

On or about December 6, 2004, the parties commenced negotiations for a successor collective agreement. The UAW submitted a proposal seeking a raise in all minimum salaries. During that session, the City proposed modifying Article 11, E. to include a benefit calculation for hourly wages paid to seasonal and temporary employees. The parties engaged in several subsequent negotiations sessions, however, no successor agreement was concluded. It appears that at this point in the on-going negotiations, the City has abandoned its proposal to modify Article 11, E.

On June 20, 2005, the City hired five or six temporary employees at the rate of $9.50 per hour to perform trash and recycling pick-up and clean restrooms. All other temporary and seasonal employees performing other duties are being paid $8.50 or less.

According to data collected by the County of Cape May, the year round population of the City in 2000 was approximately 4,000 people. As a nationally recognized historical resort destination, the City's population during the summer tourist season grows to approximately 36,000 people. The City routinely hires additional temporary and seasonal employees during the summer.

On April 28, the City advertised in the Star & Wave newspaper for seasonal employees to work at the rate of $8.80 per

hour. On May 28, 2005, the City advertised in the Atlantic City Press newspaper for seasonal employees to work at the rate of $8.80 per hour. The City received no responses from either newspaper advertisement. The City received a few unsolicited inquiries for summer jobs. All of the people inquiring declined to be considered for positions performing trash and recycling collection and restroom cleaning duties at the $8.80 hourly rate offered. As a result, the City hired seasonal employees to perform trash, recycling and restroom cleaning duties at the rate of $9.50 per hour.

As previously stated, the collective agreement establishes the minimum annual salary for a laborer at $18,310. Dividing the annual salary by 2,080 hours[2/], one arrives at an hourly salary of $8.81. The UAW asserts that $8.81 per hour is the applicable ceiling wage rate for temporary and seasonal employees pursuant to Article 11, E. in the current collective agreement.

The City asserts that the appropriate calculation to arrive at the hourly wage under the language in the agreement contemplates the inclusion of permanent employees' benefits. Thus, the City contends that a laborer receiving a base pay of $18,310 additionally receives $675 in clothing allowance and a minimum of $4,380 in City paid health insurance premiums. Adding

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2/ 2,080 hours equates to a 40 hour work week for 52 weeks a year.

those benefits brings the hourly minimum wage rate to $11.23, well beyond the $9.50 paid to temporary and seasonal employees hired for the 2005 summer season. The City argues that by adding additional benefits such as pension and "Flex Care" the hourly wage is brought to $12.17. Thus, the City asserts that it has not unilaterally changed terms and conditions of employment and has not violated Article 11, E. contained in the collective agreement.

To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975).

Assuming the enforcability of Article 11, E., the record establishes a dispute over substantial and material facts. Each party relies on Article 11, E. in support of its position, yet asserts differing interpretations. Under the UAW's application of Article 11, E., a wage rate paid to temporary and seasonal

employees exceeding $8.81 per hour repudiates the collective agreement and constitutes a unilateral change in terms and conditions of employment in violation of the Act. Under the City's application of Article 11, E., the City remains in compliance with the Article since it is not paying temporary and seasonal employees more than the minimum paid to permanent unit employees; thus, it argues that it has made no unilateral change in conditions of employment which violates the Act. I do not resolve the conflicting contract interpretation assertions. A dispute over such fundamental material facts necessitates a plenary hearing to resolve the dispute and makes it impossible at this juncture to conclude that the charging party has a substantial likelihood of success on its claim. See Monmouth County (Department of Corrections and Youth Services), I.R. No. 2005-13, 31 NJPER 135 (¶58 2005); City of Newark, 29 NJPER 162 (¶47 2003); Franklin Borough, I.R. No. 2001-1, 26 NJPER 346 (¶31136 2000); Township of Dover, I.R. No. 94-4, 20 NJPER 6 (¶25004 1993).

Thus, the UAW has not established a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations, a required element of the test to obtain interim relief. Consequently, I decline to grant the UAW's application for interim relief. This case will proceed through the normal unfair practice processing mechanism.

ORDER

Amalgamated Local 2327 UAW's application for interim relief is denied.

Stuart Reichman
Commission Designee

Dated: July 15, 2005
Trenton, New Jersey