

I.R. NO. 2010-17

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF GALLOWAY,

Respondent,

-and-

Docket No. CO-2010-359

IBEW LOCAL 210,

Charging Party.

SYNOPSIS

A Commission Designee denies an interim relief application seeking an Order restraining the Township from imposing unpaid furlough days each Monday until \$300,000 is saved and engaging in anti-union conduct.

The designee determined that the IBEW did not demonstrate both a substantial likelihood of succeeding in its factual allegations and that its two units of employees suffered irreparable harm. The disputed imposition of furloughs is not occurring during successor negotiations.

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Appearances:

For the Respondent, Gilmore & Monahan, attorneys
(Jean L. Cipriani, of counsel)

For the Charging Party, O'Brien, Belland & Bushinsky,
attorneys
(Jeffrey R. Caccese, of counsel)

INTERLOCUTORY DECISION

On March 18, 2010, International Brotherhood of Electrical Workers Union, Local 210 (IBEW) filed an unfair practice charge against the Township of Galloway (Township), together with an application for interim relief, a certification, supporting documents and a brief. The charge alleges that on or about March 1, 2010, the Township ". . . forced furloughs on IBEW members . . . mandat[ing] that [they] would not work on Mondays until a savings of \$300,000 was realized. . . ." The charge alleges that the Township required the furloughs, ". . . because IBEW refused to be the first group to provide concessions, since [it] had endured layoffs in 2008 and 2009 and agreed to furloughs in 2008

to aid the Township." The IBEW also alleges that the Township provided no "justification" for the "arbitrary amount [i.e., \$300,000]" and has engaged in bad faith negotiations. The Township's conduct allegedly violates 5.4a(1), (3) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

The application seeks an Order requiring the Township to cease imposing furloughs and engaging in anti-union conduct. It also demands that the Township make IBEW members whole.

On March 24, 2010, I signed an Order to Show Cause, specifying April 13 as the return date for argument on the application in a telephone conference call. I also directed the Township to file an answering brief, together with opposing certifications and proof of service upon the IBEW by April 8, 2010. On April 9, Township counsel requested an extension of time to file its response. I granted the request. The Township's brief was filed before 9:00 a.m., April 12, 2010. On

^{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 in that unit, or refusing to process grievances presented by the majority representative.

the return date, the parties argued their cases during a conference call. The following facts appear.

The Township and IBEW have separate "supervisor unit" and "blue collar unit" collective negotiations agreements, both of which extend from January 1, 2006 through December 31, 2010. The agreements have provisions setting a 35-hour workweek from Monday through Friday, consecutively (Art. XIV).

In December, 2009, the Township advised the IBEW of its budgetary shortfall. On January 29, 2010, Township Human Resources Manager George Wackenheim wrote a letter to IBEW Business Manager Charles Hill, Jr., reiterating the "significant shortfall" facing the municipality, together with a State-imposed "levy cap of 4%." Wackenheim wrote that at the December meeting, the Township ". . . asked locals 210, 77 and 676 for suggestions as to what measures its members would be willing to take to assist the Township in reaching savings to meet budget requirements." "77" and "676" refer to the police captains' majority representative and to a Teamsters local union, respectively.

Wackenheim wrote that the Township needed \$300,000 savings from "Local 210" largely based upon; "1. No salary increases for 2010; 2. 20 furlough days; and 3. 2.5% of salary contributions towards medical costs." Wackenheim wrote that more savings was required, all commencing by February 1, 2010. He wrote that the

Township is ". . . open to changes to the above, provided the sum of savings is \$300,000."

On February 18, 2010, IBEW representative Hill wrote a letter to Wackenheim, advising that the membership ". . . was not willing to agree to concessions," citing layoffs and furlough days yielded in the previous year.

The next day, February 19, Wackenheim wrote a letter to "Galloway employees covered under the Local 210 [IBEW] cba," acknowledging that the union was ". . . unwilling to make any wage and hour concessions which would narrow or close the gap between expenses and revenues." He wrote:

Effective March 1, 2010 and until further notice, all municipal services with the exception of public safety, administration and essential services will be shut down on Monday of each week. These Monday shutdowns will continue until the required savings are achieved.

On February 23, 2010, IBEW filed a contractual grievance contesting the decision to ". . . unilaterally close Galloway Township Hall every Monday until further notice . . ."

The furloughs have commenced, but paychecks reflecting one or more of the disputed furlough day deductions have not yet issued.

ANALYSIS

A charging party may obtain interim relief in certain cases. 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).

Retaliation for the exercise of protected rights, including the right to refrain from proposing concessions to negotiated terms and conditions of employment violates the Act. N.J.S.A. 34:13A-5.4a(1) and (3). The standards for establishing whether an employer has violated those subsections are set forth in In re Bridgewater Tp., 95 N.J. 235 (1984). No violation will be found unless the charging party has proved by a preponderance of the evidence on the entire record that protected conduct was a substantial or motivating factor in the adverse action. This may be done by direct evidence or by circumstantial evidence showing

that the employee was engaged in protected activity, the employer knew of this activity and the employer was hostile toward the exercise of protected rights Id. at 246.

If the employer does not present evidence of a motive not illegal under the Act or if its explanation has been rejected as pretextual, there is sufficient basis for finding a violation without further analysis. Sometimes however, the record demonstrates that both unlawful motives under our Act and other motives contributed to a personnel action. In these dual motive cases, the employer will not have violated the Act if it can prove, by a preponderance of the evidence on the entire record that the adverse action would have taken place absent the protected conduct. Id. at 242.

The Township has not provided a certification. For purposes of this decision, the facts are gleaned from the IBEW's certification and accompanying documents. The IBEW has not met its factual burden of proof.

One document, Township manager Wackenheim's January 29 letter, characterizes the Township's projected budget as having a "significant shortfall," and solicits remedial "measures" from other representatives of organized Township employees, together with the IBEW. On February 18, the IBEW representative wrote to the Township, declining to offer concessions. The next day, Wackenheim replied, ordering furloughs ". . . of all municipal

services with the exception of public safety, administration and essential services," every Monday, commencing March 1, until \$300,000 was saved. The IBEW has not alleged that other negotiations unit employees (and unrepresented employees, for that matter) were spared furloughs every Monday. Under these facts, I cannot conclude that the IBEW has demonstrated a "substantial likelihood" of prevailing in a Bridgewater case.

Assuming that the IBEW meets its factual burden of proof, I must deny the application because it has not demonstrated irreparable harm, a necessary component of the interim relief standard. Irreparable harm cannot be rectified in a remedial order of a final Commission decision. Generally, irreparable harm is not suffered where a monetary (and full) remedy could be provided at the end of the case. Union Cty., I.R. No. 99-15, 25 NJPER 192 (¶30088 1999); City of Newark, I.R. No. 99-7, 25 NJPER 81 (¶30033 1998).

Furloughs change an employee's work hours, compensation and unpaid leave time, all of which are mandatorily negotiable. Bd. of Ed. of Englewood v. Englewood Teachers Assn., 64 N.J. 1 (1973). See cases cited in Maplewood Tp., et al, I.R. No. 2009-26, 35 NJPER 184, 195 (¶70 2009) (interim relief granted to union where non-civil service employer ordered furloughs of unit employees during negotiations for successor agreement). Unlike the circumstances in Maplewood, the Township's furlough of both

units represented by the IBEW is not occurring during collective negotiations, a period in which unilateral changes would have an irreparable chilling effect on employee rights. See Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n., 78 N.J. 25 (1978). Nor has the IBEW demonstrated that the nature of the harm is other than economic, even for those unspecified unit employees contemplating retirement in the near future.

ORDER

The application for interim relief is denied. The charge shall be forwarded to the Director of Unfair Practices for processing.



Jonathan Roth
Commission Designee

DATED: April 15, 2010
Trenton, New Jersey