I.R. No. 2011-3

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FREEHOLD REGIONAL
HIGH SCHOOL DISTRICT,

Respondent,

-and- Docket No. CO-2010-458

FREEHOLD REGIONAL
CUSTODIAL ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee denies an application for interim relief based upon an unfair practice charge alleging that the public employer repudiated a provision of the parties' collective negotiations agreement requiring that reductions in force ". . . shall be in inverse order of seniority." The charge alleges that the employer determined to retain certain employees ". . . based upon their attendance." The charge also alleges that the employer delayed ratifying a collective negotiations agreement until a State statute mandating an employee contribution of 1.5% of base salary for health benefits was implemented.

The public employer denied that it laid off employees or engaged in a reduction in force. It asserts the certain employees were "non-renewed," as permitted by N.J.S.A. 18A:27-4.1(b). It also denies delaying ratification for the purpose of awaiting passage of a State statute mandating employee contributions to health benefits programs.

The Designee determined that material factual disputes on both principal allegations demonstrated that the Charging Party did not have a substantial likelihood of success on the merits.

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Appearances:

For the Respondent, Schwartz, Simon, Edelstein Celso & Zitomer, LLC, attorneys (Jennifer Paganucci, of counsel)

For the Charging Party, Oxfeld Cohen (Randi Doner April, of counsel)

INTERLOCUTORY DECISION

On May 27, 2010, the Freehold Regional Custodial Association (Association) filed an unfair practice charge against Freehold Regional High School District (District). The charge alleges that on or about April 23, 2010, the District repudiated the collective negotiations agreement by failing to honor the "inverse order of seniority" provision when it issued notices of reduction in force to unit employees. The charge alleges that the District claimed to have ". . . made decisions to retain certain employees based upon their attendance."

The charge also alleges that the District unlawfully refused or delayed a ratification vote on the parties' successor agreement until May 21, 2010, thereby requiring unit employees to contribute 1.5% of their base salary for health benefits, pursuant to a newly-enacted State statute.

The District'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.

On June 15, 2010, the Association filed an application for interim relief, together with a certification and brief. The application seeks an Order restraining the District from ". . . enforcing illegal reductions in force and from deducting 1.5% from each employee's paycheck."

On June 16, 2010, I signed an Order to Show Cause, specifying July 7, 2010 as the return date for argument in a telephone conference call. I also directed the District to file an answering brief, together with opposing certifications,

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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."

documents and proof of service upon the Association. On June 30, the District filed its response. On July 1, 2010, the Association filed a reply letter. On July 7, the parties argued their cases in a telephone conference call. The following facts appear.

The District and the Association signed a collective negotiations agreement extending from July 1, 2006 through June 30, 2009. The recognition provision specifies that the unit is comprised of "all non-supervisory custodial, grounds and building maintenance personnel."

Article XII (Reduction in Force) provides in a pertinent part:

> In the event that the Board of Education determines that it is necessary to reduce the size of the custodial, grounds and maintenance staff, layoff shall be in inverse order of seniority within job title. That is, the most recently hired employee in any job title shall be the first to be laid off.

Article V(B)(Management Rights) provides in a pertinent part that the Board reserves the right,

> . . . To hire, assign, promote, transfer, and retain employees . . . or to suspend, demote, discharge, or take disciplinary action against employees,
>
> . . . To relieve employees from duties because of lack of work, or other legitimate reasons,

> . . . To determine the methods, means and personnel by which such operations are conducted.

On February 8, 2010, the parties signed a memorandum of agreement for a successor collective negotiations agreement. The Association developed salary guides and gave them to the District for review.

On February 12, 2010, the District learned that the State would reclaim its budget surplus of $2,657,353. On March 19, 2010, about one week before school budgets were required to be finalized, the District learned the dollar amount of State aid it would receive for the 2010-2011 school year. (The tentative budget, submitted to the County in late February 2010, estimated that State aid would remain the same as provided in 2009-2010 school year). More than $8.5m was lost in formula aid; $46,000 in adult school aid; and $230,000 in debt service aid.

The Board notified all of its non-tenured employees [an unspecified number] that they would be "non-renewed" in the 2010-2011 school year. New salary guides were prepared. By not later than March 24, 2010, the parties agreed that the salary guides were "sound."

On or about March 22, the District advised the Association that the memorandum of agreement would not be placed on the agenda for a vote at its regularly scheduled meeting that week. It advised the Association that in consideration of its

"unprecedented financial situation" and possible implications for staffing and operations, the vote would be postponed, ". . . until a more definite financial picture was available."

On April 7, 2010, the Association voted to ratify the memorandum of agreement.

On April 20, 2010, the proposed District budget was electorally defeated. The school budget was submitted to eight municipal councils (one for each sending district), which are charged with reviewing budgets and determining funding.

On April 27, 2010, the District issued separate letters advising of non-renewals to about 12 unit employees. The letters advise that the action was approved the previous evening. The letters were signed by the District assistant superintendent of human resources. The District concedes, "[t]hose selected for non-renewal were the employees with the greatest attendance issues." Copies of written warnings to 9 of the named unit employees were submitted, as well as copies of warnings issued to others. Copies of evaluations warning of poor attendance of 5 of the targeted unit employees were also filed.

Employment agreements signed by unit employees and the District are for a "fixed term;" they must be renewed annually. The employees are not protected by tenure rights.

On or about May 17, 2010, the District conducted a regular meeting and had not learned what budget the municipal councils

passed. On May 19, the District learned that the municipal councils passed a budget reducing the District's proposed budget by $2.65m to $4.5m.

The municipal governing bodies failed to certify "the amount of taxes," and the budget was forwarded to the Commissioner of Education for a determination. On June 28, 2010, the District was advised of a final budget reduction of $2.65m. In the interim from May 19, the District refrained from approving agreements because ". . . it was reluctant to offer employment which, depending on the outcome of the budget reconstruction, may be withdrawn."

Also on June 28, in a special District meeting, the memorandum of agreement was ratified.

ANALYSIS

A charging party may obtain interim relief in certain cases. 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 Association contends that the District laid off or "reduced in force" unit employees. The District contends that it did not renew the individual employment contracts of those employees. A layoff implicates Article XII of the collective negotiations agreement, requiring the District to proceed in "inverse order of seniority." Non-renewals of individual contracts are permitted by statute. N.J.S.A. 18A:27-4.1(b).

The Association certifies that one laid off unit employee had worked for the District for 28 years. The District certifies that the targeted employees had "attendance issues" and were provided non-renewal notices. These circumstances present a material factual dispute. I do not find that the Association has demonstrated a substantial likelihood of success on the question of whether the District's action was a layoff or non-renewal.

The Association has also not demonstrated a substantial likelihood of success on whether the District has refused to negotiate in good faith by "delaying" its ratification vote on the signed memorandum of agreement. The facts reveal deteriorating economic prospects for the District during the disputed period of time, exacerbated by the electorally defeated proposed budget. The approved annual budget was reduced by $2.65m from the previous year. An economic crisis does not

negate the intention to reach an agreement. State of N.J. and CNJSCL, AFL-CIO, E.D. No. 79, aff'd P.E.R.C. No. 76-8, 1 NJPER 39, 40 (1975), aff'd 141 N.J. Super. 470 (1976).

The Association has not met its burden of demonstrating a substantial likelihood of success on the merits of both allegations.

ORDER

The application for interim relief is denied.

Jonathan Roth
Commission Designee

DATED: July 8, 2010
Trenton, New Jersey