

D.U.P. No. 2013-5

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION  
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

CITY OF CAMDEN,

Respondent,

-and-

Docket No. CO-2013-193

CAMDEN ORGANIZATION OF POLICE SUPERIORS,

Charging Party.

SYNOPSIS

The Director of Unfair Practice dismisses an unfair practice charge filed by the Camden Organization of Police Superiors (COPS) against the City of Camden. COPS alleged that the City had violated N.J.S.A. 34:13A-5.4a(1), (2), (3), (5), and (7). The Director found that no facts suggested that the City refused to negotiate prior to, or at, the interest arbitration hearing. The Director also found that the City's layoff decision was not mandatorily negotiable and governed by the Civil Service Act, N.J.S.A. 11A:8-1. Finally, the Director found that COPS did not allege facts suggesting that the City violated N.J.S.A. 34:13A-5.4a(2), (3), and (7).

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Appearances:

For the Respondent,  
Brown & Connery, attorneys  
(Michael J. DiPiero, of counsel)

For the Charging Party,  
Alterman & Associates  
(Christopher Gray, of counsel)

REFUSAL TO ISSUE COMPLAINT

On January 11, 2013, the Camden Organization of Police Superiors (COPS) filed an unfair practice charge against the Camden City Police Department and the City of Camden<sup>1/</sup> (City). The charge alleges that on December 6, 2012, during an Interest Arbitration hearing before a designated interest arbitrator, the City "failed to negotiate" by refusing to "produce the City Council President, the Mayor and the Chief of Police in order to

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<sup>1/</sup> We take administrative notice that a Certification of Representative issued for these parties on April 21, 1995 (Dkt. No. RO-95-17) identifies the City of Camden as the public employer. For purposes of this decision, I refer to the City as the public employer.

discuss potential layoffs of [superior officers]." The charge also alleges that the City refused to negotiate "a resolution of this matter" during the several months preceding December 6. The charge alleges that the refusal resulted in the City's submission of a layoff plan to the New Jersey Civil Service Commission. The City's omissions allegedly violate 5.4a(1), (2), (3), (5), and (7) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq. (Act)<sup>2/</sup>. As a remedy, COPS seeks an order requiring the City to negotiate and to appoint or effectuate the appointment of its unit employees to the newly-created Camden County police department.

On January 30, 2013, the City filed a letter, asserting that before and during the Interest Arbitration hearing, it was willing to consider any concessionary negotiations proposals from COPS, but none were forthcoming. The City also asserts that during the hearing, COPS never sought subpoenas for the

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<sup>2/</sup> 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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (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. (7) Violating any of the rules and regulations established by the commission."

appearances of the Council President, Mayor, or Police Chief, nor did it request an adjournment of the hearing. The City contends that COPS proceeded with the hearing without objecting to the City's witnesses. The City also advises that it is in the process of abolishing its police department and that its layoff plan is not mandatorily negotiable. Finally, the City asserts that it cannot appoint or assist in the appointment of unit employees to the successor employer - the County - because it is not the hiring authority for the new County police department. Layoff notices were apparently served upon the entire City police department, including the unit of superior officers. Layoffs are scheduled for April 30, 2013.

The Commission has authority to issue a complaint where it appears that the Charging Party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the complaint issuance standard has not been met, I may decline to issue a complaint. N.J.A.C. 19:14-2.3. In correspondence dated March 4, 2013, I advised the parties that I was not inclined to issue a complaint in this matter and set forth the basis upon which I arrived at that conclusion. I provided the parties with an opportunity to respond. Neither party filed a response. Based upon the

following, I find that the complaint issuance standard has not been met.

COPS is the exclusive representative of a collective negotiations unit of about 31 sergeants, lieutenants, and captains employed by the City. The City and COPS entered into a collective negotiations agreement for the period 2005 through 2008. In or before 2010, the parties commenced negotiations for a successor agreement. On October 18, 2012, COPS filed a petition to initiate compulsory interest arbitration (Docket No. IA-2013-007).

The Police and Fire Public Interest Arbitration Reform Act, N.J.S.A. 34:13A-14a, et seq. (Reform Act), sets forth the statutory scheme for arbitration regarding police and fire departments. The Reform Act provides that mediation or fact finding "shall terminate immediately upon the filing of a petition for arbitration." N.J.S.A. 34:13A-16(b)(2). Throughout the arbitration proceedings however, the interest arbitrator "may mediate or assist the parties in reaching a mutually agreeable settlement." N.J.S.A. 34:13A-16(f)(3). The Reform Act provides that the "conduct of the arbitration proceeding shall be under the exclusive jurisdiction and control of the arbitrator, who has authority to require the attendance of witnesses." N.J.A.C. 19:16-5.7(a); N.J.S.A. 34:13A-17. Resolution of unsettled issues

is by conventional arbitration. N.J.A.C. 19:16-5.7(f). In this type of arbitration, the parties submit final offers that are ". . . deemed final, binding and irreversible," which the arbitrator analyzes against a number of statutory factors. N.J.S.A. 34:13A-16(g); N.J.A.C. 19:16-5.7(g).

On December 6, 2012, COPS and the City presented their final offers to the interest arbitrator in an unsuccessful effort to informally resolve their dispute. The parties also produced witnesses at the hearing. COPS did not subpoena, nor seek subpoenas for the City Council President, Mayor, or Police Chief. Neither party requested an adjournment of the hearing, which proceeded without objection.

On December 17, 2012, the arbitrator issued an award, which specified a term from January 1, 2009 through December 31, 2013. On appeal, the Commission vacated and remanded the award for reasons unrelated to the production of witnesses. City of Camden, P.E.R.C. No. 2013-49, 39 NJPER \_\_\_\_ (¶ 2013). No facts indicate that the arbitrator ordered the City to produce witnesses or admonished it for failing to produce them. No facts suggest that the City refused to negotiate on December 6, or anytime before that date.

Layoff decisions by public employers are not mandatorily negotiable. Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78, 98 (1981); In Re Maywood Bd. of Ed., 168 N.J. Super.

45 (App. Div. 1979), certif. den. 81 N.J. 292 (1979). Public employers also have a non-negotiable right to determine in good faith whether layoffs are necessary in the aftermath of an interest arbitration award. New Jersey State PBA, Local 29 v. Town of Irvington, 80 N.J. 271 (1979). To the extent that the charge raises issues of successorship, I note that the County is not a Respondent. See, e.g., Morris Cty. Bd. of Social Services, I.R. No. 87-14, 13 NJPER 142 (¶18062 1987).

Layoffs of permanent employees in the service of the State or a political subdivision are governed by provisions of the Civil Service Act, N.J.S.A. 11A:8-1. Permanent employees may be laid off for economy, efficiency or other related reasons. N.J.S.A. 11A:8-1(a).

The City contends that in the absence of a successor agreement with the City police rank and file unit, and in the context of its municipal fiscal crisis, it must abolish the police force, including the unit of superior officers represented by COPS. Layoff notices were issued in early January, 2013 and layoffs will occur on April 30, 2013. COPS has filed a court action contesting the City's justification that the layoffs are for reasons of economy, efficiency or other related reasons.

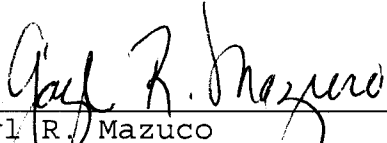
COPS has not alleged facts suggesting that the City's actions were discriminatory.<sup>3/</sup> Based on all of the circumstances, I find that the allegations in the charge, if true, do not constitute an unfair practice.

Accordingly, I find that the Commission's complaint issuance standard has not been met and I decline to issue a complaint on the allegations of this charge. N.J.A.C. 19:14-2.3.

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
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Gayl R. Mazuco  
Director of Unfair Practices

DATED: March 28, 2013  
Trenton, New Jersey

This decision may be appealed to the Commission pursuant to N.J.A.C. 19:14-2.3.

Any appeal is due by April 8, 2013.

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<sup>3/</sup> No facts suggest that the City violated 5.4a(2) and (7), in addition to a(3). These allegations are also dismissed.