

I.R. NO. 92-5

STATE OF NEW JERSEY  
BEFORE THE COMMISSIONER OF PERSONNEL AND THE  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF CLIFTON,  
Police Department,  
Layoffs and Furloughs

Administrative Appeal

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In the Matter of

CITY OF CLIFTON,

Respondent,

-and-

PERC Docket No. CO-91-361

CLIFTON P.B.A. LOCAL 36,

Charging Party.

SYNOPSIS

In a joint decision on interim relief applications, the Chairman of the Public Employment Relations Commission and the Acting Commissioner of the Department of Personnel restrain the City of Clifton from implementing an involuntary furlough program pending the issuance of final decisions by both agencies. Clifton PBA Local 36 filed an appeal with the Department of Personnel and an unfair practice charge with the Commission when the County notified police officers represented by the PBA that they would be involuntarily furloughed without pay for five days; announced that nine employees would be laid off from permanent positions and threatened employees with furloughs and layoff if the PBA did not agree to modify the terms of an interest arbitration award.

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Appearances:

For the Respondent, Ruderman and Glickman, attorneys  
(Mark S. Ruderman, of counsel)

For the Charging Party, Schneider, Cohen, Solomon, Leder &  
Montalbano, attorneys (David S. Solomon, of counsel)

JOINT DECISION AND ORDER OF THE COMMISSIONER OF PERSONNEL  
AND THE CHAIRMAN OF THE PUBLIC EMPLOYMENT RELATIONS  
COMMISSION ON INTERIM RELIEF APPLICATIONS

Procedural History: Department of Personnel Appeals

On June 26, 1991, David Solomon, Esq., representing Clifton P.B.A., Local 36 and the Clifton Police Superior Officers Association, filed an appeal with the Department of Personnel, pursuant to N.J.A.C. 4A:8-2.6(a)1, alleging that the layoffs of nine members of the police department were not in good faith. In particular, he contended that these layoffs, scheduled to take

effect on August 2, 1991, were motivated by the City's attempt to punish the members of these associations for engaging in, and being successful in, interest arbitration. Further, Appellant claimed a violation of N.J.A.C. 4A:8-1.3(a), which provides for certain pre-layoff measures to lessen the possibility, extent or impact of layoffs. On July 30, 1991, Appellant appealed the imposition of five day furloughs without pay, to take place between August 5 and December 31, 1991, and requested interim relief to stay these furloughs, pursuant to N.J.A.C. 4A:2-1.2.

On August 1, 1991, Mark Ruderman, Esq., representing the City of Clifton, submitted written argument opposing the petition for interim relief and incorporating copies of the brief and affidavits filed with the Public Employment Relations Commission on the interim relief issue.

Procedural History: Unfair Practice Charge

On June 26, 1991, Clifton P.B.A., Local 36 filed an unfair practice charge against the City of Clifton. The charge alleges that the City violated subsections 5.4(a)(1), (3), and (5)<sup>1/</sup> of

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<sup>1/</sup> 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; (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; and (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."

the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it notified police officers represented by the PBA that they would be involuntarily furloughed without pay for five days; announced that nine employees would be laid off from permanent positions; and threatened employees with furloughs and layoffs if the PBA did not agree to modify the terms of an interest arbitration award.

The PBA filed an application for interim relief with the Commission as well as the Department of Personnel. On August 14, 1991, the Commission's designee, Edmund G. Gerber, denied this application without prejudice. I.R. No. 92-3, 17 NJPER \_\_\_\_ (¶\_\_\_\_ 1991). He found that the disputed factual issues about the employer's motivation in deciding to lay off and furlough employees could only be resolved after a full hearing. With respect to the PBA's contention that the involuntary furloughs could not be unilaterally imposed, he noted that the PBA had appealed the furloughs to the Department of Personnel and directed the parties to submit to the Commission all documents filed with the Department and the Office of Administrative Law. The decision permitted renewal of the interim relief request once these documents were submitted. Shortly afterwards the Commission received these documents from the Department of Personnel.

#### Facts

The parties have filed affidavits and exhibits. These are the undisputed facts about the furloughs.

On April 29, 1991, the City Council directed the City Manager to initiate the procedures to implement a one-week furlough without pay for every member of the police department except the chief. Its resolution noted that an interest arbitration award had resulted in 1990 salary increases in excess of the amount budgeted.

The City Manager wrote a letter to the Assistant Regional Administrator of the Department of Personnel seeking approval of the furloughs. On June 12, the Assistant Regional Administrator gave that approval. By letter dated June 18, all negotiations unit members received furlough notices. The notices indicated that each officer would be furloughed without pay for one week (five working days) sometime between August 5 and December 31, 1991. The City did not negotiate with the PBA over its decision to furlough employees.

#### Joint Analysis

In Union Cty., I.R. No. 92-4, 17 NJPER \_\_\_\_ (¶\_\_\_\_ 1991), also issued today, we granted interim relief restraining the implementation of an involuntary program which would have required County employees to take five days off without pay. We concluded, given the relevant facts of that case, that this program probably violated both the Civil Service Act and the Employer-Employee Relations Act.


The present case presents certain factual differences. The City's program was restricted to the Police Department, and permanent layoffs were also implemented. Appellants in the Department of Personnel appeal and the unfair practice proceeding have also alleged that the City's program was improperly motivated.

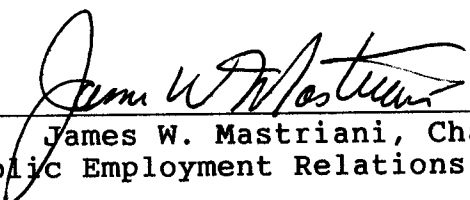
However, the present case appears to be legally indistinguishable. Although limited to a particular department, the police department is not to be closed for any period of time. The permanent layoffs are a distinct and separate action, for which no petition for interim relief has been submitted to the Commissioner of Personnel. Finally, regardless of the motivations for the temporary separations, such action is impermissible if in violation of applicable law and rules. Therefore, we incorporate our analysis in Union Cty. and issue the same relief.

The Department of Personnel will finalize this case on a written record. The parties are, therefore, given until the close of business on Wednesday, September 11, 1991 to present any additional argument or materials. The Public Employment Relations Commission will continue the administrative processing of the unfair practice charge in accordance with its rules.

ORDER

The City of Clifton is restrained from implementing its involuntary furlough program pending the issuance of final decisions by the Department of Personnel and the Public Employment Relations Commission.

  
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 William G. Scheuer, Acting Commissioner  
 Department of Personnel

  
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 James W. Mastriani, Chairman  
 Public Employment Relations Commission

DATED: Trenton, New Jersey  
 August 20, 1991