

I.R. NO. 2011-32

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF JACKSON,

Respondent,

-and-

Docket No. CO-2011-275

TRANSPORT WORKERS UNION OF
AMERICA, LOCAL 225, BRANCH 4,

Charging Party.

SYNOPSIS

The Transport Workers Union, Local 225, Branch 4, alleged that the Township of Jackson denied its request for an extension of a full-time leave of absence for its vice president in retaliation for the union activity the vice president engaged in during his initial leave. The Township claimed that it denied the TWU's request because it needed the vice president to return to his regular job due to the need for employees to perform snow clean-up. The Township asserted that its decision was not premised on anti-union motives. The Commission Designee found that the parties have presented conflicting factual claims and noted that the establishment of the employer's motivation is by its nature very fact intensive and does not lend itself to a grant of interim relief. The Commission Designee denied the TWU's application for interim relief.

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Appearances:

For the Respondent
Citta, Holzapfel and Zabarsky, attorneys
(Scott Kineavy, of counsel)

For the Charging Party
O'Brien, Belland and Bushinsky, attorneys
(Jeffrey R. Caccese, of counsel)

INTERLOCUTORY DECISION

On January 13, 2011, the Transport Workers Union of America, Local 225, Branch 4 (TWU or Union), filed an unfair practice charge, accompanied by an application for interim relief, with the Public Employment Relations Commission (Commission) alleging that the Township of Jackson (Township) violated 5.4a(1), (3), and (5)^{1/} of the New Jersey Employer-Employee Relations Act,

^{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 (continued...)"

N.J.S.A. 34:13A-1 et seq. (Act). The TWU contends that its request to extend the union activity leave of absence of its vice president was denied in retaliation for his engaging in protected conduct while on leave. The Township contends that its decision to deny the TWU's request to extend the vice president's leave was based on legitimate business reasons and unrelated to the vice president engaging in any union activity during his leave.

On January 14, 2011, I executed an Order to Show Cause scheduling a return date for January 21, 2011. At the request of the Township and with the consent of TWU, oral argument was rescheduled to January 25, 2011. The parties submitted briefs, affidavits and exhibits in support of their respective positions in accordance with Commission rules and argued orally on the rescheduled return date.

TWU Local 225, Branch 4, serves as the certified representative for fourteen collective negotiations units consisting of approximately 1200 unit members employed by various public employers, including Howell Township and Jackson Township. Pursuant to an arrangement between TWU and Howell Township, the president of TWU Local 225, a Howell Township employee, is

1/ (...continued)
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."

granted a full-time leave of absence. Due to illness, TWU's president took a full-time medical leave of absence from his position with the Union. Pursuant to TWU's constitution and by-laws, the vice president takes on the responsibilities of the president in the event the president is unable to fulfill those duties.

The TWU's vice president is employed by Jackson Township. The collective agreement between the Township and the TWU, which expired on December 31, 2009, contains no provision for a full-time leave of absence for the purpose of engaging in union activity.

In October 2010, upon the TWU's president medical leave of absence, the Union submitted a request to Jackson Township to allow the vice president to take a union leave of absence from the Township pursuant to N.J.A.C. 4A:6-1.16, Leave for Union Office. N.J.A.C. 4A:6-1.16 states:

An appointing authority may grant a leave of absence without pay to any employee elected or appointed as an official of the employee's union. The maximum period for such leaves shall be a subject of negotiation between the employer and union.

The Township granted the vice president a 12-week leave of absence which ran through the end of calendar year 2010. The Township was fully reimbursed for all employment-related costs associated with the vice president's leave of absence from the Township. On or about January 4, 2011, the TWU submitted a

request to the Township seeking to extend the vice president's leave. On or about January 13, 2011, the Township denied the TWU's request for the leave extension and required the vice president to return to full-time active employment with the Township on or about January 18, 2011.

During the time period when the vice president was on leave of absence from the Township, the Union filed two unfair practice charges against the Township. The first charge alleges that the Township failed to negotiate with the TWU prior to adopting a furlough day program affecting unit employees. Additionally, the Union filed an appeal with the New Jersey Civil Service Commission regarding the furlough program adopted by the Township. In the second unfair practice charge, the TWU alleges that the Township refused to enter into successor collective negotiations with the Union. The Union also asserts that its vice president was quoted in a local newspaper article as claiming that the Jackson Township employees who were furloughed would be asked to volunteer to work in the event of a snow storm. The TWU claims that the mayor of Jackson Township took exception to the vice president's comments. Thus, the TWU contends that the Township denied its request to extend the vice president's leave because of his involvement in the filing of the two unfair practice charges, the Civil Service furlough day appeal, and the newspaper comments. TWU asserts that the vice president was

engaged in protected activity and the Township's denial of the leave extension was in retaliation for such activity.

The Township asserts that its denial of the TWU's request for a leave extension was not in retaliation against the vice president for engaging in protected activity. The Township contends that it granted the vice president approximately twelve weeks of leave time despite the fact that there was no provision in the parties' collective agreement providing for such leave, and that N.J.A.C. 4A:6-1.16 is discretionary. The Township argues that the TWU's vice president serves in its only groundskeeper position and the Township determined, in light of the severe winter experienced during this year, it needed the groundskeeper for snow removal and other grounds assignments around the Township. The Township contends that requiring the groundskeeper to return to work took on increased importance because of the institution of the furlough program for municipal employees. The Township also asserts that the TWU's claim that the Township's decision to deny the Union's leave extension request was premised on anti-union motives is devoid of any direct evidence and is merely speculative.

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).

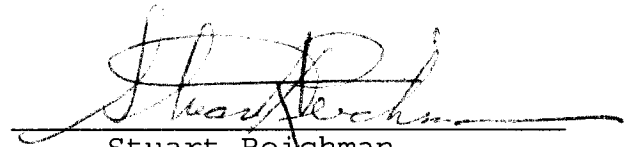
The New Jersey Supreme Court had set forth the standard for determining whether an employer's action violates 5.4a(3) of the Act in Bridgewater Tp. v. Bridgewater Public Works Assn., 95 N.J. 235 (1984). Under Bridgewater, no violation will be found unless the charging party has proved, by a preponderance of the evidence on the entire record, that protected conduct was a substantial or motivating factor in the adverse action. This may be done by direct evidence or by circumstantial evidence showing that the employee engaged in protected activity, the employer knew of this activity, and the employer was hostile towards the exercise of the protected right. Id. at 246. Thus, the assessment of the employer's motivation in determining whether it has violated a(3) of the Act is critical. However, by its very nature, establishing the employer's motivation is a fact intensive exploration and does not readily lend itself to a grant of interim relief. See Newark Housing Authority, I.R. No. 2008-2, 33 NJPER 223 (¶84 2007); City of Long Branch, I.R. No. 2003-9, 29

NJPER 39 (¶14 2003); Cty. of Union, I.R. No. 2003-8, 28 NJPER 572 (¶33176 2002); Somerset Hills Reg. Bd. of Ed., I.R. No. 2001-9, 27 NJPER 208 (¶32071 2001); Tp. of Woodbridge, I.R. No. 2000-8, 26 NJPER 163 (¶31063 2000); Cty. of Essex, I.R. No. 99-23, 25 NJPER 317 (¶30136 1999). Here, TWU contends that the Township denied the Union's request to extend the vice president's leave in retaliation for what is arguably the TWU's more aggressive labor relations posture against the Township. The Township denies the TWU's allegations and asserts that its decision to require the vice president to return to work was based solely on its business reason to have additional staff available to address the exigencies of foul weather. Ultimately, the Township's motivation must be ascertained by a hearing examiner or the Commission at the conclusion of a plenary hearing. At this early juncture, however, it is premature to make such a determination as to the Township's motivation inasmuch as the parties have presented conflicting factual claims.

Consequently, for the reasons discussed above, I find that the TWU has not established a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations, a requisite element to obtain a grant of interim relief. Accordingly, I decline to grant TWU's application for interim relief. This case will proceed through the normal unfair practice mechanism.

ORDER

TWU Local 225, Branch 4's application for interim relief is denied.

A handwritten signature in black ink, appearing to read "Stuart Reichman", is written over a horizontal line.

Stuart Reichman
Commission Designee

DATED: February 1, 2011
Trenton, New Jersey