

I.R. No. 2011-38

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CAMDEN COUNTY BOARD OF
CHOSEN FREEHOLDERS AND
CAMDEN COUNTY MOSQUITO
EXTERMINATION COMMISSION,

Respondents,

-and-

Docket No. CO-2011-298

CAMDEN COUNTY COUNCIL NO. 10
AND SUPERVISORY UNIT OF
CAMDEN COUNTY COUNCIL NO. 10,

Charging Party.

SYNOPSIS

A Commission Designee denies an application for interim relief based upon an unfair practice charge alleging that the public employer issued notices to employees in five negotiations units represented by the Charging Party that they were to be furloughed 22 days March 4, 2011 through December 23, 2011 or one furlough day in every other week.

The Designee determined that the Charging Party demonstrated a substantial likelihood of success on the merits, pursuant to Belmar Bor., P.E.R.C. No. 2011-34, 36 NJPER 405 (¶157 2010) [app. pend. App. Div. Dkt. No. A-1411-10T1]. The Designee also determined that the Charging Party did not demonstrate irreparable harm, i.e., that the harm was not limited to a monetary remedy.

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Appearances:

For the Respondent, Brown & Connery, LLP (Michael J.
DiPiero, of counsel)

For the Charging Party, Spear Wilderman, attorneys
(James Katz, of counsel)

INTERLOCUTORY DECISION

On February 2, 2011, Camden County Council No. 10 and Supervisory Unit of Camden County Council No. 10 (Council 10) filed an unfair practice charge against Camden County Board of Chosen Freeholders and Camden County Mosquito Extermination Commission (County). The charge alleges that on December 15, 2010, the County and Commission filed a furlough plan with the New Jersey Civil Service Commission and on January 14, 2011, the County issued notices to employees advising that it intended to furlough unit employees 22 days or (stated another way), one day

every alternate week, commencing March 4, 2011 and extending through December 23, 2011. The charge alleges that the notices were issued without negotiations.

On October 27, 2010, the parties allegedly signed collective negotiations agreements covering the large blue collar, crafts and mosquito commission units, all extending from January 1, 2008 through December 31, 2012. During negotiations, the County allegedly never raised any issues about furloughs or an inability to pay negotiated wage increases. Articles in the collective agreements provide regular workweeks with specified numbers of hours.

The charge also alleges that the County "has proposed laying off 260 employees," many of whom will be furloughed in March 2011 and laid off in the next month. The charge alleges that the furlough plan will decrease employees' workweeks by one day every other week for 44 weeks, reducing their salaries by more than 10% during the furlough period.

The charge alleges that employees in the large blue collar, crafts and mosquito commission negotiations units are among ". . . the lowest paid in the County" and that the salary reductions could cause irreparable harm by "making it impossible for them to make mortgage payments and meet financial necessities." On January 25, Council 10 wrote to the County, seeking rescission of the furlough notices. No reply was

received. The County's actions allegedly violate 5.4a(1) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act).

On February 17, 2011, the Union filed an application for interim relief concerning the unfair practice charge, together with a proposed Order to Show Cause, brief, certification and exhibits. The application seeks an order restraining the County from reducing unit employees' work schedules and rescinding the unilaterally imposed furloughs.

On February 18, 2011, I issued an Order to Show Cause, specifying March 2, 2011 as the return date for argument on the application in a telephone conference call. I also directed the County to file a response by February 28, 2011, together with proof of service upon the Union. On the return date, the parties argued their cases. The following facts appear.

Council 10 and the County have signed collective agreements covering about 700 white collar employees and blue collar employees in "the large unit"; about 70 employees in a blue collar unit; about 15 employees in a crafts unit; about 56

^{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 representative."

employees in a supervisors unit; and about 7 employees at the mosquito commission. On September 8, 2010, the parties signed a memorandum of understanding. On October 27, 2010, Council 10 and the County signed collective negotiations agreements extending from January 1, 2008 through December 31, 2012 for the "large" unit; the blue collar unit, crafts unit and the mosquito commission unit. The supervisors unit agreement was signed on December 15, 2009.

Article III (work schedules) of the blue collar unit's and craft unit's agreements specify that the workweek is 40 hours, Monday through Friday, except for employees assigned to "a continuous operation shift."

Article III (work schedules) of the mosquito commission unit provides that the workweek ". . . shall consist of five (5) consecutive days, Monday through Friday, inclusive."

Article III of the agreements for the "large unit" and the supervisors unit specify that for employees not assigned to a continuous operating shift, the regularly scheduled workweek consists of at least 32.5 hours per week and except for employees in the clerk's office, all unit employees have been regularly scheduled to work five days per week, Monday through Friday.

During negotiations, the County never raised issues about furloughs or an inability to pay negotiated salary increases of 2.8%, effective on the 14th pay period in 2011 and 2.8%,

effective in the first pay period in 2012. Council 10 yielded "numerous significant economic concessions" in order to achieve the salary increases. County Director of Human Resources Frank Cirii certifies that the County ". . . did not negotiate its agreement with Council 10 knowing that it would be necessary to seek layoffs in 2011." By mid-November 2010, ". . . it became apparent" to David McPeak, the County CFO, that the County's economic situation was "dire," as it was faced with a deficit of "\$43,075,000," itemized on this list provided by the County:

**CAMDEN COUNTY
2011 BUDGET
11/16/10**

Item	Amount
*Contractual Increases	2,500,000
Health Benefits/Insurance	9,000,000
Increase Debt (Emergency - \$3 mil. Other \$1.5 mil.)	4,500,000
Increase in Operation Expenses	7,600,000
Pension Increase	3,000,000
Jail OT Increase	2,500,000
Loss of Surplus Revenue	8,000,000
Loss of Bail Forfeiture Revenue	775,000
Loss of Register of Deeds Revenue	700,000
Loss of Interest Income	300,000
Loss of State Inmate Revenue	1,600,000
Loss of CCMUA Surplus Revenue	3,100,000
Increase Sheriff Revenue	(500,000)
NET INCREASE	43,075,000

*Contractual Increases reflect those for all settled units. Unsettled units are assumed to be 0%. Management is assumed to be 0%.

On December 9, 2010, the County advised Council 10 that it was facing fiscal problems in 2011 and was seeking concessions. On December 15, the County filed a furlough plan with the New Jersey Civil Service Commission.

The plan sought 22 furlough days from March 4, 2011 through December 23, 2011. The County estimates that each furlough day saves about \$135,000 or a total of about \$3,000,000. The plan affects about 700 employees of a workforce of 1800 and includes every non-public safety department and division of the County. The Director of Human Resources certifies that "the plan does not target any one department or any particular union and the entire department will be closed on each furlough day." During argument in the conference call on the return date, counsel for the County represented that on each furlough day, the County will close one department on a rotating basis.

Under the current law limiting tax increases, the County can raise \$16,000,000 in new taxes, leaving a budget gap of \$27,000,000. On January 13, 2011, the County also submitted a plan to lay off 261 employees from every department, including public safety employees, for an estimated savings of \$9,500,000.

Human Resources Director Frank Cirii certifies that if the "temporary layoff plan" is not approved, the County will have to layoff 60 more employees, based upon the assumption that each employee earns an average salary of \$50,000. Those layoffs could

not be implemented for at least 75 days, in light of a notice period and a period for processing at the Civil Service Commission. The combination of raising taxes and implementing furlough days and layoffs will reduce the deficit by about \$28,500,000, leaving a deficit of about \$16,500,000. The CFO certifies, "the County continues to explore avenues to reduce the gap further." Council 10 has filed contractual grievances contesting the involuntary furloughs.

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).

In Belmar Bor., P.E.R.C. No. 2011-034, 36 NJPER 405 (¶157 2010), [app pend., App. Div. Dkt. No. A-1411-10T1], the Commission determined that a public employer did not have a

managerial prerogative to unilaterally implement a temporary layoff plan (approved under Civil Service) which reduced weekly work hours and pay of unit employees. Acknowledging that public employers have the prerogative to reduce staffing levels through permanent layoffs, the Commission wrote that Court decisions and its own decisions, " . . . have consistently distinguished the non-negotiability of permanent staff reductions from the negotiable issues of reductions in employees' work years, workweeks, and work hours [citations omitted]. That is so even when the latter reductions could be labeled layoffs under education or Civil Service laws." 36 NJPER at 407.

In Belmar, the Commission was asked to determine if the union's grievance contesting the furlough days under workweek and work hours provisions was within the scope of negotiations or whether the employer had a non-negotiable right to reduce weekly work hours and pay of unit employees through its layoff plan as approved by the Civil Service Commission. The employer was seeking savings approximately equal to the salary of one full-time employee.

The Commission distinguished that circumstance from circumstances in State of New Jersey (Dept. of Personnel), P.E.R.C. No. 92-65, 18 NJPER 50 (¶23021 1991) (DOP), where the New Jersey Department of Personnel closed its facilities for eight days because of a budgetary shortfall. The employer in

that case certified that the shutdowns were necessary in order to avoid permanent layoffs of 59 employees, which would have "gutted" operations and reduced or eliminated several Civil Service programs. The union in that case had not disputed the financial necessity of the layoffs. The Commission held that the decision to cease operations was not mandatorily negotiable. It noted that the case involved an undisputed financial necessity and a complete departmental shutdown affecting all employees, two-thirds of whom were outside the charging party's unit and the Act's coverage.

In Belmar, the Commission observed that the "sole objective" of the plan was to save labor costs that would otherwise have been paid under provisions of the parties' negotiated salary agreement. It wrote: "The Borough has not asserted that reducing the workweek rather than laying off a single employee was needed to keep any programs running or to achieve any governmental policy purpose." 36 NJPER at 408.

In this case, the County is seeking to save about \$3,000,000 from the furloughs in addition to \$9,500,000 saved from 260 layoffs, leaving a substantial budgetary shortfall, all of which is uncontested. The County has certified that on each designated furlough day, a department will be closed (and the closures shall presumably rotate on the furlough dates). It is likely that the closures shall primarily effect Council 10 employees, reducing

their salaries by about 10% over the furlough period. Unlike DOP however, the County has not asserted that reducing the workweeks and work hours of unit employees rather than a layoff of 60 additional employees is needed to keep programs operating or to achieve a governmental policy purpose. Also unlike DOP, Council 10 unit employees shall bear the primary economic burden of the County's decision to furlough. For these reasons, I believe that Council 10 has demonstrated a substantial likelihood of success on the merits.

Council 10 argues that its unit employees will suffer irreparable harm ". . . for any of three independent reasons." Council 10 first contends that a 10% wage loss over 44 weeks is irreparable, citing, Union Cty., I.R. No. 92-4, 17 NJPER 448 (¶22214 1991). There, the employer unilaterally imposed layoffs of five consecutive days to unit employees, prompting the Chairman's observation that ". . . permitting unilateral changes of this magnitude in these fundamental terms and conditions of employment during this litigation could irreparably harm the continuing relationship between the employer and the majority representatives and cause hardship for individual employees." Union Cty., 17 NJPER at 452.

This application in part requires an assessment of the irreparability of harm. The Commission Designee in Sussex Cty. and Sussex Cty. Sheriff, I.R. No. 2003-13, 29 NJPER 274 (¶81

2003) wrote that irreparable harm “. . . is incapable of an adequate remedy at the conclusion of the case. Interim relief is typically not granted where the harm is limited to a monetary remedy.” 29 NJPER at 276. See also, Maplewood Tp., I.R. No. 2009-26, 35 NJPER 184 (¶70 2009); Union Cty., I.R. No. 99-15, 25 NJPER 192 (¶30088 1999).

A 10% loss of income for Council 10 unit(s) employees is harmful. But the evenly spread deductions over 44 weeks enable employees to anticipate (regular) expenses and adjust for them, and differs from the circumstances in Union Cty. Uncontested facts on this application also reveal that the County became aware of its deficit after the collective negotiations agreements were signed, suggesting that the parties' negotiations relationship would not be irreparably harmed by the County's imposition of the furlough.

Council 10 also argues that the County's actions have irreparably harmed the negotiations process, citing Egg Harbor Tp., I.R. No. 2011-14, 36 NJPER 336 (¶131 2010). In Egg Harbor, the employer had not paid negotiated salary increases in 2010 after the union had twice agreed to reopen negotiations to address the employer's financial difficulties. In the first instance, the union agreed to defer a salary increase due January 1 until April 1, when the increase would be paid retroactively. The union later agreed to accept 10 furlough days and other

concessions in reliance upon the Township's promise to implement the salary increase on April 1. The employer did not pay the salary increase.

The Designee determined that the irreparable harm was attributable to the employer's reneging on mid-term contractual commitments to pay salary increases. She observed that permitting the employer ". . . to renege on its contractual commitments under [the] circumstances would have a devastating impact on the negotiations process and cripple the parties' ability to negotiate further concessions. Money damages will not satisfy the damage to the process." Egg Harbor, 36 NJPER at 339.

The uncontested facts in this application do not reveal that the County reneged on a mid-term modification of its contractual agreements to pay salary increases in return for concessions, including furloughs. Nor do the facts reveal that the County negotiated in bad faith, inasmuch as it learned of the deficit after the collective agreements were signed. I find that the County has not irreparably harmed the negotiations process.

Finally, Council 10 argues that the imposed furloughs will irreparably harm individual employees, including the lowest paid members of the unit, all of whom received no wage increases in 2008 and 2009. It argues that ". . . several employees have indicated that . . . they will be unable to meet payments for food, shelter and other necessities" (brief at p. 27). Council

10 contends that the magnitude of the economic loss and its length, “. . . could well cause employees to forgo needed care and necessities due to inability to pay.”

The record on this application does not demonstrate the harm to employees which Council 10 has effectively described. I note that this case presents only a similarly impalatable option of 60 permanent layoffs to the furloughs, in addition to the 260 employees who shall be laid off. Based upon the record presented in this application, I find that Council 10 has not established the requisite irreparable harm necessary to obtain interim relief.

ORDER

The request for interim relief is denied^{2/}.



Jonathan Roth
Commission Designee

DATED: March 9, 2011
Trenton, New Jersey

^{2/} A Complaint and Notice of Hearing shall issue under separate cover.