

I.R. NO. 2008-2

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEWARK HOUSING AUTHORITY,

Respondent,

-and-

Docket No. CO-2007-378

NEWARK UNION OF INDEPENDENT  
SPECIAL POLICE, LOCAL 202,

Charging Party.

SYNOPSIS

The Newark Housing Authority transferred the security responsibilities for all of its housing units to the City of Newark Police Department. Consequently, it laid off all of its armed security personnel. Newark Union of Independent Special Police, Local 202, the terminated employees' majority representative, filed an unfair practice charge, accompanied by an application for interim relief, against the Authority claiming that the employees were laid off as the result of the more aggressive posture taken by Local 202 in its general relationship with the Authority and, particularly, in successor negotiations. The Authority claimed that Newark police could provide a more efficient and economical delivery of security services which would result in an improved level of safety for residents. The Commission designee denied Local 202's application for interim relief finding significant factual disputes so as to undermine Local 202's ability to establish the requisite likelihood of success element.

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Appearances:

For the Respondent  
Dorf & Dorf, attorneys  
(Gerald L. Dorf, of counsel)

For the Charging Party  
Oxford Cohen, P.C., attorneys  
(Sanford R. Oxford, of counsel)

INTERLOCUTORY DECISION

On June 26, 2007, the Newark Union of Independent Special Police, Local 202 (Local 202) filed an unfair practice charge<sup>1/</sup> with the Public Employment Relations Commission (Commission) alleging that the Newark Housing Authority (Authority) violated

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<sup>1/</sup> On August 9, 2007, Local 202 filed an amendment to the unfair practice charge alleging that on June 12, 2007 and on multiple occasions thereafter, the Local requested a copy of the contract between the Authority and the City of Newark reflecting the details under which the City would provide police services at Authority properties. Local 202 contends in the amended charge that the Authority has refused to provide it with a copy or draft of that contract. The issue raised in the amended charge has not been incorporated by Local 202 into this application for interim relief.

5.4a(1), (3) and (5)<sup>2/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when in a June 12, 2007 meeting, it notified representatives and members of Local 202 that they were to be terminated by the Authority effective June 15, 2007. The Authority informed Local 202 that the armed security function at the Authority's properties would be handled by the City of Newark's Police Department. Local 202 contends that the Authority's actions were in retaliation for exercising its rights under the Act and have had a chilling effect on the current negotiations/interest arbitration process.

On July 2, 2007, I executed an Order to Show Cause and set a return date of July 31, 2007, for oral argument. At the request of the Authority, and with the agreement of Local 202, the return date was postponed until August 13, 2007. The parties submitted briefs, affidavits and exhibits and argued orally on the scheduled return date. The following facts appear.

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<sup>2/</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; (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."

Beginning in or about 1992, Local 202 became the collective negotiations representative for all armed security personnel of the Authority. The most recent collective agreement between the parties expired on March 31, 2004. Since that time, the parties have engaged in negotiations for a successor agreement. In May 2005, Darryl Johnson was elected president of Local 202. During the term of Mr. Johnson's presidency, Local 202 filed grievances (some of which were appealed to arbitration), filed an unfair practice charge, and pursued collective negotiations to impasse resulting in the filing of a Petition to Initiate Compulsory Interest Arbitration. Prior to President Johnson's term, the Local had sought neither grievance nor interest arbitration or filed an unfair practice charge. Local 202 contends that the Authority's decision to terminate all of its members and replace them with City of Newark police officers was motivated by the more aggressive posture taken by the Local in its labor relations interactions with the Authority under Johnson's leadership. Local 202 has taken the position in successor negotiations that its members have been significantly underpaid compared to other police personnel and sought substantial improvements in compensation. It claims that the Authority's determination to eliminate all unit employees has had a chilling effect on the negotiations process in violation of the Act.

The Authority denies that its decision to terminate unit members was motivated by Local 202's filing of grievances, demanding either grievance or interest arbitration, or prosecuting unfair practice charges. The Authority argues that it has processed all disputes in good faith and points out that the parties have achieved mutual resolutions of some issues. The Authority asserts that it is in dire financial circumstances. It contends that unit employees were both insufficient in number and not capable of providing effective crime suppression on Authority property. The Authority alleges that the provision of police functions by City of Newark police for the Authority's residents represents a more competent, efficient and economical delivery of services. The Authority claims that its decision to replace unit employees with Newark police was based on its conclusion that an improved level of safety could be provided to the Authority's residents as the result of this change. In support of its contentions, the Authority cites statistics prepared by Edward Malia, Chief of Security, showing that unit employees arrested a total of 331 people in 11 months (from July 2006 thru May 2007) compared to 224 arrests that were made by Newark police in July 2007.<sup>3/</sup>

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<sup>3/</sup> Local 202 disputes the arrest numbers contending that arrests made by City of Newark police in July 2007 include areas for which Local 202 members were not responsible. It also rejects the assertion that the number of arrests  
(continued...)

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).

This case is very similar to County of Hudson, I.R. No. 97-6, 22 NJPER 383 (¶27204 1996). In Hudson, the County effectively abolished the Hudson County Police Department and layoffs resulted. PBA Locals 51 and 51A (PBA) filed unfair practice charges against the County alleging that it illegally abolished the Hudson County Police Department in retaliation for the PBA's position in negotiations for a successor collective agreement. In those negotiations, the PBA refused to accede to certain demands of the County and the dispute went to interest arbitration. The County denied that its actions were taken in

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3/ (...continued)  
correlates to enhanced safety.

retaliation for proceeding to interest arbitration and/or that its actions were the result of union animus.

In Hudson, the Commission Designee found that the PBA did not introduce any direct evidence of hostility or union animus, but sought to have such animus inferred on the basis of the difficult negotiations. The Commission Designee denied the PBA's application for interim relief, partly basing his determination on the finding that an employer may lawfully exercise its inherent managerial prerogative to reorganize the way it delivers governmental services. See Jersey City v. Jersey City POBA, 154 N.J. 555 (1988); City of Jersey City, P.E.R.C. No. 2007-7, 32 NJPER 278 (¶115 2006), recon. granted, P.E.R.C. No. 2007-26, 32 NJPER 356 (¶149 2006); Maplewood Tp., P.E.R.C. No. 86-22, 11 NJPER 521 (¶16183 1985); Freehold Reg. H.S. Bd. of Ed., P.E.R.C. No. 85-69, 11 NJPER 47 (¶16025 1984).

In this case, the Authority states that its determination to layoff all of the employees in Local 202 and replace them with Newark police officers is grounded in its determination that such change will improve the overall level of safety delivered to the residents living in the Authority's housing units. The Authority's apparent managerial prerogative to effect such reorganization appears to undermine Local 202's ability at this early stage of the process to establish a likelihood of success on the merits of its claim. (See cases cited immediately above.)

Here, as in Hudson, Local 202 urges that I infer animus on the part of the Authority resulting from difficult successor negotiations. The New Jersey Supreme Court has set forth the standard for determining whether an employer's action violates 5.4a(3) of the Act in Bridgewater Tp. v. Bridgewater Public Works Association, 95 N.J. 235 (1984). Under Bridgewater, 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 engaged in protected activity, the employer knew of this activity, and the employer was hostile toward the exercise of the protected rights. Id. at 246. Thus, the assessment of the employer's motivation in determining whether it has violated a(3) of the Act is critical. However, by its very nature, establishing the employer's motivation is a fact intensive exploration and does not readily lend itself to a grant of interim relief. See City of Long Branch, I.R. No. 2003-9, 29 NJPER 39 (¶14 2003); County of Union, I.R. No. 2003-8, 28 NJPER 572 (¶33175 2002). Here, Local 202 contends that the Authority abolished its security workforce in retaliation for Local 202's more aggressive labor relations posture. The Authority denies Local 202's allegations and asserts that it has processed all labor disputes pursuant to the



terms of the collective agreement or applicable Commission rules and has reached mutually agreeable resolutions to some issues. Ultimately, the Authority's motivation must be ascertained by a hearing examiner or the Commission at the conclusion of a plenary hearing. At this juncture, however, it is premature to make such a determination as to the Authority's motivation inasmuch as the parties have presented conflicting factual claims.

Consequently, for all of the reasons discussed above, I find that the charging party has not established a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations, a requisite element to obtain a grant of interim relief. Accordingly, I decline to grant Local 202's application for interim relief. This case will be forwarded to the Director of Unfair Practices for processing through the normal unfair practice mechanism.

ORDER

Local 202's application for interim relief is denied.

  
Stuart Reichman  
Commission Designee

DATED: August 29, 2007  
Trenton, New Jersey