

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF CAMDEN,  
Respondent,

-and-

Docket No. CO-2010-271

FRATERNAL ORDER OF POLICE LODGE 1,  
Charging Party.

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CITY OF CAMDEN,  
Respondent,

-and-

Docket No. CO-2010-272

CAMDEN ORGANIZATION OF POLICE SUPERIORS,  
Charging Party.

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CITY OF CAMDEN,  
Respondent,

-and-

Docket No. CO-2010-273

CAMDEN FIRE OFFICERS, IAFF LOCAL 2578,  
Charging Party.

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CITY OF CAMDEN,  
Respondent,

-and-

Docket No. CO-2010-274

CAMDEN FIRE FIGHTERS, IAFF LOCAL 788,  
Charging Party.

SYNOPSIS

A Commission Designee restrains the City of Camden from unilaterally recouping salary for employee use of vacation and/or holiday carry over leave. The parties are in negotiations/interest arbitration for new collective agreements and before a mutually selected arbitrator regarding grievances that raise the same issues as raised in the charges. The Commission Designee finds that the City's unilateral action before the arbitrator decides or resolves the underlying issue creates a chilling affect on the parties' own negotiating procedure to resolve such disputes.

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Appearances:

For the Respondent, Howard J. McCoach, City Attorney  
(Marc A. Riondino, Assistant City Attorney)

For the Charging Party, Loccke, Correia, Schlager,  
Limsky & Bukosky, attorneys (Charles E. Schlager, Jr.,  
of counsel)

INTERLOCUTORY DECISION

On January 22, 2010, the Fraternal Order of Police Lodge 1  
(FOP), the Camden Organization of Police Superiors (C.O.P.S.),

Camden Fire Officers, IAFF Local 2578 (Fire Officers) and Camden Fire Fighters, IAFF Local 788 (Fire Fighters) (Charging Parties), filed unfair practice charges with the Public Employment Relations Commission (Commission) alleging that the City of Camden (City) violated 5.4a(1) through (7) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act). The Charging Party's alleged that the City unilaterally "docked" or recouped money from employee wages based upon what the City claimed was the use of unauthorized vacation or holiday leave time taken in excess of such leave time earned. The City had conducted an audit based upon which it concluded that certain employees used vacation and/or holiday time they were allegedly not entitled to carry over into the relevant succeeding year(s).

The charges were accompanied by applications for interim relief seeking to restrain the City from recouping wages at least until grievances regarding the carry over issues were resolved. Orders to Show Cause were signed on January 25, 2010 scheduling a return date for February 4, 2010. Both parties submitted briefs, certifications and exhibits and argued orally on the return date.

The following facts appear:

The City's collective negotiations agreements with each union expired on December 31, 2008. The FOP and C.O.P.S. agreements were extended through December 31, 2009. All four units are in the negotiations/interest arbitration process.

A dispute arose in two prior charges against the City, Docket Nos. CO-2009-461 (C.O.P.S.) and CO-2009-489 (Fire Superiors), over the ability of those affected employees to carry over vacation and holiday time earned in one year to more than the next succeeding year. Those charges were withdrawn when the parties agreed to defer the charges to the parties respective arbitration provisions by settlement agreement signed by September 1, 2009. The grievances were merged into one matter and are currently before a mutually selected arbitrator. The arbitration is ongoing.

On or about December 30, 2009, the City notified affected employees that their wages would be docked because they used - and were paid for-allegedly unauthorized leave time. Some dockings have already occurred, but not all dockings concerned vacation and holiday carry over. Some dockings concerned unauthorized sick leave or other leave situations. The instant cases only concern vacation and holiday carry over leave that was identified by audit.

Article VII is the vacation article for each agreement.

Section 3 is the same for each agreement and provides:

Vacation time must be taken in year earned. When vacation time is deferred by the City for any reason other than the fact that such period has been previously granted in accordance with Section 1 of this ARTICLE, then the employee shall be entitled to utilize such vacation time at a later period in the same calendar year or to be paid for same.

Section 4 is the carry over provision. The language for the C.O.P.S., Fire Superiors and Fire Fighter's agreements is the same. The FOP carry over language is different.

Section 4, C.O.P.S., Fire Superiors, Fire Fighters:

Notwithstanding any provision to the contrary, an employee may accumulate fifteen (15) vacation days in the calendar year to be carried over in the following calendar year.

Section 4, FOP:

Any officer not able to utilize their time in accordance with this section may carry that time to be used in subsequent years but shall be limited to 30 days accumulation for pay out at separation or retirement.

Article XXXI is the Holiday article for the FOP, C.O.P.S., and Fire Fighters agreements. The Fire Superiors do not have a Holiday leave provision based upon prior negotiations. The carry over language varies as follows:

Article XXXI, §4 (Fire Fighters)

Notwithstanding any other provision of this ARTICLE to the contrary, employees may carry over into the following year, five (5) accumulative holidays. Payments for such accumulative holidays shall be paid to the employee at the employee's current rate of pay.

Article XXXI, §4 (C.O.P.S.)

Notwithstanding any other provision of this ARTICLE to the contrary, employees may carry over into the following year, five (5) accumulative holidays for each year. Payments for such accumulative holidays shall be paid to the employee at the employee's current rate of pay.

## Article XXXI, §4 (FOP)

Any officer not able to utilize their time in accordance with this section may carry that time to be used in subsequent years but shall be limited to 20 days accumulation for pay out at separation or retirement.

Currently, only firefighters have received docking notices. Many of those notices only concern sick leave. The docking notices issued to date concerning holiday and vacation leave time equate to approximately \$15,000 in total recoupment amounts. But some individuals have been notified that they will be docked from \$3000 to \$4500. The City unilaterally decided to dock as much as \$200 per paycheck. The City could not establish how much all recoupments would equate.

There is no evidence that FOP unit members are even affected by this docking action, nor was there evidence that C.O.P.S., or Fire Superiors unit members have been docked.

On November 6, 2006, the same arbitrator mutually selected to consider the above described matters issued an arbitration award between the City and C.O.P.S. interpreting the same vacation and holiday language as in the above C.O.P.S. agreement. Docket No. AR-2006-327. No contractual violation was found. The arbitrator has met with the parties regarding the deferred matters that gave rise to this proceeding and is attempting to resolve the underlying matter. Another meeting with the arbitrator is scheduled for February 17, 2010. Pending before

the arbitrator is a motion to include the FOP and Fire Fighters in that proceeding.

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 issue before me is not whether the City is entitled to recoup salary for vacation and holiday time. It might be so entitled. The issue before me is whether the City prematurely implemented salary recoupment. I find it did. The Charging Party's satisfied the requirements for a restraint to that extent.

The parties are in negotiations for new collective agreements. They are also - by agreement - in a binding arbitration procedure regarding the interpretation of the vacation and holiday carry over contractual provisions that led to this charge and application. Just as it is irreparable harm

for an employer to change existing terms and conditions of employment during negotiations for a new collective agreement, Galloway Tp. Bd. Ed. v. Galloway Tp. Ed. Assn., 78 N.J. 25 (1978); Twp. of Nutley, I.R. No. 99-19, 25 NJPER 262 (¶30109 1999); City of Jersey City, I.R. No. 97-20, 23 NJPER 354 (¶28167 1997), a unilateral change of terms and conditions of employment during the pendency of an arbitration proceeding regarding those very terms has a chilling effect on the arbitration process and is irreparable. See Nutley; Borough of Ridgefield, I.R. No. 98-16, 24 NJPER 87 (¶29047 1997).

Because of the chilling effect of the City's action on the arbitration process and the unilateral nature of the action there is a substantial likelihood that the Charging Party's would succeed with their charges that the City's recoupment actions were premature. Based upon the evidence produced to date, the harm to the unions and the affected employees if the recoupments are allowed to continue is greater than the harm to the City if the recoupments are restrained. The City could not establish a significant financial benefit from the recoupment, but the financial detriment to certain employees could be significant.

Consequently, I restrain the City from implementing recoupments regarding only vacation and holiday carry over leave identified by the State/City recent audit. This restraint is in place for at least sixty (60) days unless the parties otherwise resolve this matter. The restraint does not apply to sick leave



reimbursements or reimbursement based upon leave situations other than vacation and holiday carry over.

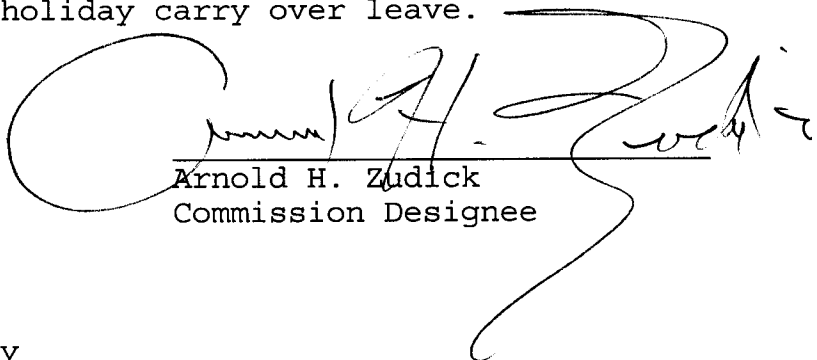
I retain jurisdiction in this matter. During or by the end of the sixty day time period, the parties should advise me of the status of the related arbitration proceeding; whether FOP members are affected by the City's intent to recoup; and whether members of the C.O.P.S. and Fire Superior units are affected.

The parties are encouraged to resolve this matter in the context of the related arbitration proceeding. Absent a resolution, I will consider the efficacy of extending the restraint.

Accordingly, based upon the above findings and analysis, I issue the following:

ORDER

The City is restrained in accordance with the above analysis from recouping salary from members of the Charging Party's for their use of vacation and holiday carry over leave.



Arnold H. Zudick  
Commission Designee

DATED: February 18, 2010  
Trenton, New Jersey