

I.R. NO. 2011-11

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF DENVILLE,

Respondent,

-and-

Docket No. CO-2010-452

PBA LOCAL 142,

Charging Party.

SYNOPSIS

A Commission Designee grants in part and denies in part an application for interim relief. While the Township was not required to implement the terms of an agreement signed by the Mayor, the Township Council was required to vote on the agreement and related salary ordinance, and the Mayor was required to support the agreement when it is presented to the Council.

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Appearances:

For the Respondent
Knapp, Trimboli & Prusinowski, LLC
(Fredric M. Knapp, of counsel)

For the Charging Party
Cohen, Leder, Montalbano & Grossman
(Bruce D. Leder, of counsel)

INTERLOCUTORY DECISION

On May 26, 2010, PBA Local 142 (PBA) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the Township of Denville (Township) violated 5.4a(1) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq., (Act)^{1/} by refusing to

^{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. (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
(continued...)

adopt an ordinance approving the PBA's collective agreement. The charge was accompanied by an application for interim relief seeking an order binding the Township to a previously signed collective agreement and, presumably, even without the Township Council voting on whether or not it supports the agreement and a related ordinance.

An Order to Show Cause was executed on June 1, 2010 scheduling a telephone conference call return date for June 21, 2010. Both parties submitted briefs, certifications and exhibits to support their respective positions and argued orally on the return date. Subsequently, the parties engaged in discussions in an attempt to resolve the matter, but were unsuccessful.

The PBA argued that the Township had accepted the PBA's offer and approved an agreement which was signed by the Mayor. It, therefore, argued that even assuming a vote of the Township Council was necessary, the Council was bound to vote in favor of approving the new agreement.

The Township argued that the Mayor had signed the agreement by mistake, that the Township Council had not been given the opportunity to vote on the contract, and that such conduct failed to follow the parties ratification practice.

The following facts appear:

1/ (...continued)
representative."

It has been the Township's practice for over twenty years to have all tentative agreements adopted by the Township Council prior to any agreement being signed by the Mayor. Normally, after a tentative agreement has been reached between a union and the Township's Business Administrator, the Business Administrator would meet with the Mayor and sometimes the Township's labor counsel, to discuss the agreement. If the tentative agreement was acceptable to those individuals, the Business Administrator would review the terms of the agreement with the Council.

If the Council approved the terms, the union would be notified and its membership would vote on ratification. If the union ratified, the tentative agreement and a related salary ordinance would be introduced at a Council meeting. After the appropriate number of readings and public review, the Council would vote. If the Council adopted the agreement/ordinance, the agreement would be presented to the Mayor. The Mayor's signature after Council approval would finalize the Township's agreement.

The parties last collective agreement expired on December 31, 2009. The PBA selected its president Scott Welsch, and Keith Partin and Frank Perna to negotiate with Township Business Administrator Marie Goble, and Kathy Bowditch for a new agreement. The teams first met on January 21, 2010. Goble made certain representations about what the Mayor and Council would accept.

At the second session on March 11, 2010, the teams reached a tentative agreement on an employee health insurance contribution. At the third and final session on March 18, 2010, the parties revised the health contribution but could not agree on salary increases. No agreement was reached that day.

The following day Partin verbally advised Goble the PBA would accept the Township's salary proposal. On March 24, 2010, Goble apparently advised Welsch that the Council had accepted the terms agreed to by the PBA.

On March 27, 2010, Goble sent Welsch the following memorandum:

Per our discussion on Thursday, March 25, the Township of Denville is offering the following for your 2010 - 2013 contract:

| <u>Year</u> | <u>2010</u> | <u>2011</u> | <u>2012</u> | <u>2013</u> |
|-------------|-------------|-------------|-------------|-------------|
| Percentage | 3.0% | 3.0% | 3.5% | 3.5% |

Healthcare contribution per employee:

| <u>Years</u> | <u>Single</u> | <u>Family</u> |
|--------------|--------------------------|-----------------------------|
| 2010, 2011 | \$400 (\$16.67/paycheck) | \$800 (\$33.33/paycheck) |
| 2012, 2013 | \$450 (\$18.75/paycheck) | \$900 (\$37.50/paycheck) |

Please be advised that both the raise and the healthcare will be retroactive to January 1, 2010.

Thank you for your consideration to this matter.

The PBA then drafted an agreement which Goble found acceptable. On April 12, 2010, the Municipal Clerk, the Mayor and PBA representatives signed the agreement.

The Council held a public session on May 4, 2010. Welsch spoke regarding the agreement and asked both the Mayor and Council to honor the contract. The Council apparently passed a new budget that included a 3% increase for PBA members for 2010, but the Council did not vote on the agreement or the salary ordinance. Neither the Mayor, nor the Business Administrator advised the PBA that the contract was subject to a Council vote.

The Mayor signed the agreement on May 12 believing he needed to sign the agreement for it to be considered for final review and approval by the Council.

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 facts presented do not establish that a memorandum of agreement was ever reached, prepared or signed in this case. Although Goble sent Welsch the March 27 memorandum, that document was phrased as an offer and only noted the salary and the health care contributions. No other terms were provided and no information was included on how an agreement would be ratified.

The PBA argued that based upon Goble's representations of what the Council had approved, she had the apparent authority to bind the Township to the agreement once the Mayor signed the contract. If that were accurate, then the Township essentially waived the Council's right to vote on the agreement.

In Borough of Palmyra, P.E.R.C. No. 2008-5, 33 NJPER 207 (¶75 2007); decision affirmed in request for reconsideration, P.E.R.C. No. 2008-16, 33 NJPER 232 (¶89 2007), the Commission explained that although "parties seeking to require or omit ratification are not bound by their conduct in prior negotiations", Id. at 208:

Where the issue of ratification is addressed during negotiations, past history is irrelevant. Where the issue is not addressed, past history may be relevant to discerning the parties expectations and the negotiators apparent authority. Id.

In order to obtain an order binding the Township to the agreement without the Council's right to vote, the PBA had to

demonstrate a substantial likelihood of success on the facts presented that the parties agreed to or knowingly changed their ratification procedure. The facts presented do not meet that requirement. It is not clear to me at this point whether there was any intent to change the ratification practice. My finding, however, does not mean that the PBA will be unable to prove in a plenary hearing, an intent to change the ratification procedure, it only means it did not meet that burden in interim relief.

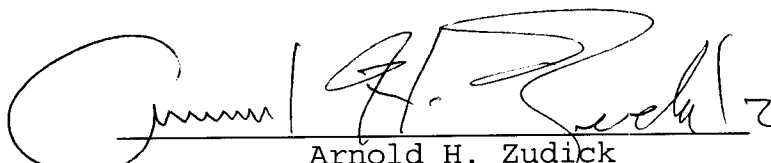
Nevertheless, the facts presented have shown that to the extent the ratification procedure required the Council to vote upon the agreement and ordinance, the Council has failed to vote. Consequently, if the ratification procedure relied upon by the Township continues to apply, there is a substantial likelihood of success that the PBA will prove that the Township has not complied with that procedure.

Under that theory, the Township's continued failure to vote on the agreement/ordinance is irreparable harm because it represents a unilateral change in the ratification procedure during negotiations for a successor agreement. Similarly, the harm to the PBA and the process is greater if the Council does not vote and is allowed to wait until this case is fully litigated, than if required to vote now.

Accordingly, based upon the above, I issue the following:

ORDER

The Mayor having already signed the agreement, the Township Council shall now vote upon the agreement and salary ordinance as soon as practically possible. The Mayor must support the agreement in its presentation to the Council.



Arnold H. Zudick
Commission Designee

DATED: August 11, 2010
Trenton, New Jersey