

I.R. NO. 95-19

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF KEARNY,

Respondent,

-and-

Docket No. CO-95-307

FMBA LOCAL NO. 18 and KEARNY FIRE  
CAPTAINS ASSOCIATION,

Charging Parties.

Appearances:

For the Respondent,  
Shaljian, Cammarata & O'Connor, attorneys  
(Thomas J. Cammarata, of counsel)

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

INTERLOCUTORY DECISION

On March 10, 1995, FMBA Local No. 18 and the Kearny Fire Captains filed an unfair practice charge with the Public Employment Relations Commission alleging that the Town of Kearny violated N.J.S.A. 34:13A-5.4(a)(1), (3), (5) and (7)<sup>1/</sup>

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<sup>1/</sup> 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

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It was alleged that the FMBA has a collective negotiations agreement with the Town which expired on June 30, 1994. The Captains Association has an agreement with the Town which expired on December 31, 1991. Both charging parties are in interest arbitration for a successor agreement with the Town.

The most recently expired FMBA contract permits up to five firefighters to be on vacation at any one time. The Captains agreement permits up to two captains to be on vacation at one time. On March 8, 1995, during the pendency of the interest arbitration proceeding, the Town unilaterally implemented a vacation directive stating that no more than three firefighters and one fire captain can be on vacation at any one time.

The charging parties also filed an application for interim relief seeking to restrain the Town from unilaterally altering terms and conditions of employment during the course of interest arbitration. An order to show cause was executed and was heard on March 28, 1995.

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when addressing similar applications. The moving

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1/ Footnote Continued From Previous Page

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"

party must demonstrate that it has a substantial likelihood of success on the legal and factual allegations in a final Commission decision and that irreparable harm will occur if the requested relief is not granted. Further, in evaluating such requests for relief, the relative hardship to the parties in granting or denying the relief must be considered.<sup>2/</sup>

The Town does not dispute that Fire Chief DiRenzo issued a directive reducing the number of employees eligible to take vacation at one time. DiRenzo certifies that the size of the fire department has dropped from 142 to 100 uniformed employees since 1981 and that the Mayor and Council ordered him to operate with a minimum staffing of 17 men per tour. In order to comply with that directive, DiRenzo was compelled to limit the number of employees on vacation at any one time.

The Town's submission shows that all tours of duty normally have one deputy chief and a combined total of either 20 or 21 firefighters and captains on duty at any one time.

It is not disputed that vacation leave time is mandatorily negotiable, subject to the employer's minimum staffing requirements. However, an employer cannot unilaterally implement a blanket vacation policy without demonstrating that its minimum

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<sup>2/</sup> Crowe v. DeGioia, 90 N.J. 126 (1982); Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975).

staffing requirement would be otherwise jeopardized. Tp. of Pennsauken, P.E.R.C. No. 92-39, 17 NJPER 478 (¶22232 1991).

Here, given a minimum manning requirement of 17 employees per tour and a maximum compliment of personnel on duty on any one tour of 21 employees, minimum staffing levels are reached whenever three firefighters and one captain from any one tour are on vacation.

However, the Chief's directive is not limited to any particular tour of duty; rather, the directive is applied to the entire force. It is apparent that it is possible for five firefighters and two captains to be on vacation at one time, without dropping below the 17 employee minimum, provided they are from different tours. Accordingly, Chief DiRenzo's directive is overly broad. The directive here goes beyond the employer's managerial prerogative and unlawfully repudiates the employees collective negotiations agreement thereby unilaterally altering the parties terms and conditions of employment. This conduct occurred during the course of interest arbitration thereby causing irreparable harm. Evesham Tp. B/E v. Evesham Tp. E/A, I.R. No. 81-1, 7 NJPER 324 (¶12142 1981) interim order enforced and leave to appeal denied App. Div. Dkt. No. A-1037-80T3 (7/15/81).

Accordingly, the Town of Kearny is hereby restrained, consistent with this decision, from altering its contractual provisions with the FMBA Local No. 18 and Kearny Fire Captains Association.

It is hereby ORDERED that five firefighters and two captains shall be permitted to take vacation at any one time provided minimum staffing levels are maintained. This is an interim order only pending a final Commission decision. This matter will proceed to a full plenary hearing.

BY ORDER OF THE COMMISSION

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Edmund G. Gerber  
Commission Designee

DATED: April 7, 1995