

I.R. No. 2012-9

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NORTH HUDSON REGIONAL FIRE
AND RESCUE,

Respondent,

-and-

Docket No. CO-2012-020

NORTH HUDSON FIREFIGHTERS
ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee granted interim relief, based on undisputed facts which established that: the parties had previously entered into a settlement agreement which resolved a prior unfair practice by establishing a bank of paid union release time; the employer repudiated that agreement when it denied requests for Association members to utilize the leave and also limited the duration of that leave. The Designee found that the denial of union leave time constituted irreparable harm since it impaired the Association's ability to represent its membership. Balancing the public interest and the relative hardship to the parties, the Designee found that the public interest was furthered by adhering to the tenants of the Act, requiring good faith negotiations prior to changing a term and condition of employment, and respect for the negotiations process. The employer experiences a lesser degree of hardship by being required to maintain the existing practice concerning releasing employees for union business.

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Appearances:

For the Respondent, Scarinci Hollenbeck, attorneys
(Ramon L. Rivera, of counsel)

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

INTERLOCUTORY DECISION

On August 1, 2011, the North Hudson Firefighters Association
(Association) filed an unfair practice charge with the Public
Employment Relations Commission (Commission) alleging that the
North Hudson Regional Fire and Rescue (NHRFR) violated 5.4a(1)
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. (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."

N.J.S.A. 34:13A-1 et seq. (Act). The Association claims that the NHRFR violated the Act and repudiated a Settlement Agreement which resolved a prior unfair practice charge by denying the request of firefighters to attend the PFANJ State Convention and the FMBA State monthly meetings on June 15 and August 15, 2011.

The unfair practice charge was accompanied by an application for interim relief. An Order to Show Cause was executed on August 5, 2011, scheduling a return date for August 12, 2011. The parties submitted briefs, and the Association submitted an affidavit and supporting papers. Both parties argued orally on the return date. I ordered the NHRFR to permit a union representative to utilize union leave time to attend a meeting of the FMBA on August 15, 2011 at the conclusion of the oral argument, based on the following analysis.

On or about May 27, 2011, the NHRFR denied the request of an Association member employed by the NHRFR to utilize paid union release time to attend the PFANJ State Convention, as well as a request for utilization of union release time to attend the June 15 and August 15 monthly meetings of the FMBA. The Association asserts that in denying the use of paid union release time to attend these meetings, the NHRFR repudiated a settlement agreement.

The NHRFR argued in its brief that the employer had a past practice of refusing to allow the utilization of paid union release time when overtime would result, but provided no affidavit or other factual support for its position.

The following undisputed facts appear:

The Association and the NHRFR are parties to a collective bargaining agreement covering the period from July 1, 2004 through June 30, 2009. Article 3 "Association Rights" Paragraph A of the agreement, provides that no more than four (4) employees who are elected officers, delegates, trustees and/or alternates of the Association, or who have been elected to State or international office, shall be granted time off from normal duties to attend designated conventions. The duration of the time off, notice provisions and other procedural matters are also set forth in the agreement.

Dominick Marino, President of the Association, filed an affidavit stating that on May 21, 2009 the Association filed an unfair practice charge (Docket No. CO-2009-429) against the NHRFR with the Commission. That charge was resolved by settlement agreement which provided in Paragraph 1 that:

The parties agree that the Association shall have 400 hours per year of paid release time from work to conduct union business and attend union conventions. The Association shall have an additional 50 hours per year of paid release time to attend to union business provided that the additional 50 hours does not generate any overtime pay for the

Regional. The 450 hours per annum is the maximum paid release time for all Association representatives conducting union business, except that nothing herein shall be construed to prohibit Association representatives from using personal paid time such as vacation leave to attend union activities.

Marino states that when Association Trustee, Firefighter Steve Wojtowicz, requested paid union release time to attend the PFANJ State Convention, the request was denied by the NHRFR. A request by Association member, Firefighter Stefan Vassallo, for paid union release time to attend FMBA monthly meetings on June 15 and August 15, 2011 was also denied. At the time that these requests were denied, Marino states that the Association had used less than 400 hours of union leave time in calendar year 2011. Additionally, the NHRFR limited the amount of paid leave time which could be used for monthly Association meetings to four (4) hours per meeting. Attendance at the PFANJ State Convention and at the FMBA monthly meetings are union business. Issues such as health insurance changes, pension reforms and layoffs are currently being discussed at conventions and monthly meetings, and in order to represent their members effectively, Association members must be educated and informed about these matters.

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 in this matter are not disputed; the parties entered into a settlement agreement on September 29, 2010 that resolved a prior unfair practice charge (CO-2009-429) which alleged that the NHRFR had violated a past practice concerning union leave.

Subsequent to the execution of that settlement agreement, the employer denied the Association's request to utilize union leave, and also limited the amount of paid leave which could be utilized for attendance at monthly union meetings to four (4) hours per meeting. The Association alleges that these actions constitute a repudiation of the settlement agreement. It is further alleged that the harm to the Association members who will be forced to utilize personal leave time in order to attend these functions is irreparable, thereby warranting the extraordinary remedy of interim relief.

Allegations setting forth mere breach of contract do not warrant the exercise of the Commission's unfair practice jurisdiction. However, a specific claim that an employer has repudiated a contract clause which is clear on its face may be litigated in an unfair practice proceeding. State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). Moreover, deference to settlement agreements is a well settled Commission policy. Red Bank Bd. of Ed. and Red Bank Teachers Association, H.E. No. 86-63, 12 NJPER 503 (¶17189 1986), citing In re Borough of Hawthorne, P.E.R.C. No. 82-37, 7 NJPER 602, (¶12268 1981) and In re North Brunswick Township Board of Education, P.E.R.C. No. 82-107, 8 NJPER 314 (¶13141 1982).

Based upon the undisputed facts presented, the existence of a settlement agreement and the unrefuted failure of the employer to abide by the terms of the agreement, the Association has demonstrated a substantial likelihood of success on the merits concerning its claim that the employer has repudiated the agreement.

With respect to the requisite showing of irreparable harm, the Association cites City of Plainfield, I.R. No. 2004-14, 30 NJPER 193 (¶72 2004) in support of its position that the denial of union leave time cannot be effectively remedied at the conclusion of the case. The impairment of the Association's ability to

represent its membership due to the denial of union leave time constitutes irreparable harm here, as in Plainfield.

Finally, balancing the public interest and the relative hardship to the parties, I find that the public interest is furthered by adhering to the tenets of the Act which require the parties to negotiate in good faith prior to changing the terms and conditions of employment, and to respect the negotiations process itself. In assessing the relative hardship to the parties, I am persuaded that the NHRFR experiences a lesser degree of hardship by being required to maintain the existing practice concerning releasing employees for union business. Accordingly, interim relief is granted with respect to the release of a union representative on union release time to attend the August 15, 2011 FMBA meeting.

ORDER

North Hudson Regional Fire and Rescue will release Stefan Vassallo, or his designee, on Monday, August 15, 2011 to attend the FMBA meeting and union release time will be utilized to permit Vassallo's attendance at the August 15, 2011 meeting to conduct union business.



Gayl R. Mazuco
Commission Designee

DATED: October 14, 2011
 Trenton, New Jersey