

I.R. NO. 97-14

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF CLIFFSIDE PARK,

Respondent,

-and-

Docket No. CO-97-186

PBA LOCAL NO. 86,

Charging Party.

SYNOPSIS

A Commission Designee declined to restrain the Borough of Cliffside Park from rescinding its requirement that certain police officers also serve as firefighters.

The Borough required seven police officers, as a condition of their hire, to serve as volunteer firefighters during their normal shift of duty. It was stipulated for the purposes of this hearing that these same officers wished to perform firefighting duties while they were on duty and would be willing to perform such duties even if they were not so required by the Borough.

N.J.S.A. 40A:9-160.1 requires the governing body of a municipality to grant time off from work with pay for municipal employees who are members of a volunteer fire company serving the municipality when such employees are called to alarms occurring during the hours of their employment.

It does not appear that an interlocutory order would be meaningful since officers would continue to serve as volunteers. This matter will go forward to a plenary hearing.

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Appearances:

For the Respondent,
Diktas Gillen, attorneys
(Christos J. Diktas, of counsel)

For the Charging Party,
Loccke & Correia, attorneys
(Joseph Licata, of counsel)

INTERLOCUTORY DECISION

On December 11, 1996, PBA Local 396 filed an unfair practice charge against the Borough of Cliffside Park alleging that the employer violated subsections (1), (3), (5) and (7)^{1/} of the

^{1/} These subsections 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. (7) Violating any of the rules and regulations established by the commission."

New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. when it required seven police officers hired after October 1, 1996 to serve as volunteer firefighters during their normal shifts of duty.

The unfair practice charge was accompanied by an application for interim relief which was executed and initially made returnable for December 27, 1996. The parties agreed to postpone this matter and it was ultimately heard on February 20, 1997 at which time the parties argued orally, submitted affidavits and stipulations of fact.

For the purposes of this hearing, the PBA has stipulated that the police officers who volunteered to be fire officers while on duty generally wish to perform firefighter duties and would be willing to perform the duties of volunteer firefighters even if they were not required by the Borough. The balance of the facts are not disputed.

In 1993, the Borough of Cliffside Park adopted an ordinance which requires all newly hired police officers to become volunteer firefighters while they are on duty in the Borough. On October 17, 1996, the Borough Business Administrator notified seven police officers, who were hired on or about January 1996, that they were required to become volunteer firefighters during their regular duty shifts. The Association argues that the employer has attempted to by-pass the union and deal directly with employees and has, in general, refused to negotiate compensation for this extra duty.

The Borough argues that the union's unfair practice charge is untimely. The PBA should have known of this requirement that new

hires would be required to serve as volunteer firemen by virtue of the ordinance being passed in 1993. It further argues that these employees genuinely desire to serve as firefighters and they are truly volunteers. The Borough cites N.J.S.A. 40A:9-160.1:

The governing body of any municipality shall grant time off from work with pay for municipal employees who are members of a volunteer fire company serving the municipality, volunteers in first aid or rescue squads serving the municipality or volunteer drivers of municipally-owned or operated ambulances when such employees are called to respond to alarms occurring during the hours of their employment.

It argues that even if the Commission ordered the rescission of the Borough ordinance requiring these police officers to act as volunteer firefighters, because these police officers desire to be volunteer firefighters they would continue to function as firefighters and be granted time off with pay under N.J.S.A. 40A:9-160.1.


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 Tp. of Maplewood, P.E.R.C. No. 97-80, — NJPER — (1997), the Commission held that an employer has the right to establish a new job title with expanded duties without first negotiating with a majority representative. Analogously, it seems that the Borough has the right to establish a new title, that of police officer/firefighter, without negotiations.

It does not appear that the Borough created such a title. Nonetheless, they have the power to do so.

Moreover, given that the officers in question genuinely desire to be volunteer firefighters and that N.J.S.A. 40A:9-160.1 mandates the granting of time off from work with pay for municipal employees who are members of a volunteer fire company, it does not appear that any interlocutory order would be meaningful in this instance; if the Borough is ordered to rescind its ordinance, these officers would continue to function as volunteers. Although there is a clear obligation on the part of the Borough to negotiate with the PBA for the assignment of extra duties, such a harm is not necessarily irreparable. The Commission has the authority to issue a bargaining order at the conclusion of this case.

Accordingly, I deny the PBA's application for Interim Relief. This matter shall go forward to a plenary hearing.


Edmund G. Gerber
Commission Designee

DATED: February 27, 1997
Trenton, New Jersey