

I.R. No. 2009-017

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ESSEX COUNTY PROSECUTOR,

Respondent,

-and-

Docket No. CO-2009-246

ESSEX COUNTY PROSECUTOR'S
INVESTIGATORS, NEW JERSEY PBA,
LOCAL 325,

Charging Party.

SYNOPSIS

A Commission Designee denies an interim relief application accompanied by a request for an interim restraint seeking an Order prohibiting the public employer from laying off unit employees on January 24, 2009. The unfair practice charge filed by New Jersey PBA Local 325 alleges that the Essex County Prosecutor refused to negotiate over the impact of projected layoffs. The parties are negotiating a successor collective negotiations agreement. The charge also alleges that the layoffs were ordered in retaliation for the PBA's rejection of proposed furloughs and its insistence upon not limiting negotiations to "one issue."

The Designee found that the PBA did not meet its burden to demonstrate by a substantial likelihood of success that the employer refused to negotiate in good faith and that it retaliated against it because it insisted upon negotiating matters other than layoffs and furloughs.

I.R. No. 2009-017

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ESSEX COUNTY PROSECUTOR,

Respondent,

-and-

Docket No. CO-2009-246

ESSEX COUNTY PROSECUTOR'S
INVESTIGATORS, NEW JERSEY PBA,
LOCAL 325,

Charging Party.

Appearances:

For the Respondent, Genova, Burns & Vernoia, attorneys
(Brian W. Kronick, of counsel)

For the Charging Party, Zazzali, Fagella, Nowak,
Kleinbaum of Friedman, attorneys (Paul L. Kleinbaum, of
counsel)

INTERLOCUTORY DECISION

On January 15, 2009, the Essex County Prosecutor's
Investigators, New Jersey PBA Local 325 (PBA) filed an unfair
practice charge against the Essex County Prosecutor (Prosecutor).
The charge alleges that on or about December 8 and 24, 2008, and
on January 5, 2009, the Prosecutor refused to negotiate in good
faith over the impact of projected layoffs of unit employees and
over the procedures and criteria for the layoffs. The charge
also alleges that the Prosecutor's decision to lay off PBA
members is in retaliation for the PBA's rejection of her proposal
for voluntary furloughs and insistence upon not limiting

to ". . . the one issue [she] would discuss." The Prosecutor'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. (Act).

The charge was accompanied by an application for interim relief and a request for an interim restraint prohibiting the Prosecutor from laying off unit employees on January 24, 2009. Certifications and a brief accompanied the application. The PBA also seeks an order requiring the Prosecutor to immediately negotiate in good faith; desist from dealing directly with unit employees; and provide information about procedures for laying off employees.

On the same day, I issued an Order to Show Cause without a temporary restraint, specifying January 22, 2009 as the return date for argument at the Commission's Trenton offices (later changed to its Newark offices, upon the Prosecutor's request and consent of the PBA). I also directed the Prosecutor to file an

^{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."

answering brief together with opposing certifications. On January 21, the Prosecutor filed its response. The next day, the parties appeared in person and argued their cases. The following facts appear.

The Prosecutor and the PBA signed a collective negotiations agreement which expired on December 31, 2007. They are negotiating a successor agreement.

On December 8, 2008, the Prosecutor met with the PBA president and officials of other majority representatives and advised that the 2009 budget would be reduced \$1.2 million from the 2008 budget. She discussed eliminating both increments and step increases for 2009 and 2010. She also advised the PBA that she could offer no salary increases in 2009 and 2010. She listened to suggestions for meeting the budget crisis from the union officials, one of which was voluntary furloughs of employees.

On December 15, 2008, representatives of the parties met and discussed budget reductions and their effect upon the negotiations unit. PBA President Guy Casale asked how the reduction would effect wage increases and health insurance contributions in 2008, 2009 and 2010. The President asked the Prosecutor to consider alternatives to the elimination of increments, including the reduction or elimination of car assignments; and elimination of certain agent positions in the

'detective ranks. The Prosecutor advised that those matters were ". . . in arbitration."

On or about December 16, the Prosecutor was directed by the County to reduce her budget by another \$1 million.

On December 17, PBA counsel wrote a letter to the Prosecutor counsel, requesting copies of the 2008 and proposed 2009 budgets and seeking a date for collective negotiations on a successor agreement.

On December 24, the Prosecutor wrote a letter to the PBA president. She recapped the recent chronology of events and advised of the impact of the County's directive to reduce the Prosecutor budget by an additional \$1 million:

. . . Because I cannot meet this additional reduction without reducing ECPO 2009 salary requirements, I am forced to consider layoffs. In addition, I am prepared to enter into discussions with my employees about the possibility of voluntary furloughs in lieu of layoffs.

She also wrote that in light of PBA counsel's December 17 letter, she was ". . . not entertaining the discussions [i.e., ". . . increments, step increases, etc.]" with you, as they may be construed as contract negotiations." Finally, she wrote that she would discuss "layoffs, furloughs and step increases" if the PBA counsel wrote a letter advising that those matters ". . . will not be construed as negotiations."

On December 29, PBA counsel wrote to Prosecutor counsel, advising that the Prosecutor's recent letter, ". . . is, in and of itself, an unfair practice" and seeking her withdrawal of the letter and agreement to negotiate unconditionally.

On the same day, the Prosecutor issued an e-mail to all employees, advising of the budget crisis and of budget reductions through layoffs in January 2009. The e-mail provided estimated numbers of layoffs among prosecutors, investigators and support staff and an alternative number of furlough days for each group. The Prosecutor wrote that she wished to know ". . . all union and association representative . . . responses to the furlough proposals by no later than January 6, 2009 at 4 p.m."

On December 31, Prosecutor counsel wrote a letter to PBA counsel, rescinding the Prosecutor's December 24 letter and agreeing to continue collective negotiations with the PBA. The letter also advised that the 2009 budget, ". . . and issues like increments, step increases and other terms and conditions of employment . . . depend on the parties' discussions regarding voluntary furloughs and layoffs."

On January 2, 2009, the Prosecutor issued a general layoff notice to all employees.

On January 5, 2009, the Prosecutor and other employer representatives met with the PBA president and vice president. The Prosecutor advised of County budget cuts and discussed

furloughs in lieu of layoffs. A PBA representative presented the Prosecutor with a typed document outlining certain issues or matters, including dismissals, potential budget reductions, and reasons why it opposed furloughs. The PBA proposed reducing senior management and pay; increasing the number of voluntary retirements; and returning recent hires to their "previous departments."

On the same day, a Prosecutor representative informed the PBA president that the Prosecutor had ". . . effectuated a reduction in the budget of \$300,000 by terminating unspecified personnel"; not filling six investigator positions; and reduced by \$60,000 on-call overtime costs. It advised that other costs were not borne by it, and certain funds could not be allocated for salary. Furloughs were to apportioned throughout the fiscal/calendar year.

On January 6, PBA counsel wrote a letter to the Prosecutor advising that it will not consent to voluntary furloughs. Counsel also objected to the Prosecutor's unwillingness to negotiate ". . . any other topic, including the procedures and criteria for layoffs and other cost saving measures."

On January 9, the Prosecutor issued letters to the six most-recently hired investigators, advising that their employment would end on January 24, 2009. On unspecified dates after January 9, three of the six investigators were informed that they

would be rehired by their previous law enforcement employers. One other investigator was informed that he would not be laid off. Two investigators were to be laid off on or about January 24, 2009.

ANALYSIS

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

I deny the application because the PBA has not demonstrated a substantial likelihood of success on the legal and factual merits of its case.

N.J.S.A. 34:13A-5.3 entitles a majority representative to negotiate terms and conditions of employment. Section 5.3 also requires a public employer to negotiate before changing working conditions. Public employers have a prerogative to decide

whether to lay off public employees - although related procedural issues, such as notice, are mandatorily negotiable. Council of N.J. State College Locals, NJSFT-AFT/AFL-CIO v. State Bd. of Higher Ed., 91 N.J. 18 (1982).

The PBA has not substantially demonstrated that the Prosecutor refused to negotiate over procedural issues pertaining to the January 24 layoff. The certifications demonstrate that the Prosecutor rescinded a letter indicating a refusal to negotiate collectively and that in ensuing meetings of the parties - particularly, on January 5, 2009 - it responded to the PBA's proposals for reducing costs in lieu of layoffs (or, for that matter, voluntary furloughs). The uncontested facts also indicate that the Prosecutor did not have an indefinite period of time in which to propose a budget which reduced her previous year's budget by \$2.2 million.

The PBA has also alleged that the Prosecutor determined to lay off employees in retaliation for its refusal to agree to a voluntary furlough. If proved, such conduct would violate 5.4a(3) of the Act. See Bridgewater Tp., 95 N.J. 235 (1984). The Prosecutor has certified that the decision to lay off employees took place in the context of a \$2.2 million reduction of the budget. Nor do any uncontested facts suggest animus or anti-union sentiment against the PBA. Accordingly, I find that

the Commission's interim relief standards have not been met and deny the application.

The charge will be forwarded to the Director of Unfair Practices for processing.

ORDER

The application for interim relief is denied.


Jonathan Roth
Commission Designee

DATED: January 26, 2009
Trenton, New Jersey