

I.R. NO. 2002-11

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of
CITY OF NEWARK,

Respondent,

-and-

NEWARK FIREFIGHTERS UNION, INC.,

Docket No. CO-2002-276

Charging Party.

-and-

NEWARK FIRE OFFICERS UNION, LOCAL 1860,
IAFF, AFL-CIO,

Intervenor.

SYNOPSIS

The City of Newark and the Newark Fire Officers Union, Local 1860, IAFF, AFL-CIO, negotiated an agreement which provided, among other things, for a 24-hour work schedule. Rank-and-file firefighters work a different schedule. To maintain supervision, the City changed the rotational closings of its firehouses resulting in fire companies being reassigned to different firehouses, possibly in different battalions. The Newark Firefighters Union, the firefighters' majority representative, demanded negotiations over safety issues which, it claims, impact upon firefighters' terms and conditions of employment. The City contends that it has incurred no negotiations obligation with the NFU resulting from the implementation of the 24-hour schedule for fire officers and the change in the rotational closings of the firehouses. The NFU filed an application for interim relief seeking to enjoin the City from implementing the 24-hour schedule until the City and the NFU engage in impact negotiations. The Commission Designee found a material factual dispute existed concerning whether the City's actions changed terms and conditions of employment for employees in the firefighters' collective negotiations unit and, consequently, found that the NFU did not establish a likelihood of prevailing in a final Commission decision, a requisite element to obtain interim relief. The NFU's application for interim relief was denied.

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Appearances:

For the Respondent,
JoAnne Y. Watson, Corporation Counsel
(Phillip Dowdell, Assistant Corporation Counsel)

For the Charging Party,
Fox and Fox, attorneys
(Craig S. Gumpel, of counsel)

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

INTERLOCUTORY DECISION

On April 12, 2002, the Newark Firefighters Union (NFU) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the City of Newark (City) committed unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), by

violating N.J.S.A. 34:13A-5.4a(1), (2) and (5).^{1/} The NFU alleges that the City has refused to negotiate mandatorily negotiable impact issues resulting from an agreement between the City and the Newark Fire Officers Union, Local No. 1860, IAFF, AFL-CIO (Local 1860), to change the work schedules of employees included in the unit represented by Local 1860.

The unfair practice charge was accompanied by an application for interim relief and temporary restraints. On April 15, 2002, I executed an order to show cause establishing a return date of April 17, 2002 in order to hear oral argument on the request for temporary restraints. On April 16, 2002, the City advised that its prior announcement to implement the change in fire officers' work schedules on April 18, 2002, was being delayed until after the NFU's interim relief application has been heard. Also, on April 16, 2002, Local 1860 applied for and was granted intervenor status in this proceeding in accordance with N.J.A.C. 19:14-5.1. In light of the City's determination not to implement the fire officers' new work schedule, the request for a temporary restraining order was dissolved and a return date for oral argument on the interim relief

^{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. (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."

application was scheduled for May 15, 2002. At Local 1860's request, and with the agreement of the other parties, the return date was rescheduled to May 24, 2002. The parties submitted briefs, affidavits and exhibits in accordance with Commission rules and argued orally on the return date. The following facts appear.

The NFU and the City are parties to a collective negotiations agreement which expires on December 31, 2002. The NFU is the exclusive representative of all firefighters, fire alarm operators and fire signal system repairers. Local 1860 represents a unit of fire captains, battalion chiefs and deputy chiefs employed by the City. Local 1860 and the City are parties to a collective negotiations agreement which covers the period January 1, 1999 through December 31, 2003.

The Fire Department is comprised of four battalions covering: (1) the Central and West Wards, (2) the North Ward, (3) the Central and South Wards and (4) the East Ward. Each firefighter is assigned to a company within a battalion. Each company consists of four firefighters and a captain.

On or about February 27, 2002, the City and Local 1860 signed a memorandum of agreement which reopened salaries for 2003 and extended the collective agreement for one year through December 31, 2004. The memorandum of agreement also modified unit employees' work schedules. The new work schedule provides for fire officers to work one 24-hour day followed by two 24-hour days off, followed by one 24-hour day on, followed by four 24-hour days off. Employees

represented by the NFU work on a schedule which differs from the fire officers' new schedule. Firefighters work two consecutive 10-hour days, followed by one day off, followed by two consecutive 14-hour night shifts, followed by three days off. The schedule change for fire officers represented by Local 1860 does not apply to firefighters represented by the NFU.

As part of the change of the fire officers' work schedules to the 24-hour shift, a change in the current system of rotational fire company closings has also been implemented. The result of the new system of rotating fire company closings is that firefighters and the fire officers with whom they normally work are off at different times. Consequently, firefighters who would normally report to their regularly assigned company are detailed to another company and possibly to a different battalion. Accordingly, entire company's are now transferred from one fire house to another. Prior to the new system, firefighters and officers were simultaneously off on a tour (shift) when their engine or truck companies were closed and entire fire companies were not reassigned to different locations.

In correspondence dated April 5, 2002, the NFU advised the City that the change in fire officers' work schedules impacts upon the terms and conditions of employment for unit firefighters and demanded negotiations concerning the impact of the implementation of the officers' schedule.^{2/} Although it has raised several impact

^{2/} The NFU delineated specific elements upon which it sought negotiations.

issues, the NFU claims that the most significant impact of the schedule change upon firefighters relates to safety. The firefighters claim the following:

1. As a result of entire companies having to report to a different fire house under a different Captain and a different Battalion Chief, continuity of supervision is disrupted.
2. Firefighters are going to be detailed out to districts where they are unfamiliar with the territory, including the structures and other landmarks.
3. Firefighters will now be required to transport their fire gear, which may be contaminated, in their personal vehicles when traveling from one fire house to another. This is a direct threat to the Firefighters' health and safety.
4. Confusion at the fire scene. Firefighters wear a tag on their helmet. This tag identifies which company the Firefighter is assigned to. This system of identification is utilized by the officers on the fire ground in determining the tasks each Firefighter is expected to perform. This determination is dependent on the order in which a Firefighter's company is due on the scene. A Firefighter who would normally be second or third due on the scene if he remained at his own company may actually now be first due on the scene as a result of having been detailed out to a different fire house. Yet the Firefighter's helmet tag will not show that he is a member of the first due company. This will result in extreme confusion.
5. Firefighters detailed out to another fire house will not have their spare gear with them. This is because Firefighters keep their spare gear in their lockers, which are located in their 'home' fire house.
6. The use of 'accountability tags.' Every firefighter wears a tag clipped to his turnout coat. This tag identifies the Firefighter and the company to which he belongs. In addition,

each company's apparatus also contains an accountability tag that identifies the company and its member firefighters. This becomes important when in certain circumstances it becomes necessary to determine what firefighters remain unaccounted for.

7. Firefighters will be working in new surroundings, with Firefighters with whom they do not have an established working relationship, and will even be sleeping in a different bed.

The NFU urges the Commission to enjoin the City from implementing the new 24-hour schedule for fire officers until impact negotiations between the City and the NFU can take place. The NFU does not seek a remedy calling for the permanent elimination of the fire officers' 24-hour shift.

The City contends that it has no obligation to engage in impact negotiations with the NFU because the implementation of the 24-hour shift for fire officers results in no impact upon firefighters' existing terms and conditions of employment. The City asserts that firefighters have been temporarily reassigned to different tours, companies, fire houses and battalions for many years. Further, such reassignments have resulted in firefighters receiving supervision from different captains and battalion chiefs notwithstanding that such reassigned firefighters maintain the helmet and accountability tags reflecting their regular assignment. The City claims that when firefighters are detailed to a different assignment, such firefighters have customarily transported their gear in their personal vehicles, changed their clothing at home or in the new fire house's locker room and have slept in different

beds. The City asserts that there are established mechanisms within the Newark Fire Department to clean contaminated gear and obtain directions to a fire scene. The City contends that there have been other circumstances when an entire fire company is reassigned to a different battalion. For example, this has occurred in multi-alarm fires. The entire fire company may be reassigned to a different fire house, which could be in a different battalion, for back-up coverage for the fire company sent to fight a multi-alarm fire. Should another fire occur in the same district where the multi-alarm fire is being fought, the reassigned, back-up fire company will respond to the new fire in that geographic district.

The City maintains that it has the right to negotiate the 24-hour shift with Local 1860 and has done so in order to enhance supervision and improve staffing levels in the captains' rank. The City determined that by moving fire companies from one fire house to another resulted in the closure of fewer fire houses and less down time than would have occurred had the City decided to move the fire officers to the location where the fire companies were previously scheduled to be open.

Local 1860 urges that the NFU's application for interim relief be denied on the grounds that it would interfere with a legally and otherwise properly negotiated term and condition of employment established through legitimate negotiations between the City and Local 1860. Local 1860 argues that the work schedule is a mandatory subject of negotiations and, pursuant to the exclusivity

principle established by the Act, the agreement between it and the City should be given effect by the Commission and not be undermined by claims from an employee organization which is not the majority representative of the employees in the collective negotiations unit. Accordingly, Local 1860 contends that the NFU has no standing to contest the implementation of a term and condition of employment properly negotiated between it, as the majority representative, and the City.

Local 1860 asserts that the safety issues raised by the NFU are not unique to, nor caused solely by the rotational closing of fire houses. Local 1860 contends that the issues raised by the NFU occur whenever a firefighter is detailed to another company as happens on almost a daily basis currently, and has happened for many years in the past. Firefighters may be detailed to a different company to balance staffing levels, to take advantage of overtime opportunities or to effect voluntary "swaps" between firefighters. Local 1860 asserts that when firefighters are detailed to another company, they are working with firefighters and fire officers that they do not normally work with, they must transport their gear, they continue to use their regular accountability tags, they may not have their spare gear with them, and they may have to sleep in different beds. Local 1860 asserts that rotational fire house closings have occurred in the City for many years.

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 NFU has applied for interim relief primarily on the grounds that the change in fire officers' work schedules and rotating fire company closures impact upon their terms and conditions of employment. The NFU has demanded negotiations with the City mainly over safety issues. However, the City and Local 1860 contend that the issues which the NFU seeks to negotiate have existed for many years and have not arisen as the result of any changes related to the implementation of the fire officers' new schedule. Consequently, it is apparent that a material factual dispute exists regarding whether the City's negotiated agreement with Local 1860 has caused the City to incur a negotiations obligation with the NFU. Such material factual disputes are not resolved at the interim relief stage of an unfair practice proceeding. Interim relief is denied in circumstances where

disputes of material fact exist. See Union County, I.R. No. 2001-16, 27 NJPER 273 (¶32098 2001); Somerset Cty., I.R. No. 2001-12, 27 NJPER 261 (¶32092 2001); Franklin Borough, I.R. No. 2001-1, 26 NJPER 346 (¶31136 2000); Borough of Fair Lawn, I.R. No. 98-1, 23 NJPER 444 (¶28205 1997); Tp. of Dover, I.R. No. 94-4, 20 NJPER 6 (¶25004 1993). The existence of the material factual disputes in this matter undermines the NFU's ability to establish the requisite likelihood of success with respect to whether the implementation of the fire officers' 24-hour schedule has raised new safety issues which impact the employees in the collective negotiations unit represented by the NFU.

Thus, under the circumstances, the NFU has not, at this early stage of the dispute, established a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations. Consequently, I decline to grant the NFU's application for interim relief. This case will proceed through the normal unfair practice processing mechanism.

ORDER

The NFU's application for interim relief is denied.


Stuart Reichman
Commission Designee

DATED: June 5, 2002
Trenton, New Jersey

