

I.R. No. 2009-10

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF CRANBURY,

Respondent,

-and-

Docket No. CO-2009-064

CRANBURY FOP LODGE NO. 68,

Charging Party.

SYNOPSIS

A Commission Designee denies a request by Cranbury FOP Lodge No. 68 to restrain the Township of Cranbury from implementing an ordinance containing trial and probation periods, procedural and compensation issues regarding promotions, except with respect to the length of the probationary period. The Township is restrained from implementing more than a three-month probationary period without negotiations with the FOP. The Township is also required to engage in negotiations with the FOP regarding trial and probationary periods, compensation and procedures concerning promotions.

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Appearances:

For the Respondent, Ruderman & Glickman, P.C. (Mark Ruderman, of counsel, John Boppert, on the brief)

For the Charging Party, Klatsky, Sciarrabone & DeFillippo, attorneys (David DeFillippo, of counsel)

INTERLOCUTORY DECISION

An unfair practice charge was filed with the Public Employment Relations Commission (Commission) on August 25, 2008 by Cranbury FOP Lodge No. 68 (FOP) alleging that the Township of Cranbury (Township) violated 5.4a(1), (2), (3), (5) and (7)^{1/} of

^{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. (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. (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 (continued...)

the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., (Act.). The FOP alleged the Township violated the Act by implementing an ordinance that unilaterally set promotional procedures including trial and probationary periods prior to permanent appointment.

The unfair practice charge was accompanied by an application for interim relief seeking to restrain the Township from implementing the ordinance, trial and probationary periods. An Order to Show Cause was signed on September 8, 2008 originally scheduling a hearing for October 7, 2008. By agreement of the parties, the return date was rescheduled for October 23, 2008, as a telephone conference call. Both parties submitted briefs, affidavits and exhibits in support of their respective positions and argued orally on the return date.

The FOP argued that the Township changed terms and conditions of employment during the time they have been negotiating for a new collective agreement. The Township argued it merely codified the practice the parties had followed regarding certain promotional procedures.

The following pertinent facts appear:

1/ (...continued)
the majority representative. (7) Violating any of the rules and regulations established by the commission."

The Township and FOP are parties to a collective agreement which expired on December 31, 2007 and they are currently engaged in interest arbitration for a new collective agreement.

On July 14, 2008, the Township adopted an ordinance and the chief of police issued a memorandum containing promotional procedures which contained in pertinent part that the chief could: 1) assign a successful promotional candidate to a trial period of up to six months without a title or compensation change; 2) move a candidate from the trial period to a probationary period with the new title and increased compensation for up to one year; and 3) remove the candidate from the probationary period and reduce the employees' rank in accordance with certain notice, hearing and other procedures included in the ordinance. The Township did not negotiate with the FOP over the content of the ordinance.

By letter of July 18, 2008, the FOP objected to the above elements of the ordinance and other procedural issues, and also requested the criteria for promotion and scoring information. Between July 23 and 30, 2008, the FOP's attorney and the Township's Administrator exchanged written communication regarding the above issues but no resolution was reached. The FOP had demanded negotiations over the trial and probationary periods, compensation and other procedural matters.

On July 31, 2008, the Township announced that Lt. Varga was made an acting captain and Sgt. Owens an acting lieutenant both in a trial period without additional compensation. During the conference call, the Township noted that Lt. Varga had been permanently promoted to captain.

The FOP submitted affidavits showing that between 2002-2004, several officers were permanently promoted without serving in either a trial or probationary period. The Township, through affidavits, demonstrated that between 2001-2004 several officers being considered for permanent promotion were appointed to "acting" capacities without additional compensation and then were all subject to a three-month probationary period after the trial period. The Township's Employee Manual provides in pertinent part:

Employees who are promoted shall be subject to a three (3) month probationary period in the new position.

Article I, §C of the parties contract, incorporates Township ordinances. The Township, by affidavit, expressed its willingness to negotiate over procedures for promotion.

ANALYSIS

The Commission has held that as long as employers retain the prerogative to determine the criteria for promotion, whether certain employees are qualified for promotion, and whether an employee's performance during a trial and or probationary period

warrants a permanent promotion, trial and probationary periods are negotiable terms and conditions of employment. See West Milford Bd. Ed., P.E.R.C. No. 94-41, 19 NJPER 574 (¶24271 1993); Howell Tp. Bd. Ed., P.E.R.C. No. 92-101, 18 NJPER 174 (¶23085 1992); City of Vineland, P.E.R.C. No. 91-57, 17 NJPER 58 (¶22025 1990).

Additionally, while criteria for promotion are not negotiable, compensation and promotional procedures are negotiable terms and conditions of employment. N.J. Department of Human Services, P.E.R.C. No. 97-106, 23 NJPER 194, 197 (¶28096 1997).

Here, the Township has expressed its willingness to negotiate over promotional procedures but argued it did not negotiate over the procedures and compensation issue set forth in the ordinance because it claimed that the ordinance merely codified the parties promotion practice. The practice, it claimed, included the use of up to a six-month trial period without additional compensation and subsequently the use of a probationary period which included the higher compensation rate.

The FOP disputed such a practice, submitting evidence of promotions which did not follow the alleged practice, and argued that the terms of the ordinance be restrained until the parties negotiated over trial and probationary periods, compensation and promotional procedures. The Township, however, responded with

evidence of several promotions which used trial and probationary periods following what the Township claimed to be the promotional practice.

Having reviewed the evidence and arguments submitted in this matter, I find a dispute exists over material facts, whether the parties have had a promotional practice, and if so, what were the terms of that practice. Where there is a dispute over material facts, interim relief must be denied because there is insufficient basis to conclude that the charging party has a substantial likelihood of success on the merits of the charge. Union Cty., P.E.R.C. No. 2003-46, 29 NJPER 15 (13 2002).

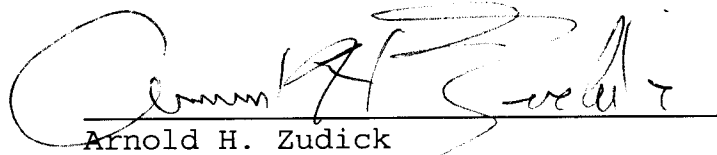
Based upon the above facts and analysis, the application is denied except to the extent the Township implemented a one-year probationary period. The Township's own evidence shows it had applied no more than a three-month probationary period.

Denying the FOP's request for a restraint of the ordinance, however, does not mean the Township is absolved of its obligation to negotiate. Given the FOP's demand, and noting the parties are in negotiations for a new collective agreement, the Township is immediately required to engage in negotiations with the FOP over trial and probationary periods, compensation and procedures related to promotion.

ORDER

The application for a restraint is denied except with respect to the length of the probationary period. The Township is restrained from implementing more than a three-month promotional probationary period without negotiations with the FOP.

The Township must immediately engage in negotiations regarding trial and probationary periods, compensation and procedures regarding promotion.



Arnold H. Zudick
Commission Designee

DATED: November 5, 2008
Trenton, New Jersey