

I.R. No. 2011-6

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEWARK HOUSING AUTHORITY,

Respondent,

-and-

Docket No. CO-2010-487

SKILLED TRADES ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee denies an application for interim relief accompanying an unfair practice charge filed by the Skilled Trades Association against the Newark Housing Authority. The charge alleges that the Authority laid off unit employees and assigned unit work to non-unit employees in retaliation for activity protected by the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

The Designee determined that material factual disputes indicated that the Association did not have a substantial likelihood of success on the merits of its charge.

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Appearances:

For the Newark Housing Authority
Samuel Manigault, Chief of Labor Relations

For the Skilled Trades Association
Oxford Cohen, P.C.
(Arnold Shep Cohen, of counsel)

INTERLOCUTORY DECISION

On June 15, 2010, the Skilled Trades Association filed an unfair practice charge against the Newark Housing Authority. The charge alleges that on June 1, the Association president was notified of impending layoffs of unit employees and of his title/position, carpenter. The charge alleges that the "layoffs are unjustified and are in retaliation for the vigorous advocacy by the Association on behalf of its members and in an attempt to eliminate the Association." The charge also alleges that the "work of the skilled trades will be performed by outside contractors or members of other bargaining units." The

Authority's conduct allegedly violates 5.4a(3) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq.

On June 24, 2010, the Association filed an application for interim relief, together with a certification and brief seeking a restraint of the layoff scheduled for June 30. The application seeks a rescission of the impending layoffs and reinstates merit of unit work. On June 29, I issued an Order to Respond, scheduling the Authority's written response to the application. On July 8 and 12, 2010, I received the Authority's reply, including documents, a letter and a certification.

The Association represents mechanics, boilermakers, carpenters, electricians, masons, painters and other non-supervisory skilled titles. The parties have signed a collective agreement extending from April 1, 2007 through March 31, 2011.

In May, 2006, the Authority and the U.S. Department of Housing and Urban Development signed an agreement and a

^{1/} These provisions prohibit public employers, their representatives or agents from: "(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."

"corrective action plan," requiring a restructuring of the Authority to an "asset base management operation." Among the mandated changes are decentralization of cost centers, training and new position descriptions. NHA funding has been reduced for more than two years; the NHA has reduced its staff from 1000 to about 500. The entire membership of one union at the Authority, Local 202, was laid off for reasons of economy. Employees were laid off in all ranks; union and non-union; management and rank-and-file.

Association President Gerard Costella and Vice President Ray Ramos are among nine carpenters at the Authority with Civil Service protection. Five other carpenters do not enjoy that protection; in 1997, the Authority withdrew from the Civil Service system.

The Association has filed numerous grievances in 2009 concerning the loss of unit work. It has also filed unfair practice charges (CO-2008-114; CO-2010-282, e.g.) concerning the matter of unit work. Grievance arbitration cases on the subject have also been litigated.

On or about June 9, Costella, Ramos and three other carpenters were informed by separate individual notices from the Authority that they would be laid off, effective July 26, 2010. The notices provided that the action was taken "for reasons of economy and efficiency" and acknowledged their possible rights

". . . to displace employees in other positions." In addition to the five Civil Service carpenters, the Authority laid off two electricians and one painter. The parties dispute whether non-civil service carpenters have been laid off. They also dispute remarks attributed to Janet Abrahams, the Authority's Chief Operating Officer, shortly before the layoff notices issued.

The Association President and Abrahams also dispute in their certifications the circumstances of work assigned to non-unit organized craft employees and reasons for the layoffs. Abrahams certifies that "the layoffs were based entirely on economy and efficiency."

ANALYSIS

A charging party may obtain interim 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, 36 (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 material factual dispute in this matter concerns the Authority's motive(s) for laying off unit employees and assigning or sub-contracting work to non-unit employees. Whether these actions were taken for reasons of economy and efficiency or in retaliation for the exercise of protected activity can be resolved only through a plenary hearing. See In re Bridgewater Tp., 95 N.J. 235 (1984).

I cannot conclude that the Association has a substantial likelihood of success on the merits of its application.

ORDER

The application for interim relief is denied.


Jonathan Roth
Commission Designee

DATED: July 16, 2010
Trenton, New Jersey