

I.R. No. 2020-5

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF CAMDEN,

Respondent,

-and-

Docket No. CO-2020-100

CAMDEN FIRE OFFICER'S ASSOCIATION,
LOCAL 2578, INTERNATIONAL ASSOCIATION
OF FIRE FIGHTERS,

Charging Party.

SYNOPSIS

A Commission Designee denies an application for interim relief based on an unfair practice charge alleging that the public employer repudiated the agreement and practice of the parties regarding the length of administrative leave provided to certain union representatives and unit employees to attend monthly union meeting(s).

The parties had recently negotiated a memorandum of agreement that modified a provision from the predecessor agreement specifying the notice of leave required for "an entire tour of duty. . ." The Designee determined that the modification did not permit the Charging Party to demonstrate by a substantial likelihood of success that the public employer had repudiated the agreement, though it had unilaterally changed an existing employment condition. The Designee determined that the Respondent had asserted a colorable, implied right to make the change in the length of administrative leave granted.

I.R. No. 2020-5

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF CAMDEN,

Respondent,

-and-

Docket No. CO-2020-100

CAMDEN FIRE OFFICER'S ASSOCIATION,
LOCAL 2578, INTERNATIONAL ASSOCIATION
OF FIRE FIGHTERS,

Charging Party.

Appearances:

For the Respondent,
Brown and Connery, LLP, attorneys
(Christopher M. Kurek, of counsel)

For the Charging Party,
Loccke, Correia & Bukosky, attorneys
(Michael A. Bukosky, of counsel)

INTERLOCUTORY DECISION

On October 16, 2019 and November 20, 2019, Camden Fire Officer's Association, Local 2578, International Association of Firefighters (IAFF) filed an unfair practice charge and amended charge against the City of Camden (City). The amended charge included an application for interim relief with temporary restraints, a brief and certification. The charge, as amended, alleges that on or about September 19, 2019 and October 18, 2019, the IAFF requested 24 (consecutive) hours of administrative leave for its executive board members to attend usual monthly union meetings. In both instances, the Chief replied by allegedly

denying the requested leave for [twelve hours of] "day work" and approving the requested leave for [twelve hours of] "night work." The charge alleges that on or about October 4, 2019, the IAFF demanded negotiations and a "return to the status quo concerning the unilaterally changed term and condition of employment." The charge alleges that the City's actions violate section 5.4a(1) through (7)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13-A-1, et seq. (Act).

On November 25, 2019, I issued an Order to Show Cause without a temporary restraint, setting forth dates for the City's response, IAFF's reply and argument in a telephone conference call. On December 17, 2019, the parties argued their respective cases.

^{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. (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 the act. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (7) Violating any of the rules and regulations established by the commission.

The City argues that the parties have agreed to a series of non-economic modifications in their 2017-2020 collective negotiations agreement, and to Article III, Union Representation and Membership, specifically. The City asserts that the number of authorized union representatives is now reduced from four to two and that the IAFF agreed to excise the phrase, “. . . an entire tour of” in section 6:

b. Whenever a Union representative is required to be excused from [an entire tour of] duty to perform his/her duties as Union representative, written notification of such absence shall be given to the office of the Chief whenever practicable. . . .

The City contends that its denial of day work leave, “. . . is based upon the agreed to changes to Article III, section 6 of the collective negotiations agreement” (brief at 4) and that the IAFF’s charge concerns only a contract dispute that fails to meet the standard for granting interim relief.

The following facts appear.

The IAFF is the exclusive employee representative of all uniformed superior officers employed by the City in its fire department.

The City and IAFF have signed a series of collective negotiations agreements, the immediate predecessor one extending from January 1, 2014 through December 31, 2016. Unchanged sections of Article III, Union Representation and Membership, concern IAFF access to City facilities, “. . . for purposes of

processing or investigating grievances;" the granting of "administrative leave with pay" to "officially recognized delegates;" administrative leave for IAFF representatives to participate in successor negotiations; release of the IAFF president from all duties and assignments; excuse of [number] authorized representatives, ". . . from all duties and assignments for the purpose of attending County or State union-affiliated meetings on the day of the meeting."

On September 28, 2018, the parties, with the assistance of an Interest Arbitrator, signed a Memorandum of Agreement (MOA) adding economic provisions, modifying some non-economic provisions, and extending the term from January 1, 2017 through December 31, 2020.

In the MOA, the parties agreed that the terms of the predecessor agreement shall remain in effect, ". . . unless modified herein." The MOA provides in a pertinent part:

Article III- Union Representation and Membership - Amend the current language as follows:

Section 6

b. Whenever a Union representative is required to be excused from ~~an entire tour of~~ duty to perform his/her duties as Union representative, written notification of such absence shall be given to the Office of the Chief of Fire whenever practicable. When it is not practicable to give such notification, said Union representative shall notify the Division verbally. . .

The same numbered article and section of the predecessor agreement included the four words that are apparently slashed or deleted from the successor MOA.

IAFF President Munoz was chief negotiator for IAFF and participated in negotiations leading to the parties' current agreement. He certifies that the words deleted in the agreement from the predecessor agreement at Article III, Section 6 were not intended," . . . to modify the amount of leave time nor was such a modification ever discussed or proposed" (para. 6. Supp. Munoz cert.). Munoz certifies that the parties agreed, ". . . to change the language for notification of leave, only (emphasis supplied, para. 12, supp. Munoz cert.).

On an unspecified date, the IAFF ratified the MOA. On December 11, 2018, the City ratified the MOA. On July 30, 2019, the parties signed a two-page "Consent Award of Arbitrator" providing that "a dispute arose between the parties in or around December 2018 concerning the ratification of a negotiated memorandum of agreement for a successor contract." The award provides, among other things, that the MOA is "deemed ratified by the parties;" that salary increases and retroactive payments for 2017, 2018 and 2019 shall be paid to unit employees within specified periods of time; that the [IAFF] President would be required to work a specified number of shifts in 2019; that all other provisions of the MOA will be "implemented as written

unless otherwise modified herein;" and that the award is "final and binding."

In the past, authorized IAFF representatives in the City's employ were excused from all duties and assignments on the day of each monthly IAFF meeting. The entitlement extended from 7 a.m. to 7 a.m. on the following day. Executive board IAFF members conducted monthly meetings "immediately prior to the local union meeting. . . Typically, the combined Executive Board meetings and the union meeting lasted all day" (para. 33, Munoz cert.). IAFF President Samuel Munoz certified:

Because the tour of Camden City Fire Officers ordinarily occurs on a 24 hour basis from 0700 to 0700, the extent of the union leave for the day of the union meeting was inclusive of all hours within that 24 hour period, 0700 to 0700. [para. 30, Munoz cert.]

The "formal" meeting "typically" extended from 6:30 p.m. through 10 p.m. or later. The meeting occurred on the fourth Wednesday of every month. Meetings in advance of the "formal" meeting occurred earlier in the day and concerned such topics as working conditions within firehouses, truck conditions, and plant operations. Another meeting might concern training, personnel matters, new policies, pending disciplines, etc.

On September 19, 2019 and October 16, 2019, the IAFF Secretary filed written requests with the Chief for two identified Executive Board members to be provided administrative leave and "overtime make-ups" to attend ". . . our monthly union

meeting" on September 25 and October 23, 2019, respectively. On or about September 19 and October 18, 2019, respectively, the Chief replied to the requests by approving the administrative leave requests for "night work" and denying the requests for "day work." In other words, leave was approved from 7 p.m. - 7 a.m. and denied for 7 a.m. - 7 p.m.

The now-reduced "day" of union leave doesn't correlate with scheduled IAFF meetings, effectively ending IAFF representative ". . . access to executive board meetings and preparatory sessions" (para.60, Munoz cert.). Also, the union meeting (i.e., not a preparatory session) begins at 6:30 p.m., about thirty minutes before release time is now being approved.

ANALYSIS

A charging party may obtain interim relief in certain cases. To obtain 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); Whitmeyer 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).

The IAFF maintains that the deletion of the four words in Article III, section 6b (“ . . . an entire tour of”), “. . . did not change the amount, nature or scope of union leave recognized by the contract nor did it change any [of] the practices which have formed around the union leave benefit” (brief at 11-12). It emphasizes that the provision regards only notification of the use of leave time and that historically, IAFF members, “. . . were provided with union leave for the entire 24-hour period and were excused from all duties and assignment on the entire day of the meeting” (brief at 13).

The IAFF variously asserts that the City “repudiated” a contractual right and “unilaterally changed” a term and condition of employment, demonstrating its substantial likelihood of succeeding in a final Commission decision (brief at pages 22-27, 30-35).

In State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984), the Commission wrote that a “claim that an employer has repudiated an established term and condition of employment may be litigated in an unfair practice proceeding, pursuant to section 5.4a(5).” It explained:

A claim of repudiation may also be supported, depending on the circumstances of a particular case, by a contract provision that is so clear that an inference of bad faith arises from a

refusal to honor it or by factual allegations indicating that the employer has changed the parties past and consistent practice in administering the disputed clause (citations omitted).

[10 NJPER 423]

It appears to me that the IAFF has not demonstrated a repudiation by a substantial likelihood of success under either standard set forth in the above-quoted paragraph. I disagree with the IAFF that the parties' recent deletion of ". . . an entire tour of" is superfluous to the disputed sentence's meaning, compared with its meaning when those words were included in the predecessor agreement. The IAFF has also acknowledged that a "tour . . . ordinarily occurs on a 24 hour basis from 0700 to 0700," possibly implying that "entire" was an intended point of emphasis. Similarly, the parties, having deleted the phrase and the City, deriving a contextual meaning of the remaining provision, changed the parties' past and consistent practice of providing IAFF representatives 24 consecutive hours of administrative leave to attend monthly union meetings.

The City appears to claim an implied right to make the change. See Middletown Tp., P.E.R.C. No. 98-77, 24 NJPER 28 (¶29016 1998), aff'd 334 N.J. Super. 512 (App. Div. 1999), aff'd 166 N.J. 112 (2000). Under these circumstances, I do not find that the IAFF has demonstrated by a substantial likelihood of success that the City's unilateral change triggered its duty to negotiate under section 5.3. Middletown Tp.

The IAFF did not demonstrate that it has a substantial likelihood of prevailing in a final Commission decision. Accordingly, I deny the application for interim relief. This case shall be processed in the normal course.

/s/ Jonathan Roth
Jonathan Roth
Commission Designee

DATED: December 23, 2019
Trenton, New Jersey