

I.R. No. 2009-19

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEWARK HOUSING AUTHORITY,

Respondent,

-and-

Docket No. CO-2009-263

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 617,

Charging Party.

SYNOPSIS

A Commission Designee denies an application for interim relief on a charge alleging that the Newark Housing Authority violated the New Jersey Employer-Employee Relations Act by unilaterally abolishing a position, laying off affected employees and re-employing most of them into a new position, but did not place the new position in the existing unit, all during negotiations for a new collective agreement. The Authority disputed the underlying reasons for abolishing one position and creating another, and the union filed a clarification of unit petition (CU) to place the new title in its unit. The Commission Designee found that material facts were disputed preventing a conclusion that a substantial likelihood of success had been established. The Designee also concluded that the unit placement of the new title was better resolved through the CU petition.

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Appearances:

For the Respondent, Samuel M. Manigault, Esq., Chief of
Labor Relations

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

INTERLOCUTORY DECISION

On January 28, 2009, Service Employees International Union,
Local 617 (SEIU) filed an unfair practice charge with the Public
Employment Relations Commission (Commission) alleging that the
Newark Housing Authority (Authority) violated 5.4a(1), (3) and
(5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A.

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. (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
(continued...)

34:13A-1 et seq. (Act). SEIU alleges that the Authority violated the Act by unilaterally laying off unit members from one title, re-hiring some of those employees into a new title in order to undermine, circumvent and repudiate negotiations for a new collective agreement.

The unfair practice charge was accompanied by an application for interim relief seeking to restrain the layoffs. An Order to Show Cause was executed on February 4, 2009, scheduling a telephone conference call return date for February 27, 2009. Both parties submitted written positions, certifications and argued orally on the return date.

SEIU alleged that the layoffs were implemented in bad faith and in an attempt to intimidate it during negotiations for a new collective agreement. It also alleged the Authority violated the Act by not including the new title in its unit. The Authority denied violating the Act and argued that it abolished one title and created the new title to comply with requirements of the U.S. Department of Housing and Urban Development (HUD), and that SEIU's president was aware of the reasons for its reorganization and encouraged laid-off employees to apply for the new positions.

The following pertinent facts appear:

1/ (...continued)
in that unit, or refusing to process grievances presented by the majority representative."

The Authority and SEIU are in negotiations for a successor to their collective negotiation agreement effective from April 1, 2004 through March 31, 2007. SEIU's unit includes non-supervisory clerical and secretarial employees including the senior clerk typists in the operations department.

As a result of an agreement between the Authority and HUD, the Authority was obligated to reorganize its structure. On April 10, 2008, the Authority had created a new position entitled "Customer Service Representative" for the operations department. The Authority conducted a meeting on April 25, 2008 with its clerical staff and union representatives, including SEIU's president, to discuss the restructuring of the department including the creation of new positions.

On January 16, 2009, six employees holding senior clerk typist positions in the operations department were notified of layoffs from that title. It appears that nearly all of those employees have been rehired as customer service representatives. The parties disagree over whether the duties of the senior clerk typist and customer service representative are the same.

Although SEIU's president attended the April 2008 meeting and encouraged his members to apply for the customer service representative title, the Authority did not discuss or negotiate over layoff issues with SEIU, nor have the parties agreed upon whether the customer service representative title can be included

in SEIU's unit. SEIU has filed a clarification of unit petition, CU-2009-025, seeking to include the customer service representative title into its unit, but there is no evidence it has demanded negotiations over the terms and conditions of employment for that title.

The parties have disputed: whether the SEIU's president was contacted and aware of the title change; the reasons for the abolishment of one title and the creation of another; and whether the duties of the two positions are substantially the same.

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).

Notwithstanding unlawful motives, a public employer has the managerial prerogative to abolish and create positions, and layoff and/or transfer employees from abolished positions and

rehire them into new positions to reorganize their structure.

Rahway Valley Sewerage Authority, P.E.R.C. No. 89-37, 14 NJPER 654 (¶19275 1988); Piscataway Twp. Bd. Ed., P.E.R.C. No. 88-42, 13 NJPER 823 (¶18317 1987); Trenton Bd. Ed., P.E.R.C. No. 83-37, 8 NJPER 574 (¶13265 1982). See also City of Jersey City v. POBA and PSOA, 154 N.J. 555 (1998). Even where the parties can agree on the inclusion of a new position into a particular unit, the union must make a demand to negotiate over the terms and conditions of employment for the new position. Trenton Bd. Ed., P.E.R.C. No. 88-16, 13 NJPER 714 (¶18266 19887).

Having reviewed the parties certifications and the related law, I find the SEIU has not met the standards for a grant of interim relief. Disputes exist regarding several material facts, making it impossible to conclude that a substantial likelihood of success exists in this case. The parties could not agree on the reasons for the abolishment of the senior clerk title; whether SEIU was contacted regarding the title change; and, whether the duties of the two positions were the same.

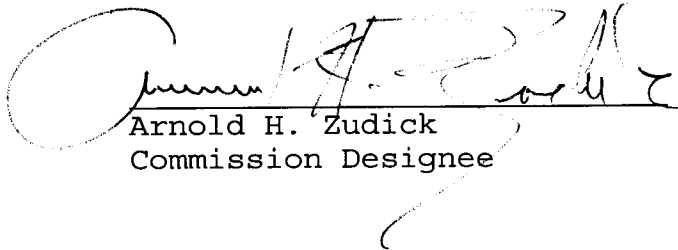
Additionally, nearly all of the laid-off employees have been rehired severely minimizing any irreparable harm, and any harm to any employees not re-employed can be remedied later. Finally, the SEIU has not demonstrated it made a demand to negotiate over the terms and conditions of the new title, and its clarification

of unit petition is the most appropriate vehicle by which to resolve whether the new title belongs in its unit.

Accordingly, based upon the above findings and analysis, I issue the following:

ORDER

SEIU's application for interim relief is denied.^{2/}



Arnold H. Zudick
Commission Designee

DATED: March 4, 2009
Trenton, New Jersey

^{2/} This charge will be consolidated with the petition in CU-2009-025 for further processing.