I.R. No. 2010-22

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEW BRUNSWICK,

Respondent,

-and- Docket No. CO-2010-380

NEW BRUNSWICK FIREMAN'S MUTUAL
BENEVOLENT ASSOCIATION, LOCAL NO. 17; AND
NEW BRUNSWICK FIREMAN'S MUTUAL
BENEVOLENT ASSOCIATION, LOCAL NO. 217,

Charging Parties.

SYNOPSIS

A Commission Designee denies a request to restrain the City of New Brunswick from calculating vacation time based upon a prior methodology. Disputed material facts made it impossible for the FMBA to demonstrate in this proceeding that the City retaliated against the FMBA for arbitrating a vacation related grievance.

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Charging Parties.

Appearances:

For the Respondent, Bauch, Zucker, Hatfield, LLC
(Kathryn V. Hatfield, of counsel)

For the Charging Party, Fox and Fox, LLP (Jessica S.
Swenson, of counsel)

INTERLOCUTORY DECISION

On April 5, 2010, the New Brunswick Fireman's Mutual Benevolent Association, Locals 17 and 217 (FMBA) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the City of New Brunswick (City) violated 5.4a(1), (3) and (5)[1/] of the New Jersey Employer-

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. (5) Refusing to negotiate in good faith with a
(continued...)

Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act). The FMBA alleged that the City violated the Act by retaliating against the Locals because they processed a grievance regarding vacation time to binding arbitration. The FMBA contends that the City unilaterally eliminated vacation time due to twenty one firefighters because it sought to arbitrate the vacation grievance.

The unfair practice charge was accompanied by an application for interim relief seeking to restrain the City from eliminating the vacation time in dispute. An Order to Respond was executed on April 20, 2010 requiring the City to respond to the FMBA's application. Both parties submitted briefs, certifications and exhibits in support of their respective positions. The City opposed the request for a restraint and disputed material facts asserted by the FMBA.

The following pertinent facts appear.

The collective agreements between the City and both Locals have expired and both organizations and the City are in interest arbitration and/or negotiations for successor agreements. Both Locals have similar vacation articles which provide a certain number of vacation hours based upon years of service.

1/ (...continued)
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."

An issue has apparently existed for many years over how to determine the amount of vacation time. The result is different if based upon being hired after January 31 of a given year or basing it upon an employee's anniversary date of hire. Based upon an apparent prior agreement, the City has been using the January 31 methodology which results in a lower calculation of hours.

During the negotiations for successor agreements, the FMBA proposed anniversary date language for the vacation calculation of hours. Local 17 President Keefe certified that the City agreed to that language and implemented it during the spring of 2008. Fire Director Rawls and the City's attorney, however, certified that the City did not agree to that language. Rather, Director Rawls certified that he agreed to use the anniversary date methodology on a trial basis only, subject to three conditions, one of which was that it was only on a trial basis, another condition was he had the unilateral right to return to the prior methodology. Rawls certified that he notified the FMBA in November 2009 that he was returning to the January 31 methodology for 2010.

In November 2009, the FMBA filed grievances regarding the accuracy of employee records regarding vacation, personal and sick leave time. An arbitration was scheduled for March 8, 2010.

In early 2010, Director Rawls learned that a mistake was made on the 2010 vacation selections for certain new hires. On March 7, 2010, Rawls explained the mistake to his Deputy Chiefs. Rawls certified that at the previously scheduled March 8th arbitration, he told Local 17 President Keefe that he had corrected the new hire vacation selection issue. Rawls certified that during a break in the March 8 arbitration, Keefe alleged that Rawls had engaged in an unfair practice regarding vacation allotment. Rawls reminded Keefe that the vacation allotment based upon an employees' anniversary date had only been on a trial basis.

The City denies that the return to the prior method of determining vacation allotment was based upon the FMBA's November grievances.

The FMBA apparently filed grievances over the vacation allotments affecting the twenty one employees.

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

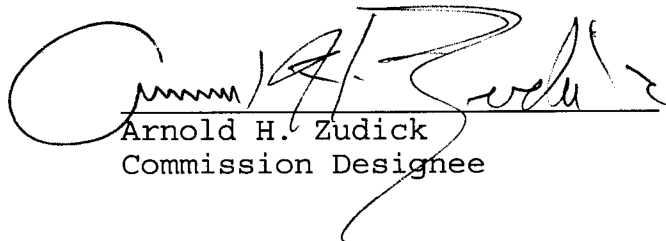
Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975).

Based upon the certifications submitted by the parties, a dispute exists regarding the material facts that led to the reduction in the vacation allotment for twenty one employees alleged in the charge. Consequently, it is not possible for the FMBA to demonstrate in this proceeding that it has a substantial likelihood of success in proving its charge.

Since the FMBA cannot meet all of the interim relief standards, I have no choice but to issue the following:

ORDER

The application for interim relief is denied.[2/]



Arnold H. Zudick
Commission Designee

DATED: May 27, 2010
Trenton, New Jersey

2/ This charge will be processed in the normal fashion.