

I.R. NO. 89-19

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF MANASQUAN,

Respondent,

-and-

Docket No. CO-89-269

MANASQUAN PBA, LOCAL NO. 284,

Charging Party.

SYNOPSIS

An application for interim relief brought by Manasquan PBA, Local No. 284 was denied. The PBA argued that the layoffs were motivated by an attempt to chill interest arbitration. The PBA failed to demonstrate that it had a substantial likelihood of success in prevailing on the facts in this matter.

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Appearances:

For the Respondent
Sinn, Fitzsimmons, Cantoli, West & Pardes, Esqs.
(Kenneth Fitzsimmons, of counsel)

For the Charging Party
Dr. Simon M. Bosco, Labor Relations Specialist

INTERLOCUTORY ORDER

On March 20, 1989, the Manasquan PBA, Local No. 284 ("PBA") filed an unfair practice charge with the Public Employment Relations Commission ("Commission") alleging that the Borough of Manasquan ("Borough") was seeking to layoff certain members of the police force and these layoffs would have a chilling effect on the scheduled interest arbitration between the parties and such action is violative of subsection 5.4(a)(1), (2), (3) and (5) of the New

Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").^{1/}

The charge was accompanied by a request for temporary restraints and demand for interim relief. Although the request for temporary restraint was denied, a show cause order was ultimately issued and made returnable for May 4, 1989. On that date, I conducted an order to show cause hearing. Both parties submitted affidavits and argued orally.

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

^{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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (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 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."

relief, the relative hardship to the parties in granting or denying the relief must be considered.^{2/}

At the hearing, the PBA stated that the issue of whether the layoff was a bona fide layoff was before the Department of Personnel and it did not seek to litigate that issue in this action. Rather, the PBA argues that the threat of layoffs was used in an illegal manner in negotiations. Specifically, it alleges that the Borough threatened that if the PBA takes the Borough's offer of increase, the Borough won't lay off police officers but if the PBA does proceed to interest arbitration, the Borough will layoff police officers. By way of affidavit of Roger Ackerman, the PBA claims that the Borough's goal was to use the layoffs as a means to force the PBA to accept its offer without even considering any of the PBA's counter-proposals.

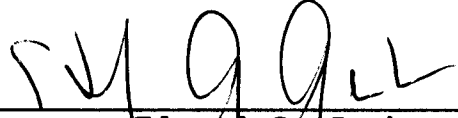
The Borough, by way of affidavit of Mayor John L. Winterstella, argues that the layoffs were made in response to economic pressures and this was a valid managerial decision. The affidavit states there is a severe financial short-fall in the Borough. The Borough conducted a referendum which sought to increase the spending cap but was defeated by Borough residents.

The PBA does not contest the economy necessity of the layoff here. Rather, it is questioning the motive only.

^{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).

Here, the dispute between the parties is factual in nature and it cannot be said that the PBA will have a substantial likelihood of success at a full hearing on this matter. See Bridgewater Tp., 95 N.J. 235 (1085). Accordingly, the PBA has not met the test for granting of interim relief.

Accordingly, the application for interim relief is denied.



Edmund G. Gerber
Commission Designee

DATED: May 9, 1989
Trenton, New Jersey