

I.R. NO. 2013-5

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF CAMDEN,

Respondent,

-and-

Docket No. CO-2013-040

FRATERNAL ORDER OF POLICE,
CAMDEN LODGE NO. 1,

Charging Party.

SYNOPSIS

A Commission Designee denies an application for interim relief filed by the Charging Party alleging that the Respondent violated the parties' collective negotiations agreement ("CNA") when it ended the approximate 20 year past practice of allowing full-time union leave for the FOP President and assigned him to active duty.

The Designee found that the CNA language clearly authorized the termination of the full-time union leave. The Designee further found, based on Commission precedent, that the Respondent had not violated the Act even though it had ended the past practice of full-time union leave.

The Designee found that the Charging Party had not established a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations, a requisite element to obtain interim relief.

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Appearances:

For the Respondent,
Brown & Connery, attorneys
(William M. Tambussi, on brief)
(Michael J. DiPiero, of counsel)

For the Charging Party,
Markowitz and Richman, attorneys
(Matthew D. Areman, of counsel)

INTERLOCUTORY DECISION

On August 14, 2012, the Fraternal Order of Police, Camden Lodge No. 1 ("FOP") filed an unfair practice charge against the City of Camden ("City"), which was accompanied by an application for interim relief seeking a temporary restraint, a certification, a brief and documents. The charge alleges that the City violated the parties' collective negotiations agreement ("CNA") when it ended full-time release time to attend to union business for the FOP President, John D. Williamson.

The FOP asserts that the City's conduct allegedly violates 5.4a(1), (3) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. The application seeks an Order requiring the City to return to the status quo ante by restoring the full-time union leave. The City responds that the change in the FOP President's duties is authorized by the specific language in the CNA.

On August 14, an Order to Show Cause with a temporary restraint was issued prohibiting the City from unilaterally implementing changes relating to the use of union leave time. The City was given the opportunity to move for dissolution or modification of the temporary restraint by filing for same by August 16. The City filed for dissolution of the temporary restraint and on August 17, I dissolved the temporary restraint and issued the following Order:

The Respondent shall assign Police Officer John D. Williamson, FOP President, to duties consistent with and in the spirit of Article III, Section 4 of the Agreement between the

^{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 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."

parties that will ensure that the following is adhered to: "The President of the Union shall be excused from all duties and assignments when required to allow him/her to properly perform his/her duties as Union representative."

The City filed an opposition brief and documents. The parties presented oral argument via telephone conference call on September 4. I issued the below interim relief Order on September 5.

FINDINGS OF FACT

The parties' CNA has a term from January 1, 2005 through December 31, 2008. The FOP President has been granted full-time release from work duties to attend to union business for approximately 20 years. On August 8, 2012, the City's Mayor wrote the following memorandum entitled "Active duty for union leadership" to the City's Chief of Police and Fire Chief:

As you may know, the State has been requesting that the Presidents of each collective bargaining unit be placed in active duty. This action is necessary to sustain public safety and is supported by Article III Section 4 of each respective Collective Bargaining Contract. Please know that while the Presidents are assigned to active duty, the Union Presidents shall be excused from duties and assignments when required to perform the duties of the Union.

I am requesting that you take action effective the work day of August 13, 2012.

I thank you for your anticipated cooperation.

The CNA at Article III, Section 4 provides:

A president of the Union or his/her designee shall be assigned a position which is conducive to his/her duties as Union president. Said position shall be one that will enable the Union president to properly and effectively perform his/her duties. The president of the Union may devote full-time to administering and enforcing the provisions of this agreement. The president of the Union shall be excused from all duties and assignments when required to allow him/her to properly perform his/her duties as Union representative.

CONCLUSIONS OF LAW

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^{2/} 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); Burlington Cty., P.E.R.C. No. 2010-33, 35 NJPER 428 (¶139 2009), citing Ispahani v. Allied Domecq Retailing United States, 320 N.J. Super. 494 (App. Div. 1999) (federal court requirement of showing a substantial

^{2/} Material facts must not be in dispute in order for the moving party to have a substantial likelihood of success before the Commission.

likelihood of success on the merits is similar to Crowe); 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). In Little Egg Harbor Tp., the designee stated:

[T]he undersigned is most cognizant of and sensitive to the extraordinary nature of the remedy sought to be invoked and the limited circumstances under which its invocation is necessary and appropriate. The Commission's exclusive remedial powers, normally intended to be exercised subsequent to a plenary hearing, will not be called into play for interim relief in advance of such hearing except in the most clear and compelling circumstances.

In pertinent part to the outcome of this decision, the FOP argues that the changes that occurred effective August 13 with respect to the repeal of full-time union leave for the FOP President, was a unilateral change in a term and condition of employment and is mandatorily negotiable. Additionally, the FOP argues that since the parties are currently in negotiations for a successor CNA, the City is required to maintain the status quo ante with respect to the existing terms and conditions of employment.

The City responds that the actions it took in assigning the FOP President to active duty were specifically authorized Article III, Section 4 of the CNA.

The Commission has held, "Where clear and unambiguous contract language grants a benefit to employees, an employer does not violate the Act by ending a past practice granting more generous benefits and by returning to the benefit level set by the contract." Kittatinny Reg. Bd. of Ed. P.E.R.C. No. 92-37, 17 NJPER 475 (¶22230 1991) citing, See, e.g., New Brunswick Bd. of Ed., P.E.R.C. No. 78-47, 4 NJPER 84 (¶4040 1978), recon. den. P.E.R.C. No. 78-56, 4 NJPER 156 (¶4073 1978), aff'd App. Div. Dkt. No. A-2450-77 (4/2/79).

In the instant case, Article III, Section 4 of the CNA clearly allows for the elimination of full-time union leave with the FOP President assigned to an active duty status. The only requirement in the CNA is that "The president of the Union shall be excused from all duties and assignments when required to allow him/her to properly perform his/her duties as Union representative." Therefore, the change by the City in the past practice of allowing the FOP President full union leave does not constitute a violation of the Act.

Based on the above, I find that the FOP has not established a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations, a requisite element to obtain interim relief.^{3/} The application for interim

^{3/} As a result, I do not need to conduct an analysis of the other elements of the interim relief standard.

relief must be denied. Accordingly, this case will be transferred to the Director of Unfair Practices for further processing.

ORDER

The application for interim relief is denied. The charge will be forwarded to the Director of Unfair Practices for processing in accordance with the Commission's Rules. Pending the decision of the Director of Unfair Practices, the City shall assign the FOP President to duties consistent with and in the spirit of Article III, Section IV of the Agreement between the parties that will ensure that the following is adhered to: "The President of the Union shall be excused from all duties and assignments when required to allow him/her to properly perform his/her duties as Union representative."



David N. Gambert
Commission Designee

DATED: October 10, 2012
Trenton, New Jersey