

P.E.R.C. NO. 2013-84

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF EDISON,

Respondent,

-and-

Docket No. CO-2011-301

INTERNATIONAL ASSOCIATION OF
FIREFIGHTERS, LOCAL 1197,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission affirms the refusal of the Director of Unfair Practices to issue a Complaint on an unfair practice charge filed by the International Association of Firefighters, Local 1197 against the Township of Edison. The Director found the Township was not obligated to negotiate before transferring emergency medical services work from Local 1197 firefighters to civilian EMTs in another unit because the work had not been within the exclusive province of Local 1197. The Director also found that the allegation that the Township unlawfully instituted a sick leave verification policy was not pled with the specificity required by N.J.A.C. 19:14-1.3(a)(3).

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Respondent, DeCotiis, Fitzpatrick & Cole, LLP,
attorneys (Louis N. Rainone, of counsel)

For the Charging Party, Kroll Heineman Carton,
attorneys (Raymond G. Heineman, of counsel)

DECISION

On January 25, 2012, the International Association of Firefighters, Local 1197 appealed the refusal of the Director of Unfair Practices to issue a Complaint based on an unfair practice charge filed by Local 1197 against the Township of Edison.

D.U.P. No. 2012-9, 38 NJPER 269 (¶92 2012). The Director, in a thirteen page decision, found that the Township was not obligated to negotiate before transferring emergency medical services work from the firefighters' unit to civilian EMTs in another unit because the work had not been within the exclusive province of the firefighters' unit. The Director further found that the allegation that the Township unlawfully instituted a sick leave

verification policy was not pled with the specificity required by N.J.A.C. 19:14-1.3(a)(3). We affirm the refusal to issue a Complaint.

Local 1197 contends that the Director instituted, without notice, a new complaint issuance standard by weighing the evidence prior to a hearing and not determining only whether the allegations in the charge, if true, were sufficient.

The Township responds that it exercised its non-negotiable managerial prerogative to assign firefighters exclusively to firefighting duties and institute a sick leave verification policy. The Township further contends that Local 1197 failed to establish either protected conduct or a connection between any such conduct and the Township's exercise of its managerial prerogative.

On February 3, 2011, Local 1197 filed its initial charge alleging that the Township violated N.J.S.A. 34:13A-5.4a(1), (3), and (5)^{1/} when it unilaterally transferred emergency medical

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. . . .(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. . . .[and] (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and
(continued...)

services work from the Local 1197 negotiations unit to EMTs in another unit. The charge further alleges on January 15, the Township unlawfully instituted a policy of home visitation of firefighters on sick leave because of their membership in and activities on behalf of Local 1197.

On February 24, 2011, the Deputy Director of Unfair Practices wrote to the parties and asked, among other things, that the Township submit to a Commission staff agent, a "written statement of position explaining why the allegations contained in the charge, if true, would or would not constitute unfair practices."

By letter to the staff agent dated March 10, 2011, the Township asserted that it exercised its managerial prerogative to improve the effectiveness and efficiency of its administration by increasing the number of firefighters available to assist in fighting fires. The Township further argued that it exercised a managerial prerogative through sick leave verification.

On October 7, 2011, the Commission staff agent wrote to counsel for the Township requesting that he serve a copy of his position statement on counsel for Local 1197 if he wanted the

1/ (...continued)
conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

Director to consider the information contained therein in her determination as to complaint issuance. On October 10, counsel for the Township served Local 1197's counsel with a copy of his position statement and forwarded a proof of service to the staff agent.

On October 26, 2011, the Director wrote to the parties that based on the information before her, she was not inclined to issue a Complaint. As to the 5.4a(5) allegations, the Director stated that because the EMS work was not within the exclusive province of Local 1197's unit, she was inclined to dismiss the charge. As to the 5.4a(3) allegations, the Director found that the IAFF alleged no facts describing the unit employees' "activities on behalf of Local 1197" that motivated the Township to implement sick leave verification."

On November 14, 2011, Local 1197 responded to the Director's letter by amending its charge to allege the Township violated the Act when it "unilaterally and discriminatorily" [sic] transferred the EMS duties of firefighter/EMTs to newly hired part-time EMTs resulting in the demotion of the affected firefighters, without prior negotiations. The demotion included a loss of the firefighter/EMT pay differential set forth in Article 49 of the parties' agreement.

In assessing the claims set forth in the charge, the Director reached the following conclusions. First, that the 5.4a(1) and 5.4a(5) charges were insufficient to constitute a violation of the Act because, in accordance with the direction provided by the Supreme Court in the case of City of Jersey City v. Jersey City PBA, 154 N.J. 555 (1998), where a municipality undertakes a reorganization of its delivery of service, (there by civilianizing its dispatching and other non-law enforcement functions) to increase the number of police officers in field positions, its action would be hampered by an obligation to negotiate that determination. After a lengthy analysis of that decision, and its progeny before the Commission, the Director determined that the transfer of EMT duties from firefighters to civilian employees in Edison also constituted a non-negotiable exercise of an inherent policy determination by a public employer. The Director also noted the allegation by Local 1197 that this change was at least in part motivated by economic considerations and, in reliance upon Borough of Bogota and PBA Local 86, P.E.R.C. No. 99-77, 25 NJPER 129 (¶30058 1999), aff'd 26 NJPER 169 (¶31066 App. Div. 2000), certif. denied 165 N.J. 489 (2000), 26 NJPER 330 (¶31134 Sup. Ct. 2000), found that under the Commission's precedent an employer's legitimate organizational

interests do not lose their protected status because there is also a cost savings component.

Additionally, the Director noted that the work at issue herein was historically performed by both Local 1197 and non-unit employee's so that there was not a viable unit work rule violation presented.

Thus, with regard to the 5.4a(1) and (5) charges, the Director concluded that even if Local 1197's allegations were found to be true, no violation of the Act would be accomplished.

As to the 5.4a(3) allegations claiming that the change in sick leave policy was motivated by anti-union animus, the Director again reviewed the basis for this charge asserted by Local 1197, and found each of them insufficient as a matter of law and regulatory compliance.

The Director found that Local 1197's claim that it had "aggressively defended its membership" merely recites its inherent responsibility as a representative of the negotiating unit but did not meet the specificity required by N.J.A.C. 19:14-1.3(a)(3). Its reliance on its President's public opposition to cuts in the fire department's staffing levels, and the criticism of the union by the Interim Business Administrator, was discounted for the same lack of specificity required by the rule. Finally, the allegation regarding a comment made by the Interim

Business Administrator almost six years earlier when he himself was unsuccessfully running for Mayor were not only pled without sufficient specificity to meet the requirements of the rule, but also were so remote in time, and so devoid of any allegations of participation in the Township's decisions in 2010-11.

Contrary to Local 1197's arguments in this appeal, the Director applied the standards set forth in N.J.A.C. 19:14-1.3 and found the charge deficient to support issuance of a complaint. Accordingly, we affirm the Director's decision.

ORDER

Local 1197's appeal is denied and the charge is dismissed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Eskilson and Voos voted in favor of this decision. Commissioner Jones voted against this decision. Commissioners Bonanni, Boudreau and Wall were not present.

ISSUED: May 30, 2013

Trenton, New Jersey