

I.R. NO. 2009-23

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF MONMOUTH,

Respondent,

-and-

Docket No. CO-2009-288

MONMOUTH COUNTY CORRECTIONS PBA 240,

Charging Party.

SYNOPSIS

A Commission Designee denies an application for interim relief on a charge alleging that Monmouth County violated the New Jersey Employer-Employee Relations Act by negotiating in bad faith and retaliating against the members of the Monmouth County Corrections PBA 240 with layoffs for not accepting a wage freeze for 2009. The County disputed the PBA's allegations and argued that the layoff is based on a budget shortfall and for reasons of economy and efficiency. The dispute over material facts makes it impossible at this stage of the process to conclude that there is a substantial likelihood of success on the merits of the charge. Consequently, the application was denied.

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Appearances:

For the Respondent
Parthenopy A. Bardis, Esq.

For the Charging Party
Zazzali, Fagella, Nowak, Kleinbaum & Friedman, attys
(Robert A. Fagella, of counsel)

INTERLOCUTORY DECISION

On February 13, 2009, the Monmouth County Corrections PBA 240 (PBA) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the County of Monmouth (County) violated 5.4a(1), (3) and (5)^{1/} of

^{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

(continued...)

the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq. The PBA alleges that the County violated the Act by demanding that it accept a wage freeze for budget year 2009 or face immediate layoffs of over 30 of its unit members, corrections officers.

The unfair practice charge was accompanied by an application for interim relief seeking to restrain the layoffs until negotiations are conducted. An Order to Show Cause was executed on February 18, 2009, scheduling a return date for March 17, 2009. The parties submitted briefs, certifications and argued orally on the return date.

The PBA argues that it has been targeted for layoffs for not acceding to the County's ultimatum to either accept a 0% salary increase in 2009 or have in excess of 30 corrections officers laid off from their jobs. The PBA argues further that no significant savings will result from the layoffs because any anticipated savings will be spent on overtime as the jails are a 24 hour/7 day per week operation. The lack of true cost savings, the PBA contends, supports its view that the layoff is just a retaliatory measure of the County.

The PBA also argues that the County has negotiated in bad faith by commencing negotiations with a take it or leave it

1/ (...continued)
the majority representative."

proposal of accepting a wage freeze for 2009 or face layoffs of its members.

The County maintains that the proposed layoffs are in response to a \$7-8 million dollar shortfall. It denies targeting the PBA for layoffs and claims that 24 other negotiations units across 21 divisions of County government are affected by the layoff plan, 7 units of which are under the County Sheriff's department as is the PBA. The County further contends that it did not threaten or give the PBA an ultimatum but rather attempted to collaboratively explore alternatives to layoffs with all of the unions representing County employees.

The following facts appear:

The County is a civil service jurisdiction which employs approximately 3,500 employees with a payroll of about \$180 million. Approximately one-third of the County's workforce is comprised of non-union employees. The other two-thirds of the workforce are unionized employees represented by 24 unions. The PBA is one such union and represents 331 county corrections officers in the sheriff's office. There are 7 other negotiations units in the sheriff's department.

The County and PBA are parties to a labor agreement which expired on December 31, 2008. The parties are in the process of negotiating a successor agreement.

By letter dated January 6, 2009, the County advised union representatives, including those of the PBA, that it was considering layoffs for reasons of economy and efficiency. It invited the representatives of the affected unions to a January 9, 2009 meeting to discuss alternatives to layoffs and any pre-layoff actions to lessen the possibility, extent or impact of layoffs.

At the January 9th meeting, the County explained to the union representatives that it needed \$7-8 million in savings to adopt a budget. This savings could be achieved the County asserted if all its employees accepted a wage freeze for budget year 2009. The union representatives were further advised that County non-union employees would not receive a wage increase in 2009 generating a \$2 million savings. The unions were told that if they agreed to a wage freeze for 2009, the remaining savings would be achieved and there be no need for layoffs. At the meeting, the PBA indicated that it would not agree to a wage freeze.

The unions requested some documentation as to the County's financial condition before having to decide on the wage freeze proposal. On January 14, 2009, the County provided a written summary of its major expenses and revenue losses in a document entitled, 2009 Projected Budget and Deficit Reduction Plan.

On January 22, 2009, the unions appeared at the Monmouth County Freeholders' public meeting and requested more time to submit cost savings ideas. The Freeholders gave them until February 2, 2009 to submit their suggestions.

On February 3, 2009, PBA representatives met with County officials. An agreement was not reached regarding the wage freeze proposal. As the majority of unions did not agree to the County's wage freeze proposal, the County did not achieve its sought after savings. Consequently, the County filed layoff plans with the Civil Service Commission. The Sheriff's layoff plan affects 7 out of 8 negotiations units in her department and includes the elimination of over 30 corrections officer positions.

The County has taken several pre-layoff measures which reduced its budget deficit by \$25 million. The measures include a directive to all County departments to cut their budgets by 15%, a reduction in funding to educational institutions, the utilization of a less costly employee prescription plan, a reduction in the 2009 overtime budget, a reduction in capital expenditures, a hiring freeze and coordination of Medical Examiner services with Middlesex County, to name a few.

A review of the certifications submitted in this case reveals that the parties dispute several material facts including whether: 1) the wage freeze proposal was presented as a

collaborative alternative or a threatening ultimatum, 2) the County explained the basis for the financial crisis or invited discussion at the January 9th meeting, 3) the County had specified at the January 9th meeting that over 30 corrections officers would be laid off, 4) the County directed the Sheriff to cut \$1.5 million from any aspect of the budget allocated to the PBA or instead gave her the discretion as to where to make reductions in her total budget, and 5) true cost savings will be achieved by laying off corrections officers as the jail is a 24 hour/7 day per week operation. The parties also disagree on the County's motive for laying off PBA unit members. The PBA contends that its members are being laid off in retaliation for refusing to comply with the County's wage freeze demand and the County maintains that the layoffs are for reasons of economy and efficiency.

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 whether the County has negotiated in bad faith by proposing a wage freeze for budget year 2009 in order to avoid layoffs and whether the County has retaliated against the PBA and its members by moving forward with its plan to layoff over 30 corrections officers. To resolve either issue uniquely involves an intensive fact-finding hearing in order to properly understand the context and tone of statements made and actions taken. See, State of New Jersey, E.D. No. 79, 1 NJPER 39 (1975), aff'd 141 N.J. Super. 470 (App. Div. 1976), (the totality of circumstances must be assessed to determine whether a party has refused to negotiate in good faith) and Bridgewater Tp., 95 N.J. 235 (1984), (sets forth the standard by which to evaluate an employer's motive in union animus retaliation claims).

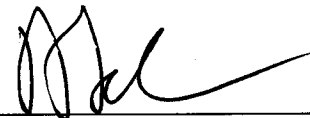
Having reviewed the parties' certifications and briefs, and having listened to their oral argument, I find that disputes exist regarding several material facts which prevent the PBA from establishing a substantial likelihood of success on the merits of its charge at this stage of the proceeding. I therefore deny the PBA's application for interim relief.

This case is similar to previous interim relief cases regarding layoffs, Tp. of Brick, I.R. No. 2009-14, 34 NJPER 425 (¶132 2008) and Passaic Cty. Prosecutor's Office (Assistant Prosecutors), I.R. No. 2008-8, 34 NJPER 56 (¶20 2008); and furloughs, Essex Cty. Prosecutor, I.R. No. 2009-17, ___ NJPER ___ (2009). In those cases, the unions argued that employees were selected for layoffs or furloughs because of their exercise of protected conduct. The employers in those cases disputed that allegation with certifications that the layoffs/furloughs were economically based. The requests for restraints were denied because the unions could not demonstrate a substantial likelihood of success on the merits due to the disputed material facts. I see no reason to deviate from those precedents here.

A plenary hearing is needed to resolve the disputed facts, absent a voluntary resolution of this matter. Accordingly, I will forward the charge to the Director of Unfair Practices for further processing.

ORDER

The PBA's application for interim relief is denied.



Perry O. Lehrer
Commission Designee

DATED: March 20, 2009
Trenton, New Jersey