

I.R. NO. 2008-19

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF HIGHLAND PARK,

Respondent,

-and-

Docket No. CO-2008-330

MIDDLESEX COUNCIL NO. 7,
NEW JERSEY CIVIL SERVICE
ASSOCIATION,

Charging Party.

SYNOPSIS

The Middlesex Council No. 7, New Jersey Civil Service Association filed an unfair practice charge, accompanied by an application for interim relief, alleging that the Borough of Highland Park violated the Act when it issued e-mails to public safety dispatchers during negotiations that required the dispatchers to work the actual day of a holiday to receive holiday pay. The Borough responded that it was enforcing the parties' contract language and denied any past practice regarding holiday pay. The Commission designee found that since material facts are in dispute, the Association has not established a likelihood that it will prevail on its legal and factual allegations, a requisite element to obtain interim relief. The designee denied the Association's application for interim relief.

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Appearances:

For the Respondent, Apruzzese, McDermott, Mastro & Murphy, attorneys (Arthur R. Thibault Jr., attorney)

For the Charging Party, Oxfeld Cohen, LLC, attorneys (Arnold Shep Cohen, attorney)

INTERLOCUTORY DECISION

On April 29, 2008, Middlesex Council No. 7, New Jersey Civil Service Association ("Association") filed an unfair practice charge with the Public Employment Relations Commission alleging that the Borough of Highland Park ("Borough") violated subsection 5.4a(1), (3) and (5)^{1/} of the New Jersey Employer-Employee

^{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."; "(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

(continued...)

Relations Act, N.J.S.A. 34:13A-1 et seq., when it issued e-mails to public safety dispatchers stating that if a dispatcher is not scheduled to work the actual day of a holiday, they would not receive any compensation/time off for the holiday.

The charge was accompanied by an application for interim relief. An Order to Show Cause was signed on May 2, 2008 scheduling a telephone conference call return date for May 16, 2008. Both parties submitted briefs and affidavits and argued orally on the return date. The following facts appear.

The Borough and Association are parties to a collective negotiations agreement with a duration of January 2004 to December 2007.

Article V is entitled Overtime and provides in section E:

Holiday pay will be paid to a public safety dispatcher who is scheduled to work on the actual day of a holiday, regardless of when the holiday is observed by other unit members and/or regardless of the day that Borough Hall is closed. Holiday pay will not be paid to a public safety dispatcher who is scheduled to work on the day a holiday is observed by other unit members, either because the holiday falls on a Saturday or Sunday, or because the holiday is observed on a different day by mutual consent of the Employee and the Association. When a public safety dispatcher actually works on the actual day of a holiday, he or she shall receive holiday pay in accordance with the

1/ (...continued)
concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative.

provisions of sub-paragraphs C or D, whichever sub-paragraph applies.

Article V sections C and D provide:

C. Except as provided in sub-paragraph D, employees requested or scheduled to work any holiday included in Article XII shall be paid their regular day's pay plus an additional rate of time and one-half (1 1/2) in pay.

D. Employees requested or scheduled to work on New Year's Day, July 4th, Thanksgiving Day, or Christmas Day shall be paid their regular day's pay plus an additional rate of two (2) times in pay.

Article XII is entitled Holidays and sets forth the list of holidays that full-time employees shall be entitled to and the general guidelines for when the holidays will be observed. Good Friday is on the list. Easter Sunday is not on the list.

Karen Connors is a public safety dispatcher and president of Council No. 7. She only works weekends. According to the Association's charge, she worked on Easter Sunday, March 23, 2008 and was paid for the Good Friday holiday on March 21. The parties are currently in negotiations for a successor agreement and held a negotiations session on April 8 during which many items were discussed including holidays.

On April 9, 2008, Connors received an e-mail from Captain Scott J. Golden that states "You are not entitled to the holiday on March 23rd. You need to submit a new time-off request utilizing some other form of time-off for that shift." On April

10, Captain Golden sent all public safety dispatchers an e-mail stating:

Please be advised that as of March 21, 2008 the contract provisions regarding Holiday Pay are being adhered to. Specifically, Article V, Section E which states that *"Holiday pay will be paid to a public safety dispatcher who is scheduled to work on the actual day of a holiday, regardless of when the holiday is observed by other unit members and/or regardless of the day that Borough Hall is closed. Holiday pay will not be paid to a public safety dispatcher who is scheduled to work on the day a holiday is observed by other unit members, either because the holiday falls on a Saturday or Sunday or because the holiday is observed on a different day by mutual consent of the Employee and the Association. When a public safety dispatcher actually works on the actual day of a holiday, he or she shall receive holiday pay in accordance with the provisions of sub-paragraphs C or D, whichever sub-paragraph applies."*

Additionally, you should be aware that as per contractual agreement, if you are not scheduled to work the actual holiday you will not receive any compensation/time off for that day. Schedules have been updated to reflect this.

Please feel free to contact me with any questions regarding this.

The Association argues that the e-mails from Captain Golden repudiate the parties' agreement as to holiday pay because they were issued during negotiations without negotiation with or agreement from the Association. It further argues that the e-mails violate the parties' past practice of giving dispatchers the same holidays received by other unit members.

The Borough denies the past practice and argues that it is not repudiating the contract, but is enforcing the contract as written. It further contends that there is no irreparable harm because there are adequate remedies to address a violation if found.


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 parties disagree as to the interpretation of the contract regarding overtime and holiday pay. This is a dispute as to the material facts of the charge. The Borough also disputes that there was a past practice as set forth by the Association. To counter the Borough's contention, the Association has not proffered any concrete proof of the past practice with the exception of the certification of Connors. Thus, at this early stage of the case, I find that the

Association has not carried its burden of establishing a substantial likelihood of success on the merits, a requisite element to obtain interim relief. Accordingly, this case will proceed through the normal unfair practice processing mechanism.

ORDER

The Association's application for interim relief is denied.


Mary E. Hennessy-Shotter
Commission Designee

DATED: May 16, 2008
Trenton, New Jersey