P.E.R.C. NO. 2011-35

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP of MOUNT LAUREL,

Respondent,

-and-

Docket Nos. CO-2010-128
CO-2010-134

COMMUNICATIONS WORKERS OF AMERICA,
AFL-CIO and AFSCME COUNCIL 71,

Charging Parties.

SYNOPSIS

The Public Employment Relations Commission holds that the issue of whether the Township of Mount Laurel was required to negotiate with the Communications Workers of America, AFL-CIO and AFSCME Council 71 prior to implementing a temporary layoff of Township employees is mandatorily negotiable. The Commission relies on its analysis in Borough of Belmar, P.E.R.C. No. 2011-34 and finds that, on balance, the employees' interests in negotiating over unilateral changes to terms and conditions of employment in this case outweigh the employer's interest in increasing its diminished surplus. The Commission defers the unfair practice charges to arbitration.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

P.E.R.C. NO. 2011-35

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP of MOUNT LAUREL,

Respondent,

-and- Docket Nos. CO-2010-128
CO-2010-134

COMMUNICATIONS WORKERS OF AMERICA,
AFL-CIO and AFSCME COUNCIL 71,

Charging Parties.

Appearances:

For the Respondent, Capehart & Scatchard, attorneys (Alan R. Schmoll, of counsel; Kelly M. Estevam, on the brief)

For the Charging Parties, Weissman & Mintz, LLC (Steven P. Weissman, of counsel and on the brief; David A. Tango, on the brief)

DECISION

On October 16, 2009, the Communications Workers of America, AFL-CIO filed an unfair practice charge against the Township of Mount Laurel. On October 20, AFSCME Council 71 also filed an unfair practice charge against the Township. The charges allege that the Township violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1), (3) and (5)[1/], when, in order to reduce salary costs and increase

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. . .(3) Discriminating (continued...)

its budgetary surplus, the Township unilaterally reduced the workweek of unit employees one day a month for eight consecutive months through a temporary layoff plan approved by the Acting Director of State and Local Operations for the Civil Service Commission ("CSC"). According to the charging parties, the work hour reductions repudiated the parties' collective negotiations agreements and unilaterally altered the status quo in employment conditions during successor contract negotiations.

On October 27, 2009, the Director of Unfair Practices consolidated the charges and issued a Complaint. The Township filed an Answer asserting the following defenses: it furloughed its employees because it needed to replenish its surplus and could not raise taxes without a State waiver; Civil Service employees have no contractual expectation of wages or work hours in a layoff approved by the CSC as the decision to temporarily layoff employees in a departmental shutdown is a non-negotiable managerial prerogative and is preempted by Civil Service statutes and regulations; and PERC cannot re-examine the CSC's

---

1/ (...continued)
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 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."

determination that the Township instituted the temporary layoffs for reasons of economy and efficiency.

On or about February 11, 2010, the parties agreed to adjourn the arbitration of a related grievance and seek a ruling from this Commission through summary judgment proceedings on the negotiability issue pertaining to the "involuntary furloughs of Mount Laurel employees". On February 18, CWA and AFSCME filed a motion for summary judgment. On March 17, the Township filed a cross-motion for summary judgment arguing for consolidation of this case with related individual employees' Civil Service appeals and a ruling that the CSC has the predominant interest. See N.J.A.C. 1:17.1 et seq. CWA and AFSCME withdrew all Civil Service appeals after the Township filed its brief so that issue is now moot.

The charging parties' submissions contain briefs and exhibits. The Township has filed a brief in opposition to the summary judgment motion. CWA has filed certifications of a senior staff representative and its counsel. AFSCME has filed certifications of its local president and its counsel. These material facts are not in dispute.

CWA represents the Township's clerical employees in one unit and its supervisory employees in another unit. AFSCME represents all non-supervisory blue collar employees employed by the

Township. The grievance procedures in all of the agreements end in binding arbitration.

CWA's agreement with the Township for the clerical employees unit expired on December 31, 2008. The clerical unit has been in negotiations with the Township since January 2009. The supervisory employees contract expired on December 31, 2009. On September 1, 2009, the supervisory unit notified the Township that it desired to commence negotiations for a successor agreement.

Article II of the clerical agreement sets a 35-hour workweek, Monday through Friday. Article II of the supervisory agreement provides for a workweek of five consecutive days, Monday through Friday, with the total hours of work dependent on the department to which the supervisor is assigned. Article III of the supervisory agreement provides for a 4% wage increase or $1800, whichever is greater, effective January 1, 2009.

AFSCME and the Township are parties to an agreement that expired on December 31, 2009. AFSCME and the Township have been in negotiations for a successor agreement since January 2009.

Article VII of the AFSCME-Township agreement is entitled "Hours of Work". It provides for a workweek of five consecutive days, Monday through Friday, except for sanitation employees who work Monday through Thursday; sets the starting and ending times by department; and states that the regular hours of work shall

not be changed, except as required by emergency conditions or agreed upon by the parties.

The Township adopted a balanced budget for 2009 that included appropriations to fully fund salaries. On June 18, 2009, the Township notified CWA and AFSCME representatives that it intended to reduce personnel costs in the current and upcoming budgets. The Township asked the unions to either agree to eight voluntary furlough days in 2009 and 2010 or agree to forego sick leave buybacks in 2009. The acting Township Manager advised the unions that if they did not agree to the Township's demands, the Township would attain the desired reductions through involuntary furloughs unilaterally imposed on the employees.

CWA and AFSCME responded that they would not agree to voluntary furloughs or forego sick leave buybacks without a no layoff guarantee from the Township. The Township responded that it could not agree and instead submitted a temporary layoff plan to the CSC on August 26, 2009. Under the proposed plan, all Township employees (except police and emergency service personnel) would have their hours and compensation reduced one day a month from November 20, 2009 through June 18, 2010, thus saving the Township $152,000, an amount equal to the salary of three unit employees. The sole stated purpose of the plan was to increase the Township's budgetary surplus, which had decreased by half to $600,000 in 2009. The Acting Director of State and Local

Operations for the CSC approved the Township's temporary layoff plan on October 5, 2008. Also in October, the Township reached a voluntary settlement for a successor contract with the Mount Laurel Police Officers Association that provides for 3.9% annual wage increases for 2009, 2010 and 2011.

CWA and AFSCME assert that by unilaterally requiring employees to take eight furlough days, the Township repudiated the compensation and work hour provisions of the parties' agreements; the temporary layoff rule under which the layoffs were approved was repealed in November 2009; Civil Service regulations do not preempt negotiations over reductions in work hours and compensation; it is not asking this Commission to review any determination of the CSC that the layoff plan complied with its requirements; and this Commission is required to balance the employees' interests against the employer's interests in each case.

As noted, the Township's brief does not respond to these arguments. We will, however, look to its Answer to ascertain its legal positions.

The negotiability dispute that the parties have agreed to have us resolve in this summary judgment proceeding is nearly identical to a case also decided today between CWA and the Borough of Belmar. P.E.R.C. No. 2011-34, __ NJPER __ (¶__ 2010). In Belmar, we considered all of the employer's defenses to the

charge and found that under the New Jersey Employer-Employee Relations Act, the parties' contractual dispute over the reduction in weekly work hours could be submitted to arbitration even though the Acting Director of State and Local Operations for the CSC had approved the Borough's temporary layoff plan.

Our analysis in Belmar fully sets forth the legal framework for analyzing the parties' negotiability dispute so we incorporate Belmar's analysis here. That analysis established that the Acting Director's approval of the temporary layoff plan did not preempt negotiations over the reductions in employee workweeks and pay. However, City of Jersey City v. Jersey City POBA, 154 N.J 555, 574-575 (1998), mandates that we apply the balancing test set forth in Local 195, IFPTE v. State, 88 N.J. 393 (1982) to the particular issues and facts presented by each case so we will discharge that responsibility now.

Applying the balancing test within the framework of this case law to the particular issues and circumstances presented by this record, we hold that the Township did not have a managerial prerogative to reduce the employees' workweek and pay through the means of the temporary layoff plan. The contract clauses relied upon by CWA and AFSCME are indisputably negotiable as they pertain to fundamental terms and conditions of employment at the heart of the collective negotiations process: compensation and hours of work. It is clear that the sole objective of the layoff

plan was to increase the Township's surplus by reducing the labor costs that otherwise would have been paid pursuant to the parties' negotiated salary agreements. The Township has not produced any evidence to establish that it is without alternatives to achieve the same savings without furloughing its employees nor has it shown that any operations or programs would be hindered if it had to layoff employees to achieve the same budgetary savings instead of implementing temporary layoffs. As in Woodstown-Pilesgrove Reg. H.S. Bd. of Ed. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582, 594 (1980), it appears on this record that the interest in a viable negotiations process is preeminent because the budgetary considerations are dominant and there is no particularly significant governmental policy purpose at stake. Id. at 594. We find that on balance, the employees' interests in negotiating over the unilateral reduction in their work hours and compensation are greater than the Township's interest in reducing labor costs to increase its surplus. Local 195, IFPTE v. State, 88 N.J. 393 (1982). We note that the Township retains the ability to achieve the savings through permanent layoffs which remain a non-negotiable managerial prerogative. State v. State Supervisory Employees Ass'n, 78 N.J. 54, 67 (1978); Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981); In re Maywood Bd. of Ed., 168 N.J. Super. 45 (App. Div. 1979), certif. den. 81 N.J. 292 (1979);

Union Cty. Reg. H.S. Bd. of Ed. v. Union Cty. Reg. H.S. Teachers Ass'n, 145 N.J. Super. 435 (App. Div. 1976), certif. den. 74 N.J. 248 (1977). We, of course, take no position on the merits of the parties' contractual dispute as to whether the employees had a contractual right to have their weekly work hours maintained or whether the employer had a contractual prerogative to reduce weekly work hours through these temporary layoffs. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978). We simply hold that this contractual dispute over work hour and pay provisions is within the scope of collective negotiations under the circumstances presented here.

Having resolved the parties' negotiability dispute, we will defer the unfair practice cases to the parties' negotiated grievance procedures. Binding arbitration is the preferred mechanism for resolving a dispute when an unfair practice charge essentially alleges a violation of the obligation to negotiate in good faith interrelated with a breach of contract claim. Pennsauken Tp., P.E.R.C. No. 88-53, 14 NJPER 61 (¶19020 1987). CWA and AFSCME have presented such claims. The Township may raise any contractual defenses to the arbitrator. N.J.S.A. 34:13A-5.3 (grievance procedures established by agreement shall be utilized for any dispute covered by such agreement). We retain jurisdiction as to any outstanding issues that are not resolved in arbitration. Should the arbitrator reach a result

repugnant to the Act or should a dispute arise in the implementation of our Order[2/], either party may seek to re-open the unfair practice case. Hillsborough Tp. Bd. of Ed., P.E.R.C. No. 2005-1, 30 NJPER 293 (¶101 2004).

ORDER

The Complaint is deferred to binding arbitration. We retain jurisdiction.

BY ORDER OF THE COMMISSION

Commissioners Colligan, Fuller, Krengel, Voos and Watkins voted in favor of this decision. None opposed. Commissioner Eaton recused herself.

ISSUED: October 28, 2010

Trenton, New Jersey

2/ Our record does not indicate whether AFSCME has filed a grievance. If the Township raises a procedural defense to the arbitration of a grievance, AFSCME may petition the Director of Unfair Practices to re-open its charge for adjudication by the Hearing Examiner.