

I.R. 87-22

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF FAIRFIELD POLICE
DEPARTMENT AND TOWNSHIP OF
FAIRFIELD,

Respondent,

-and-

Docket No. CO-87-270

CUMBERLAND COUNTY LOCAL POLICEMEN'S
BENEVOLENT ASSOCIATION 94,

Charging Party.

SYNOPSIS

A Commission Designee restrains the Township of Fairfield from laying off six of seven patrolmen it employs. The restraint is for a period of 45 days. The Township and P.B.A., Local 94 were engaged in collective negotiations and the Township and the P.B.A. had agreed upon a salary for patrolmen when the Township announced the lay-offs without ever raising the issue of its financial difficulties in the negotiations and failed to negotiate procedures for lay-offs and/or to negotiate concessions and givebacks. Accordingly, the Township was restrained from implementing the Order for 45 days to allow negotiations of the lay-off notification and to allow the parties to negotiate the question of givebacks.

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Appearances:

For the Respondent
Magazzu and Indyg
(Louis N. Magazzu, of counsel)

For the Petitioner
Capizola, Fineman & Kutner
(Darrell Fineman, of counsel)

INTERLOCUTORY DECISION

On March 16, 1987 the Cumberland County Local Policemen's Benevolent Association 94 (P.B.A.) filed an unfair practice charge against the Township of Fairfield (Township) claiming that the Township violated the Public Employer-Employee Relations Act, N.J.S.A. 34:13A-5.3. Specifically, 5.4(a)(4), (5) and (7). The unfair practice charge was accompanied by an Application for Interim Relief and Order to Show Cause. The Order was signed and made returnable for March 26, 1987. The hearing was held and both parties submitted briefs, filed affidavits and argued orally.

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when confronted with similar applications. The moving party must show it has a substantial likelihood of success on the legal and factual allegations in the final Commission decision and it must show it will be irreparably harmed if the requested relief is not granted. Both of these standards must be satisfied before the requested relief will be granted. Furthermore, the relative hardship to the parties must be evaluated before interim relief may be granted.

The following facts are not in dispute in this matter:

On July 10, 1986, the charging party filed a petition for representation of police officers of the Fairfield Township Police Department.

On August 7, 1986, the Township consented to recognize P.B.A. Local 94 as the exclusive negotiations representative of all patrolmen in the Fairfield Township police force. There are currently seven officers in the unit.

On September 23, 1986, the Township Committee passed a Resolution recognizing P.B.A. Local 94 as the exclusive negotiations agent.

On November 1, 1987, P.B.A. Local 94 served a notice on Mayor Don E. Taylor of its intent to commence negotiations. The notice included a list of proposals for negotiations. The salary year for the police officers was April 1, 1987 to March 31, 1988 and

accordingly, the notice of intent to commence negotiations was filed 60 days prior to the salary year.

On February 10, 1987, the P.B.A. sent a letter to the Township objecting to the Township's distribution of the Notice of intent to Commence Negotiations and the P.B.A. list of proposals to persons not directly involved in negotiations. The letter further requested a list of the Township's negotiating team and finally stated that:

"It has been brought to my attention that covert threats have been made; (sic) as to lay-off's of patrolman and disbandment of the police department. Also, discussions concerning the contract and raises have occurred with the patrolman and other members of the Police Dept.

On February 11, 1987, the president of P.B.A. #94 received a letter of resignation from the P.B.A. effectively immediately from Robert L. McRae of the Fairfield Township Police Department.

On February 12, 1987, the P.B.A. received a letter from Mayor Taylor scheduling negotiations for the following day. The parties met as scheduled on the 13th.

On February 18, 1987, the parties met again. The Township submitted a counter offer. The negotiations committee was also informed that the Township passed an Ordinance setting the salaries of the police officers. The P.B.A. was satisfied with the salaries fixed in the Ordinance. At this point, Committeeman Robert Pierce stated that the Township has no money and there are going to be cuts in the police force and the Township just might do away with the whole department. The negotiations session ended when the P.B.A.

stated it would have its counter proposal available at a later date. However, on or about February 20 at 11:30 p.m., Louis Magazzu, attorney for Fairfield Township, stated that the Township was going to suspend the negotiations because the parties were at an impasse and the Township was going to disband the police department. At that time, the P.B.A. demanded specific data regarding the Township's budget to verify the financial situation of the Township.

On March 7, 1987, the entire Township Committee met and decided at their budget meeting that they were going to lay off four part-time dispatchers, four civilian dispatchers who are unrepresented employees and six of the seven full-time Fairfield police officers, five of whom are members of the P.B.A. and one of whom was only employed for six weeks. It was further decided that McRae, who has the most seniority, would be kept along with the Lieutenant and Chief of Police.

The Fairfield Township Committee passed an Ordinance terminating the jobs of the members of the petitioner's organization and one non-member and issued lay-off notices effective March 31, 1987.

The Township claims that they are taking this action for financial reasons. It admits that it has a financial surplus of \$300,000. It, however, claims that \$200,000 was taken from the surplus last year to meet the needs for 1986. The Township has also lost Federal revenue funds in excess of \$50,000. The Township

claims that the lay-offs were solely for financial reasons and the anticipated financial situation of the Township for the coming year requires the immediate reduction in the size of the police department.

The P.B.A. argues that the Township's failure to raise the issue of its financial problems during the course of negotiations and then announcing extensive lay-offs during the course of negotiations constitutes an unfair practice. Its position is that the Township should have raised this issue in negotiations and given the P.B.A. an opportunity to possibly negotiate downward and at least discuss the possibility of givebacks in order to preserve the jobs of the P.B.A. members and this sudden and unannounced implementation of lay-offs in the Police Department rendered negotiations meaningless.

The Township takes the position that it did not seek to destroy the P.B.A. It did not totally eliminate the Police Department. Rather, by preserving the positions of Lieutenant, Chief and one patrolman it sought to preserve the existence of the Police Department and it made the representation that when the Township is financially able, it will in fact recall the laid-off police officers in order of seniority.^{1/}

^{1/} A number of other allegations were made by the P.B.A. concerning alleged unfair practices, including a loan made by the Chief of Police to Officer McRae in order to pay a fine for withdrawing from the P.B.A. Moreover, these matters are factually in dispute. Moreover, there has been no allegation

There is no dispute that the Township is suffering from a decline in revenue; however, no explanation was given as to why the Township did not raise the issue of its financial situation during the course of negotiations, enacted a salary for its employees and then proceeded to lay these employees. Such conduct destroys the entire negotiations process.

The Act is predicated upon the necessity of having stability in the labor relations process. (N.J.S.A. 34:13A-2.) The statutory scheme rests upon the existence of collective negotiations agreements between the parties. See, Galloway Twp. Bd. of Ed., 78 N.J. 25 (1978). For police and fire units, this need for stability is so compelling that the statute provides for binding interest arbitration to insure the existence of a collective negotiation agreement. Here, the acts of the employer undermine this stability. Approving a salary and then laying off the entire unit renders the entire process meaningless.

Significantly, the Police and Fire Arbitration provisions of the Act, specifically 34:13A-21 provide:

During the pendency of proceedings before the arbitrator, existing wages, hours and other conditions of employment shall not be changed by action of either party without the consent of the other, any change in or of the public employer or employee representative notwithstanding; but a party may so consent without

1/ Footnote Continued From Previous Page

that the employer violated §(a)(3) by discriminating against its employees in order to discourage the exercise of protected rights.


prejudice to his rights or position under this supplementary act.

The Town does have a managerial right to set the number of its employees and to establish minimum manning levels. Nevertheless, it also has an obligation to negotiate lay-off procedures. See State of New Jersey and IFPTE, 78 N.J. 54 (1978). Here, the Town had an obligation to explain its financial problems to the P.B.A. to allow it to negotiate terms and conditions of employment and the possible preservation of jobs.

The Commission and the Courts have long recognized that normally, the very act of unilateral modifying a particular term and condition of employment, at least in the absence of a genuine post fact-finding impasse, contradicts in and of itself, the meaning of collective negotiations inasmuch as ordinarily one cannot unilaterally act and still collectively negotiate about the same subjects. State of New Jersey, I.R. No. 82-7, 7 NJPER 532 (¶12235 1981); City of Jersey City, P.E.R.C. No. 77-58, 3 NJPER 122 (1977). This same thinking also applies to a violation of 34:13A-21. See, Vineland PBA 266 and City of Vineland, I.R. No. 81-1, 7 NJPER 324 (¶12142 1981)

In order to preserve meaningful negotiations and allow negotiations to reach their natural conclusion, it is ordered that the Township be restrained from implementing the lay-offs of the employees of the Department for a period of 45 days. During that time, the employer must negotiate in good faith with the P.B.A. The Town is not in such financial difficulty that it cannot maintain its

police force for an additional 45 days. Yet, to allow the lay-offs to stand would effectively destroy the Fairfield Township Police Department unit of Cumberland County Local Policemen's Benevolent Association #94.



Edmund G. Gerber
Commission Designee

DATED: March 30, 1987
Trenton, New Jersey