

I.R. NO. 98-1

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF FAIR LAWN,

Respondent,

-and-

Docket No. CO-97-431

FAIR LAWN PBA LOCAL No. 67,

Charging Party.

SYNOPSIS

A Commission Designee denies a request to restrain the Borough of Fair Lawn from assigning officers to special duty coverage of a fireworks display. The Fair Lawn PBA Local No. 67 brought this action claiming that the assignment did not comply with a notice required of the parties collective negotiations agreement and was a repudiation of the contract. The Borough introduced evidence demonstrating that it has followed the same procedure for such assignments in the past and argued the notice provision of the agreement does not apply here. The PBA failed to demonstrate it has a likelihood of success in prevailing on the facts after a full hearing.

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Appearances:

For the Respondent,
Giblin and Giblin, attorneys
(Brian T. Giblin, of counsel)

For the Charging Party,
Zazzali, Zazzali, Fagella & Nowak, attorneys
(Paul L. Kleinbaum, of counsel)

INTERLOCUTORY DECISION

On June 27, 1997, Fair Lawn PBA Local No. 67 filed an unfair practice charge with the Public Employment Relations Commission alleging that the Borough of Fairlawn committed unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4(a)(1) and (5)^{1/} when it

^{1/} These subsections 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. (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."

assigned officers of its police department to work the Borough's July 4th fireworks event. The parties most recent contract expired December 31, 1995. It was alleged that said assignments did not comply with the contract provision that tour assignments must be posted at least 45 days in advance.^{2/}

The PBA also filed an application for interim relief seeking to restrain the Borough from making the July 4th assignments in as much as the Borough failed to comply with the 45 day notice requirement.

A show cause order was executed and made returnable for July 2, 1997. A hearing was conducted on that date.

The Borough maintains that the contract language in question does not apply to special assignments including the pending fireworks display. It submitted affidavits indicating that when the Borough conducted such fireworks displays in the past, it did not give the PBA 45 days notice and the PBA never objected. The Borough solicited volunteers sometime in June and announced that it would assign additional employees to work during the display if there were insufficient volunteers.

It is noted that the officers on this duty would be paid time and a-half pursuant to the contract.

^{2/} The PBA and Borough have reached a tentative agreement which is effective through December 31, 1999. However, that agreement has yet to be signed by the parties.

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).

The PBA has not met its heavy burden here. There is a significant factual dispute on the record before me. The Borough apparently used the same procedure in the past to assign police officers to this duty yet the PBA did not object in the prior years.

Although the PBA's prior compliance does not necessarily mean the Borough did not violate the contract, to prove a violation of (a)(5), the union has to show more than a contract violation. It has to show a contract repudiation. That is, the employer knowingly refused to comply with the terms of the collective negotiations agreement. State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). The PBA's apparent prior compliance could very well lead the Borough to believe these assignments did not violate the contract.

I am not satisfied that the PBA will likely prevail before the full Commission. The application for interim relief is denied.


Edmund G. Gerber
Commission Designee

DATED: July 10, 1997
Trenton, New Jersey