

I.R. No. 2007-15

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF MORRIS,

Respondent,

-and-

Docket No. CO-2007-325

MORRIS TOWNSHIP PBA (SOA)  
LOCAL NO. 133,

Charging Party.

SYNOPSIS

A Commission Designee denies an application for interim relief based upon an unfair practice charge alleging that a public employer continued to negotiate collectively with a majority representative after learning that a competing employee organization had filed a representation petition. The application sought an Order requiring the employer to cease negotiations until the petition was resolved.

The Designee denied the application, finding that the charging party had not met its burden to show that it had a "substantial likelihood of success" on the merits of the charge. The Designee determined that the employer and incumbent had signed a memorandum of agreement before the petition was filed and that the agreement did not by its terms require ratification by either signator.

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Appearances:

For the Respondent, Laufer, Knapp, Torzewski, Dalena & Sposaro, LLC, attorneys (Fredrick M. Knapp, of counsel)

For the Charging Party, Loccke, Correia, Schlager, Linsky & Bukosky, attorneys (Marcia Tapia, of counsel)

INTERLOCUTORY DECISION

On April 27, May 9 and May 14, 2007, Morris Township PBA (SOA) filed an application for interim relief, an unfair practice charge and amended charge against Morris Township (Township). The charge, as amended, alleges that on or about May 8, 2007, the Township and the majority representative of its police superior officers, FOP Local No. 136, "continue[d] to negotiate for a successor collective bargaining agreement after being put on notice of the PBA/SOA's representation petition." (On April 25 and May 8, 2007, Morris Township PBA (SOA) Local No. 133 filed a representation petition and amended petition (RO-2007-78) seeking to represent Township police superior officers). The Township's

conduct allegedly violates 5.4a(1), (2), (3) and (7)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. The application seeks a restraint of negotiations until the petition is resolved.

An Order to Show Cause was executed on May 16, 2007, scheduling a return date of June 13. On June 6, 2007, Respondent filed a brief opposing the application, together with a certification and exhibits. Counsel for the parties argued their respective cases in a three-way conference call on June 15.

The following facts appear:

The Township and Fraternal Order of Police, Lodge #136 have signed a consecutive series of collective negotiations agreements covering sergeants, detective sergeants, lieutenants, detective lieutenants and captains, the last one extending from January 1, 2003 through December 31, 2005.

On October 16, 2006, the FOP filed a Petition to Initiate Compulsory Interest Arbitration (IA-2007-21). An interest arbitrator was selected by agreement and she designated January

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<sup>1/</sup> 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. (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. (7) Violating any of the rules and regulations established by the commission."

17, 2007 as a "session for mediation" in an effort to resolve "the bargaining impasse." On March 19, 2007, the arbitrator presided over a second "mediation session", resulting in a memorandum of agreement (extending from January 1, 2006 through December 31, 2009) signed that day by representatives of both the Township and majority representative. The memorandum included provisions regarding prescription and dental benefits, compensatory and sick leave time off, stipends, wage increases and changes to the grievance procedure. The memorandum's terms did not require ratification. On the same date, the Township Committee met in executive session and approved the memorandum.

On March 26, the interest arbitrator issued a letter confirming in a relevant portion that ". . . Morris Township and the FOP superiors were able to reach a mediated settlement of their negotiations impasse." On or about April 24, 2007, Township Mayor Robert Nace (sole Township signator on the memorandum of agreement) learned that the FOP had ratified the memorandum.

On April 25, Morris Tp. PBA Local 133 filed a representation petition on behalf of the Township's superior officers. On May 8, the petition was amended to show that the petitioner was Morris Tp. PBA (SOA) Local 133.

On May 9, 2007, the Township Committee met in a special session and voted publicly to formally approve the memorandum of agreement.

#### ANALYSIS

A charging party may obtain interim relief in certain cases. To obtain relief, the moving party must demonstrate that it has both 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).

I deny the PBA (SOA)'s application because the organization has not demonstrated a substantial likelihood of success on the merits of the case. Specifically, I find that the SOA has not met its burden to demonstrate that the FOP and the Township negotiated after the initial (and deficient) representation petition was filed and that the Township violated its legal duty.

N.J.A.C. 19:11-2.8 bars the filing of a representation petition during the period of "an existing written agreement containing substantive terms and conditions of employment" unless

it is filed during a "window" period. In County of Middlesex, D.R. No. 81-1, 6 NJPER 355 (¶11179 1980), req. for rev. den. P.E.R.C. No. 81-29, 6 NJPER 439 (¶11224 1980), the Commission held that a memorandum of agreement will operate as a bar to the filing of a petition: (1) if it contains substantive terms and conditions of employment; and (2) if it has been ratified, where ratification is required by the memorandum's terms. See also, Appalachian Shale Products Co., 121 N.L.R.B. 1160, 42 LRRM 1506 (1958).

In this matter, the Respondent and majority representative signed a memorandum of agreement covering and incorporating by reference essentially all terms and conditions of employment for a finite term on March 19, 2007, more than one month before the petition was filed. The memorandum does not require ratification by either party. The Township Committee members almost immediately afterwards approved the memorandum in executive session. It learned that the majority representative had ratified the memorandum the day before the petition was filed. No negotiations sessions were scheduled or held after March 19, 2007.

Neither the facts nor the legal standard indicate that the charging party is entitled to interim relief. The charge shall be forwarded to the Director of Unfair Practices for further processing.

ORDER

The application for interim relief is denied.

BY ORDER OF THE COMMISSION

  
Jonathan Roth  
Commission Designee

DATED: June 18, 2007  
Trenton, New Jersey