

I.R. NO. 95-20

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOMERSET COUNTY PROSECUTOR,

Respondent,

-and-

Docket No. CO-95-245

PBA LOCAL 307,

Charging Party.

Appearances:

For the Respondent,
Stanton, Hughes, Diana & Zucker, attorneys
(Mark Diana, of counsel)

For the Charging Party,
Abramson & Liebeskind, consultants
(Marc Abramson, consultant)

INTERLOCUTORY DECISION

On January 23, 1995, Somerset County PBA Local 307 filed an unfair practice charge with the Public Employment Relations Commission alleging that the Somerset County Prosecutor violated N.J.S.A. 34:13-5.4(a) (1), (2), (3) and (5)^{1/} of the Act when,

^{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)

Footnote Continued on Next Page

during the pendency of interest arbitration between the County and Local 307, the County laid-off five members of the unit represented by Local 307. It was alleged that this conduct was motivated by anti-union animus.

The unfair practice charge was accompanied by an application for interim relief, and a show cause hearing was held on March 23, 1995. Subsequent to the hearing, the parties submitted supplemental briefs which were received by April 10, 1995.

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

1/ Footnote Continued From Previous Page

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."

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).

The Association alleged the parties are in interest arbitration, and in a meeting before the interest arbitrator, the Prosecutor proposed a two-year contract settlement with no salary increases in the first year. Local 307 rejected that offer. However, the Prosecutor insisted that to avoid lay-offs, Local 307 must accept a contract with no salary increase for 1995. After Local 307 refused the offer in January 1995, the Prosecutor sent lay-off notices to the affected employees.

It is Local 307's position that the lay-offs were intended to coerce it to reach a settlement without going to interest arbitration. The Prosecutor argues that the County limited his office's budget to a very small increase for 1995 and that he could not afford to pay salary increases to any of his employees without lay-offs. When Local 307 refused to enter an agreement for no increases in 1995, the Prosecutor alleges he was compelled to lay-off the affected employees in order to remain within his budget constraints. He argued that he could not afford to carry the five disputed positions in 1995, for even part of the year, in the face of the possibility of having to pay increased wages if the interest arbitrator accepted Local 307's proposal. If he were to lay-off these employees mid-year, the savings incurred in a mid-year lay-off would not be sufficient for him to stay within his budget, and additional employees would have to be laid off at that time.

An employer has a managerial prerogative to determine the size of its workforce and if necessary to implement lay-offs.

County College of Morris, P.E.R.C. No. 93-25, 18 NJPER 478 (¶23217 1992). Here, however, Local 307 argues that the lay-offs were unlawfully motivated by a desire to avoid interest arbitration. Therefore, the lay-offs should be enjoined. However, the Prosecutor has raised a factual dispute as to whether the lay-offs were due to financial reasons or to anti-union animus. This factual dispute calls into question whether Local 307 has shown it has a substantial likelihood of success in prevailing on the facts in this matter after a full plenary hearing. Accordingly, its Application for Interim Relief is denied. City of Clifton, I.R. No. 92-3, 17 NJPER 508 (¶22249 1991). This matter will proceed to a full plenary hearing.

BY ORDER OF THE COMMISSION

Edmund G. Gerber
Commission Designee

DATED: April 25, 1995
Trenton, New Jersey