

I.R. No. 2009-14

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF BRICK,

Respondent,

-and-

Docket No. CO-2009-165

TRANSPORT WORKERS UNION OF
AMERICA, LOCAL 225, BRANCH 4,

Charging Party.

SYNOPSIS

A Commission Designee denies an application for interim relief on a charge alleging that Brick Township violated the New Jersey Employer-Employee Relations Act by announcing the layoff of many employees in the unit represented by TWU, Local 225. The Union alleged the Township selected titles in its unit for layoff in retaliation for not agreeing to a new collective agreement. The Township disputed the Union's allegations and argued the layoff and layoff selections were based upon a budget shortfall and business considerations. Noting the dispute over material facts, it was not possible to conclude that there was a substantial likelihood of success on the merits of the charge. Consequently, the application was denied.

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Appearances:

For the Respondent, Apruzzese, McDermott, Mastro & Murphy, P.C., attorneys (Arthur R. Thibault, Jr., of counsel)

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

INTERLOCUTORY DECISION

On November 10, 2008, Transport Workers Union of America, Local 225, Branch 4 (Local 225) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the Township of Brick (Township) violated 5.4a(1), (3), and (5)^{1/} of the New Jersey Employer-Employee Relations

^{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 (continued...)

Act, N.J.S.A. 34:13A-1 et seq. (Act). Local 225 alleges that the Township violated the Act by announcing the layoff of nearly 50 employees it represents including one Union officer because of its exercise of protected conduct.

The unfair practice charge was accompanied by an application for interim relief seeking to restrain the layoff implementation. An Order to Show Cause was executed on November 17, 2008, scheduling a telephone conference call return date for December 10, 2008. Both parties submitted briefs, certifications and argued orally on the return date.

Local 225 alleged that unit employees were selected for layoff to protect other Township employees, that the layoffs would not save money because the Township selected revenue generating positions and even created other Township positions, because the Township was trying to reduce its membership and at least in part because it would not agree to insurance concessions in negotiations. The Township argued that the layoffs were in response to a \$4 million shortfall, that no particular employee was targeted for layoff, and that DPW work performed by many of Local 225's members was easier to outsource (subcontract).

The following pertinent facts appear:

¹/ (...continued)
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."

Local 225 represents approximately 240 white collar employees. The parties' collective agreement expired on December 31, 2007. After many negotiation sessions, the parties reached a memorandum of agreement (MOA) which was signed by July 31, 2008. The MOA resulted in cost savings to the Township by switching health insurance to a direct access plan and eliminating traditional coverage, requiring employees to pay \$22 per month toward their health premium and increasing prescription co-pays. Local 225's membership apparently rejected the MOA. The parties met on September 19, 2008 where the Township proposed increasing its wage proposal to obtain the insurance concessions. The parties dispute whether they were at impasse, but the Township, believing that Local 225 would not agree to eliminate traditional coverage, filed for impasse on September 24, 2008 (I-2009-062).

On October 14, 2008, at a meeting with several unions representing Township employees including Local 225, Township Business Administrator Pezarras notified the unions' of the Township's projected \$3.8 - 4.0 million budget shortfall and of its layoff plans and suggested alternatives to layoff including wage, hiring and promotional freezes, and voluntary furloughs or demotions. The Township confirmed those discussions by letters of October 16, 2008. By letter of the same date to the State Department of Personnel (DOP), the Township announced its intent to layoff approximately 53 employees, nearly all of whom hold

titles in Local 225's unit. By letter of November 12, 2008 to the DOP, the Township amended its layoff proposal reducing the layoffs to 47 employees.

A review of the certifications submitted in this case reveals that the parties dispute several material facts including whether: 1) the Township provided requested financial information demonstrating the budget shortfall and how savings could be realized by concessions; 2) during negotiations the Township indicated that layoffs were likely; 3) the Township knew that Union Officer Mershon was the least senior mechanic and not targeted for layoff; 4) any employee(s) was targeted for layoff; 5) all Township departments were affected by layoffs or other personnel actions; 6) DOP or the Township determines bumping rights; 7) the Township is targeting revenue generating departments; and 8) layoffs and privatization (subcontracting) will save money. The parties also disagree on whether the Township negotiated in bad faith, how the personnel actions in the police department impacted the budget, and facts regarding the impact of raises for unclassified management 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).

The issues in this case are why did the Township engage in a layoff, and why it selected for layoff so many of Local 225's titles. Local 225 did not dispute that the Township had a significant budget shortfall. Rather, it argued that the Township selected unit titles for layoff in retaliation for its position in negotiations. The Township submitted information to support a budget shortfall, and disputed why many of the titles were selected for layoff. It argued that much of the work covered by Local 225's unit could be privatized at a lower cost.

Having reviewed the parties certification and briefs, I find that disputes exist regarding several material facts thereby preventing Local 225 from establishing at this stage of the proceedings, a substantial likelihood of success on the merits of its charge. This case is similar to a previous interim relief case concerning layoffs. In Passaic Cty Prosecutor's Office (Assistant Prosecutors), I.R. No. 2008-8, 34 NJPER 56 (¶20 2008), the union argued that employees were selected for layoff because

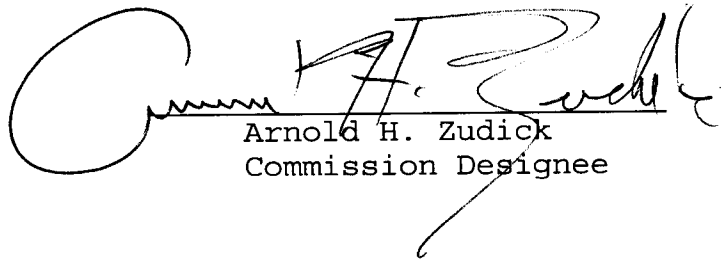
of their exercise of protected conduct. The Employer disputed that allegation with certifications that the layoffs were economically based. Noting the disputed material facts, the union could not demonstrate a substantial likelihood of success on the merits of its application and the request for a restraint was denied. See also Passaic Cty. Prosecutor's Office (IAM unit), I.R. No. 2008-11, 34 NJPER 60 (¶23 2008). The same result is necessary here.

Absent a voluntary resolution of this case, a plenary hearing is needed to resolve material facts.

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

ORDER

Local 225's application for interim relief is denied.^{2/}



Arnold H. Zudick
Commission Designee

DATED: December 11, 2008
Trenton, New Jersey

^{2/} This charge will be sent to conference to resume normal processing.