

I.R. No. 2008-8

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PASSAIC COUNTY PROSECUTOR'S OFFICE,

Respondent,

-and-

Docket No. CO-2008-231

INTERNATIONAL ASSOCIATION OF MACHINISTS  
AND AEROSPACE WORKERS, AFL-CIO,

Charging Party.

SYNOPSIS

A Commission Designee denies an application for interim relief on a charge alleging that the Prosecutor violated the New Jersey Employer-Employee Relations Act by laying off union representatives because of their exercise of protected conduct. The Prosecutor disputed the reason for layoff claiming it was economically based. A dispute over material facts existed that prevented the union from meeting the standards for a grant of interim relief.

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Appearances:

For the Respondent, Genova, Burns & Vernoia, attorneys  
(Brian W. Kronick, of counsel)

For the Charging Party, Cohen, Leder, Montalbano and  
Grossman (Bruce D. Leder, of counsel)

INTERLOCUTORY DECISION

An unfair practice charge was filed with the Public  
Employment Relations Commission (Commission) on February 11, 2008  
and amended on February 15, 2008 by the International Association  
of Machinists and Aerospace Workers, AFL-CIO (IAM) alleging that  
the Passaic County Prosecutor's Office (Prosecutor) violated  
5.4a(1), (3) and (5)<sup>1/</sup> of the New Jersey Employer-Employee

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<sup>1/</sup> These provisions 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  
condition of employment to encourage or discourage employees  
in the exercise of the rights guaranteed to them by this  
(continued...)

Relations Act, N.J.S.A. 34:13A-1 et seq. (Act). The IAM alleged that the Prosecutor laid off employees DeMarco and Vozzella, its chief spokespersons in negotiations, because of their exercise of protected conduct.

The unfair practice charge was accompanied by an application for interim relief seeking to restrain the Prosecutor from implementing those layoffs. An Order to Show Cause was signed on February 20, 2008, scheduling a telephone conference call return date for February 29, 2008 to consider the application. Both parties submitted briefs, affidavits and exhibits in support of their respective positions and argued orally on the return date.

The Prosecutor argued that DeMarco and Vozzella were laid off for economic reasons and he denied the specific allegations made by the IAM.

The following pertinent facts appear:

DeMarco and Vozzella held the position "Prosecutor's Agent" and represented the IAM in negotiations for a new collective agreement. The parties are currently in mediation. The last agreement expired December 31, 2005. The Prosecutor has not

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1/ (...continued)  
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."

participated in those negotiations. The County negotiates on the Prosecutor's behalf.

In November 2007 the Prosecutor met with all of the labor organizations representing his employees informing them there may be layoffs due to County budget cuts. DeMarco claims the Prosecutor said there would be no layoffs in the IAM unit. The Prosecutor denies that claim.

On December 27, 2007, the Prosecutor notified DeMarco and Vozzella they would be laid off on March 1, 2008. The Prosecutor also notified all Prosecutor Agents they were being laid off, and he notified at least some assistant prosecutors, investigators and clerical employees of layoffs.

DeMarco claimed she told the Prosecutor he was laying her off because of her union activities and because of her relationship with the President of PBA Local 265 who was also employed by the Prosecutor. DeMarco made additional claims regarding conversations with the Prosecutor.

The Prosecutor denied he selected DeMarco for layoff because of her union activity and/or because of her relationship with the PBA President. He claimed the layoff was for economic reasons. He also denied various remarks DeMarco attributed to him.

The Prosecutor Agents are unclassified and at will employment positions.

ANALYSIS

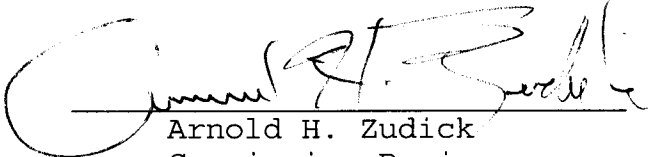
To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be 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).

In its brief, the IAM argued the likelihood of success element is judged by whether there was protected activity, whether the employer knew of that activity and whether the employer's actions evidenced hostility. Even if that were the interim relief standard, the IAM is not able to establish hostility based on the current record.

Certainly, DeMarco and Vozzella engaged in protected conduct and the Prosecutor was aware of that conduct. But the sharp dispute over material facts between the Prosecutor and DeMarco make it impossible to conclude at this stage of the proceeding that the IAM has a substantial likelihood of succeeding on the merits of the charge.

Absent a resolution of this case based upon other factors not explained herein, only a plenary hearing could resolve the dispute in material facts. Because of that dispute the substantial likelihood of success standard required for interim relief cannot be established.

Accordingly, the IAM's application for interim relief is denied.<sup>2/</sup>



Arnold H. Zudick  
Commission Designee

DATED: March 7, 2008  
Trenton, New Jersey

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<sup>2/</sup> This case will be sent to conference for further processing.