

I.R. No. 2008-17

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEWARK HOUSING AUTHORITY,

Respondent,

-and-

Docket No. CO-2008-273

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 617,

Charging Party.

SYNOPSIS

A Commission Designee denies an application for interim relief alleging that the Newark Housing Authority violated the New Jersey Employer-Employee Relations Act by subcontracting unit work and laying off employees. The SEIU argued the Authority's actions were motivated by intimidation and union animus, but the Authority argued its actions were based upon business considerations. The Designee found that a dispute over a material fact existed that prevented Local 617 from meeting the standards for a grant of interim relief.

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Appearances:

For the Respondent, Dorf and Dorf, P.C., attorneys
(Gerald L. Dorf, of counsel)

For the Charging Party, Oxfeld Cohen, P.C., attorneys
(Arnold Shep Cohen, of counsel)

INTERLOCUTORY DECISION

An unfair practice charge was filed with the Public Employment Relations Commission (Commission) on March 24, 2008 by Service Employees International Union, Local 617 (SEIU or Local 617) alleging that the Newark Housing Authority (Authority) violated 5.4a(1) and (3)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq (Act). SEIU alleged that

^{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 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."

the Authority laid off approximately 30 unit employees because of union animus. It also alleged the Authority failed to notify, discuss or negotiate with the Local over its intent to layoff unit employees and subcontract their work to Quadel Consulting.

The charge was accompanied by an application for interim relief seeking to restrain the Authority from implementing the layoffs and subcontracting. An Order to Show Cause was signed on March 26, 2008, scheduling a telephone conference call return date for April 17, 2008 which was rescheduled for May 1, 2008 pursuant to the Authority's request and SEIU's consent. Both parties submitted briefs, affidavits and exhibits in support of their respective positions and argued orally on the return date.

The Authority argued that the layoffs and subcontracting were based upon business considerations, and that it discussed its request for subcontracting proposals and the impact on employees with Local 617's president.

The following pertinent facts appear:

Between December 18 and 21, 2007, the Authority advertised for proposals to perform administrative services work for its Section 8 Housing Choice Voucher Program. Proposals were submitted by January 31, 2008. Local 617 President Muhammad first learned of layoffs and subcontracting from a Star-Ledger article on February 24, 2008 which reported that up to thirty employees would be laid off and that Quadel Consulting would

manage the voucher program. There were no negotiations regarding the decision to subcontract or the impact on employees.

SEIU's president alleged that the Authority's actions were intended to intimidate SEIU during negotiations and that it merely wanted to replace the organized employees. He also alleged that the Authority did not discuss the subcontracting or layoffs with him.

The Authority's chief administrative officer (CAO) and its chief financial officer (CFO) alleged that the subcontracting and layoffs were implemented to achieve greater economy and efficiency in the Authority's operation. Its CAO also alleged that he met with Local 617's president on March 6, 2008 and discussed the subcontracting proposal and the impact on employees.

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

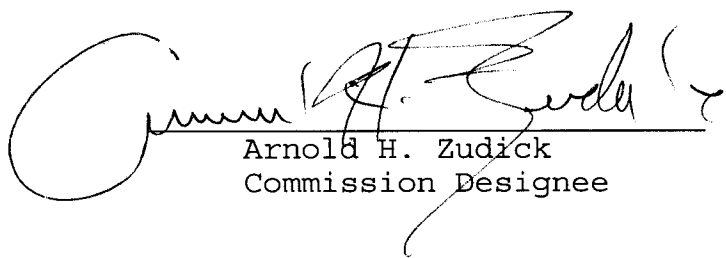
College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975).

In Local 195, IFPTE v. State, 88 N.J. 393 (1982), the Court held that a public employer had a managerial prerogative to subcontract unit work, but also held that an employer could not subcontract in bad faith or for the sole purpose of laying off public employees. It said the action must be related to a legitimate governmental purpose. Id. at 411.

SEIU relied upon Warren Hills Bd. of Ed., P.E.R.C. No. 2005-26, 30 NJPER 439 (¶145 2004), to support its argument that the Authority's subcontract violated the Act. In Warren Hills, the Commission concluded upon the review of a multi-day hearing that the Board's decision to subcontract bus drivers was motivated by union animus, and it ordered the drivers reinstated with back pay. While Warren Hills certainly concerns the same concept as the present case, it could only be decided after a plenary hearing resolved material disputed facts. A similar resolution must be made in this case.

The facts as presented by affidavit show the parties dispute the pivotal material fact. Was the subcontracting and layoffs motivated by intimidation, union animus and a mere intent to layoff public employees as Local 617 contends, or was it motivated by a need to achieve greater economy and efficiency in its Voucher Program management as the Authority argues? That

determination can only be made after a plenary hearing. Thus, it is not possible to conclude that a substantial likelihood of success exists. Since the first interim relief standard cannot be met, the application is denied.^{2/}



Arnold H. Zudick
Commission Designee

DATED: May 8, 2008
Trenton, New Jersey

^{2/} This case will be sent to conference for further processing.