

I.R. No. 2010-10

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LOWER TOWNSHIP MUNICIPAL  
UTILITIES AUTHORITY,

Respondent,

-and-

Docket No. CO-2010-136

UNITED FOOD & COMMERCIAL  
WORKERS UNION, LOCAL 152,

Charging Party.

SYNOPSIS

A Commission Designee denies an application for interim relief seeking to restrain the Lower Township Municipal Utilities Authority from eliminating two positions and laying off the affected employees. The parties' submissions demonstrated disputes over material facts which prevented Local 152 from being able to establish a substantial likelihood of success, a necessary standard for a grant of interim relief.

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UNITED FOOD & COMMERCIAL  
WORKERS UNION, LOCAL 152,

Charging Party.

Appearances:

For the Respondent, Stefankiewicz & Barns, LLC (Jeffrey  
P. Barnes, of counsel)

For the Charging Party, O'Brien, Belland & Bushinsky,  
LLC (Jeffrey Caccese, of counsel)

INTERLOCUTORY DECISION

On October 21, 2009, United Food & Commercial Workers Union,  
Local 152 (Local 152), filed an unfair practice charge with the  
Public Employment Relations Commission (Commission) alleging that  
the Lower Township Municipal Utilities Authority (Authority)  
violated the New Jersey Employer-Employee Relations Act (Act),  
specifically N.J.S.A. 34:13A-5.4a(1), (2) and (3).<sup>1/</sup> The charge

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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  
(continued...)

was accompanied by an application for interim relief seeking to restrain the Authority from eliminating two positions represented by Local 152 and laying off the affected employees.

An Order to Show Cause was signed on October 27, 2009 scheduling a return date on December 1, 2009. Both parties submitted briefs, affidavits and exhibits and argued orally on the return date.

The following facts appear:

The charge alleges that the Authority filed a layoff plan with the New Jersey Civil Service Commission seeking to eliminate two unit positions; senior account clerk and the computer operator, layoff the affected employees, and create and hire someone in a new position; certified municipal officer which the Authority determined was not appropriate for inclusion in Local 152's unit. Civil Service approved the actions to be effective December 31, 2009. Despite the Civil Service decision, Local 152 argued that the layoffs were in response to the exercise of protected conduct. One employee had been involved in a disciplinary matter which appeared to be resolved, the other employee had assisted in organizing the employees resulting in Local 152's unit.

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1/ (...continued)  
employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act."

The Authority disputed material facts offered by Local 152. It argued it's actions were taken for primarily fiscal reasons. It noted it saved \$40,000 by eliminating the two positions even though it created one higher paid position, and it enacted other cost saving measures. It argued that the two people selected for layoff had made mistakes in the performance of their jobs that adversely affected the Authority's finances, it disputed knowing about one employees' organizing efforts, and it explained that the new position would be more qualified to manage the Authority's fiscal matters.

Local 152 and the affected employees have not yet filed their Civil Service appeals.

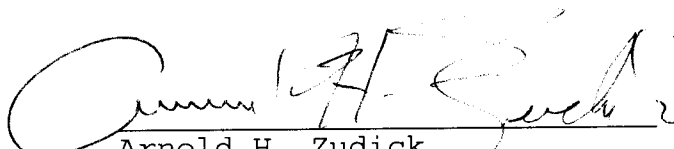
#### ANALYSIS

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).

Having considered the parties competing certifications, I find that there is a dispute regarding material facts that cannot be resolved in this proceeding. Therefore, I cannot conclude at this time that Local 152 has a substantial likelihood of success on the merits of the charge. Even assuming the Authority had knowledge that both affected employees engaged in protected conduct, under the Supreme Court's test in Bridgewater Tp. v. Bridgewater Public Works Assn., 95 N.J. 235 (1984), Local 152 must still demonstrate that the Authority was hostile to that activity which is not substantially established by its pleadings. Under the Bridgewater test, the Authority has the right to attempt to prove that it would have implemented the layoffs for business reasons despite the protected conduct. The Authority's submissions might establish that point.

Absent a voluntary resolution of this matter, a plenary hearing will be needed to determine the pertinent facts. Newark Housing Authority, I.R. No. 2008-017, 34 NJPER 98 (¶42 2008).

Based upon the above findings and analysis, the interim relief standards have not been met. Accordingly, Local 152's application is denied.<sup>2/</sup>



Arnold H. Zudick  
Commission Designee

DATED: December 10, 2009  
Trenton, New Jersey

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<sup>2/</sup> This case will be sent to conference in accordance with N.J.A.C. 19:14-1.6(c).