I.R. NO. 2010-15

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ORANGE TOWNSHIP,

Respondent,

-and- Docket No. CO-2010-308

OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 32,

Charging Party.

SYNOPSIS

A Commission Designee denies an application for interim relief on a charge alleging that the City of Orange Township violated the New Jersey Employer-Employee Relations Act by reneging on an agreement to rescind 8 of 12 unpaid furlough days in exchange for OPEIU Local 32 waiving retroactive wage increases in the first year (fiscal 2009) of a successor contract. A dispute over material facts relating to whether the parties had an agreement on the elimination of furlough days and whether that agreement needed to be approved by the City's mayor, makes it difficult to conclude that Local 32 has a substantial likelihood of prevailing in a final Commission decision. Consequently, the application was denied.

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Appearances:

For the Respondent,
Joseph M. Wenzel, City Attorney

For the Charging Party,
Mets, Schiro & McGovern, LLP
(Kevin P. McGovern, of counsel)

INTERLOCUTORY DECISION

On February 8, 2010, the Office and Professional Employees International Union, Local 32 (Local 32) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the City of Orange Township (City) violated 5.4a(1), (2) and (5)[1/] of the New Jersey Employer-

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1/ 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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (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 (continued...)

Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq. Local 32 alleges that the City negotiated in bad faith when it reneged on its agreement to eliminate 8 of 12 unpaid furlough days scheduled during calendar year 2010.

The unfair practice charge was accompanied by an application for interim relief seeking to compel the City to eliminate 8 furlough days and restraining the City from implementing more than 4 furlough days between January 1, 2010 and June 30, 2010. An Order to Show Cause was executed on February 17, 2010, scheduling a return date for March 25, 2010. The parties submitted briefs, affidavits, certifications and argued in person on the return date.

Local 32 argues that during the course of negotiations for a successor contract, the parties came to an agreement that Local 32 would forgo retroactive pay in the first year of the contract (fiscal year 2009) in exchange for the City eliminating 8 out of the 12 scheduled unpaid furlough days for calendar year 2010. According to Local 32, the agreement was only conditioned upon getting approval from its membership. It contends that the City negotiated in bad faith by withdrawing from the agreement after Local 32 had obtained approval from its membership, which in turn has had a chilling effect on negotiations.

1/ (...continued)
grievances presented by the majority representative."

The City maintains that there was no agreement, but rather a conditional offer proposed by Local 32. Moreover, the City argues that Local 32 should have understood that any agreement, especially one relating to a formal labor contract, would have to be approved by its mayor based upon the parties' bargaining history as well as the fact that he is the chief executive officer of the municipality. The City contends that the mayor rejected the offer once Local 32 extended it unconditionally, and consequently, there was no agreement between the parties.

The following facts appear:

Local 32 and the City are parties to a contract which expired June 30, 2008. The parties have been in negotiations for a successor agreement. While the parties were negotiating over the terms of a new agreement, the City developed and had approved by the New Jersey Civil Service Commission a temporary layoff (furlough) plan. The plan calls for employees to take 12 unpaid furlough days on prescribed dates between February 19, 2010 and June 25, 2010. The City notified Local 32 of the furlough plan on December 28, 2009.

On January 11, 2010, the parties met to discuss the furlough plan. Among the attendees were the City business administrator, finance director and attorney; and Local 32's business manager, attorney, business representative, shop steward and other members of its negotiations committee. During the discussion, Local 32

inquired whether the City would eliminate 8 furlough days if it agreed to waive all retroactive pay for the first year (fiscal 2009) of the contract they had been negotiating. The savings from 8 furlough days about equaled the money the City had budgeted for any wage increase in the first year of a successor contract. Local 32 made it clear that it would have to get approval for the proposal from its membership. It agreed to quickly hold a membership meeting and seek approval of the proposal. The discussion then turned to the scheduling of the 4 remaining furlough days. The parties could not agree on the scheduling of them and the meeting concluded. At no time during the meeting did the City mention that the mayor would have to approve any agreement regarding the furlough days.

Local 32 held a general membership meeting on January 13, 2010 to consider waiving retroactive pay for fiscal year 2009 in exchange for the City's recision of 8 of the 12 furlough days. The membership approved the proposal.

On January 14, 2010, counsel for Local 32 sent a letter to the City business administrator indicating that the members had approved the proposal. Counsel wrote:

> The City had represented at our meeting that if the union agreed to such waiver, the City would eliminate eight (8) of the twelve (12) furlough days scheduled by the City by memo dated December 28, 2009. We trust that the City will stand by its representations in this regard.

* * * * * * * * * * * * * * *

> We continue to urge the City, for the reasons discussed at our meeting, to reschedule the remaining four furlough days to allow the parties sufficient time to negotiate the terms of a new agreement.

On January 22, 2010, the City business administrator sent a reply correspondence to Local 32 counsel, providing in a pertinent part:

> As you may remember, the City did express concern at our January 11, 2010 meeting that failing to negotiate all the terms of the OMEBA successor agreement prior to addressing the furlough days would leave the union with little incentive to conclude our negotiations in a timely manner.
>
> It is important for the City to know all the terms of the successor agreement so we can estimate cost and budget accordingly.
>
> Therefore, we believe it to be in our taxpayers' interest for the City to proceed with negotiations with OMEBA on the terms of a successor agreement and defer any decision on the possible elimination of any scheduled furlough days until the successor agreement is approved by the parties.

Counsel for Local 32 wrote back to the City business administrator that it expected the City to honor the agreement to eliminate 8 of the 12 furlough days but agreed to sit down and promptly negotiate the terms of a successor agreement (Counsel letter dated January 25, 2010). The parties met to negotiate on February 1, 2010. Negotiations broke down at the beginning of the session when Local 32 demanded that the City rescind 8

furlough days. This action ensued when Local 32 filed an unfair practice charge and application for interim relief on February 8, 2010.

A review of the affidavits and certification submitted in this case reveals factual disputes over what was said and understood by the parties during the January 11, 2010 meeting, notably whether resolving the matter of furlough days was predicated upon resolving all outstanding issues in the successor agreement and whether Local 32 should have known that any agreement effecting the successor contract would have to be approved by the mayor.

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).

This case rests on determinations of whether the parties had a meeting of the minds on the furlough days and whether the City's negotiations team had the authority to enter into a binding agreement. My review of the parties' affidavits, certification and briefs, together with my understanding from oral argument, leads me to conclude that disputes over several material facts prevent Local 32 from establishing a substantial likelihood of success on the merits of its charge at this stage of the proceeding. For example, the City maintains that resolving the furlough days required resolving all of the outstanding issues necessary to reach a successor agreement. Local 32, on the other hand, contends that only the scheduling of the 4 remaining furlough days was discussed in the context of resolving all outstanding contract issues. Similarly, Local 32 maintains that the City's negotiating team had apparent authority to enter into a binding agreement and did not expressly reserve the right to have the mayor ratify it, while the City argues that Local 32 should have known that the mayor needed to approve the agreement, based upon the parties' negotiations history and the fact that he is the chief executive officer of the municipality solely authorized to enter into such agreements.

A plenary hearing is needed to resolve the disputed facts. Therefore, I deny Local 32's application for interim relief and forward the unfair practice charge to the Director of Unfair

Practices for further processing. See, North Caldwell Bd. of Ed., P.E.R.C. No. 90-92, 16 NJPER 261 (¶21110 1990); Trenton Bd. of Ed., P.E.R.C. No. 88-49, 13 NJPER (849 (¶18327 1987), (after plenary hearings it was found that there was no meeting of the minds of parties and consequently no agreement); and Bor. of Palmyra, P.E.R.C. No. 2008-5 33 NJPER 207 (¶75 2007), (parties' bargaining history must be considered in determining whether ratification of an agreement is required where there is no clear evidence to the contrary).

ORDER

Local 32's application for interim relief is denied.

Perry O. Lehrer
Commission Designee

DATED: March 29, 2010
Trenton, New Jersey