

I.R. NO. 99-20

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF NUTLEY,

Respondent,

-and-

Docket No. CO-99-284

NUTLEY PBA LOCAL 33,

Charging Party.

SYNOPSIS

The Township of Nutley issued a special order requiring all police personnel to complete a questionnaire regarding any non-uniformed, off-duty employment in which the officer is engaged. Nutley PBA Local 33 filed an unfair practice charge accompanied by an application for interim relief, seeking to stay the Township from requiring officers to fill out the questionnaire. The PBA claimed the Township's unilateral action constituted a change in terms and conditions of employment. The Commission Designee found that to the extent the Township is seeking the information in the questionnaire in order to protect the core purposes of the police department and meet its legitimate objectives, such requirement that officers complete the questionnaire may be non-negotiable. Consequently, the Designee found that PBA Local 33 had not demonstrated that it has a likelihood of prevailing in a final Commission decision and denied interim relief.

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Appearances:

For the Respondent,
Savage & Serio, attorneys
(Beverly M. Wurth, of counsel)

For the Charging Party,
Abramson & Liebeskind, Consultants
(Arlyne K. Liebeskind, consultant)

INTERLOCUTORY DECISION

On March 2, 1999, Nutley PBA Local 33 (PBA) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the Township of Nutley (Township) committed an unfair practice within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act). The PBA contends that the Township violated N.J.S.A. 34:13A-5.4a(1) and (5).^{1/} The unfair practice charge was accompanied by an

^{1/} These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with,

application for interim relief. On March 4, 1999, an order to show cause was executed and a return date was initially scheduled for March 25, 1999, and, subsequently, rescheduled at the PBA's request to April 20, 1999. The parties submitted briefs, affidavits and exhibits in accordance with Commission rules and argued orally on the return date.

The Township and the PBA are parties to a collective negotiations agreement covering calendar years 1996 and 1997 and have engaged in successor collective negotiations, yet failed to reach a voluntary settlement and proceeded to interest arbitration. Apparently, the parties are in the process of submitting post-hearing briefs to the interest arbitrator.

On or about November 25, 1998, the chief of police apparently issued a special order requiring all police personnel to complete a questionnaire regarding any non-uniformed, off-duty employment in which the officer is engaged. The questionnaire appears to request information consisting of the identity of the off-duty employer, the address, the nature of the duties performed and hours of employment. The parties agree that no contract

1/ Footnote Continued From Previous Page

restraining or coercing 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."

provision in the expired agreement covers the subject of outside employment, however, the PBA has submitted a proposal to the interest arbitrator concerning that issue.

The PBA asserts that on or about December 28, 1998, it wrote a letter to the director of public safety in which it sought to negotiate over the issues of employment questionnaires and work permits. The PBA claims it requested that the special order requiring police personnel to complete the questionnaire be withdrawn. Additionally, it asserts that on or about December 30, 1998, it met with the director of public safety and expressed its objection to the off-duty employment questionnaire and the director's intention to institute a work permit system. The PBA contends that the director said that he would consider the PBA's objections and respond by January 15, 1999. The PBA asserts that no communication from the director was received.

The Township asserts that the only action it has taken is to require employees to complete a questionnaire concerning the nature of each officers' outside employment. The Township asserts that it has not restricted any officer from engaging in any outside employment. The Township claims, and the PBA does not dispute, that it has not required officers to obtain work permits prior to engaging in outside employment.

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).

In State of New Jersey v. Communications Workers of America, 267 N.J. Super. 582 (App. Div. 1993), the State Department of Treasury developed a new code of ethics which applied to all of its divisions, including the Division of Taxation. The revised code placed certain restrictions on the outside employment of Division employees. The new code of ethics which restricted employees outside employment was developed and implemented without negotiations with the employees majority representative, the CWA. The Appellate Division stated that:

Any requirement that the [employer] negotiate over the terms and conditions of the prohibition against certain outside employment would substantially interfere with its inherent managerial prerogatives and substantial governmental policies. Negotiations with respect to this issue would also place the personal financial interests of agency employees above those of the public at large with respect to ethical conduct in State government. [Id. at 591.]

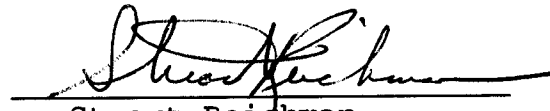
Thus, it appears that restrictions on outside employment may be so integrally related to the mission of the agency as to not require negotiations.

Accordingly, to the extent that the employer is seeking the information requested in the questionnaire in order to protect the core purposes of the Department and meet its legitimate objectives, such unilateral action appears to be non-negotiable. See Peerless Publications Inc., 283 NLRB No. 54, 124 LRRM 1331 (1987).

Therefore, I find that the PBA has not demonstrated that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations, one of the requisite elements to obtain interim relief.

ORDER

Nutley PBA Local 33's application for interim relief is denied. This case will proceed through the normal unfair practice processing mechanism.



Stuart Reichman
Commission Designee

DATED: April 23, 1999
Trenton, New Jersey