

I.R. NO. 2011-41

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF PARAMUS,

Respondent,

-and-

Docket No. CO-2011-266

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL NO. 97,

Charging Party.

SYNOPSIS

A Commission Designee denies interim relief on an application filed by International Brotherhood of Teamsters, Local 97. Local 97 alleged that the Borough of Paramus unilaterally altered, or repudiated, a contractual provision and the past practice of the parties by informing Local 97 bargaining unit members of the Sanitation Division that they must remain at their places of employment for a full 8 hour shift whether or not they had completed the route in less than eight hours. The Designee found that due to the material factual dispute in the parties' perception of the practice, along with the lack of clarity in the contractual language, Local 97 had failed to demonstrate a substantial likelihood of success on the merits of the charge.

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Appearances:

For the Respondent
Cleary, Giacobbe, Alfieri & Jacobs, attorneys
(Matthew J. Giacobbe, of counsel)

For the Charging Party
Mets, Schiro & McGovern, attorneys
(Ryan S. Carlson, of counsel)

INTERLOCUTORY DECISION

On January 7, 2011, the International Brotherhood of Teamsters, Local No. 97 ("Local 97") filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the Borough of Paramus violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act). Specifically, the charge alleges that the Borough violated 5.4a(1) and (5) ^{1/} on or about October 26, 2010, when it

^{1/} These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the
(continued...)"

unilaterally repudiated the language of Article XV, Section 7, and the past practice of the parties, by informing Local 97 bargaining unit members of the Sanitation Division that they must remain at their places of employment for a full 8 hour shift whether or not they had completed the route in less than eight hours.

The charge was accompanied by an application for interim relief, seeking temporary restraints. An Order to Show Cause was signed on February 10, 2011, without temporary restraints, scheduling a telephone conference call return date for March 3, 2011.^{2/} Both parties submitted briefs, affidavits and exhibits and argued orally on March 17, 2011. The application seeks an Order enjoining the Borough from causing irreparable harm to Local 97 bargaining unit members and to maintain the status quo pending expedited arbitration of the issue. The following facts appear.

1/ (...continued)
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."

2/ This matter was reassigned from the original Commission Designee to me on or about February 23, 2011. The original return date was twice adjourned at the Borough's request, with Charging Party's consent. The Borough filed its response on March 15, 2011.

Local 97 is the majority representative of the Borough's permanent blue collar workers, including the Sanitation Division and Shade Tree and Parks Department. The Borough and Local 97 are parties to a collective agreement which expired on December 31, 2010. That agreement provides at Article XV, Section 7, in pertinent part as follows:

Hours of Work.

3. The basic workweek shall consist of forty (40) hours. The basic workday shall consist of eight (8) hours per day exclusive of a thirty (30) minute lunch period Monday through Friday.

4. The normal starting time shall be between 7:00 a.m. - 8:00 a.m. and the normal quitting time shall be between 3:30 p.m. - 4:30 p.m. However, the Borough reserves the right to fix the starting time as early as 6:00 a.m. when required.

5. Employees who are required by the Borough to perform seasonal work and to start before 6:00 a.m. shall work only seven (7) hours but shall get paid for eight (8) hours at the regular rate of pay.

7. Sanitation and/or Recycling and the employees assigned thereto on an incentive plan [sic]. When employees assigned to the Sanitation Division have completed their assigned routes, they shall receive pay for 8 hours irrespective of the hours worked. The Provisions of Paragraphs No. 3, 4 and 5 shall not apply to the Sanitation Division.

(emphasis added).

On September 27, 2010, Local 97 filed a Notification of Its Intention to Commence Negotiations with the Borough for a

successor Agreement pursuant to N.J.A.C. 19:12-21(a). The parties are currently in negotiations.

On November 2, 2010, Local 97 filed a Request for a Panel of Arbitrators to submit the grievance on this issue to binding arbitration in accordance with the parties' agreement.

The Borough submitted certifications from Patrick Guaschino, Vice President of Local 97, Hassan Brown, Shop Steward and Karl Vander-Sluis, Chief Shop Steward.

Patrick Guaschino is Vice President of Local 97. According to Guaschino's certification, the parties have always interpreted Article XV, Section 7 of the agreement as permitting bargaining unit members in the sanitation division to leave work upon the completion of their assigned route and receive a full 8 hours pay even if they have completed their route before 8 hours, as an incentive for bargaining unit members to timely and efficiently complete their assigned routes.

Hassan Brown has been employed by the Borough as a sanitation driver for approximately 8 years and is Local 97's Shop Steward. Brown asserts that he was permitted to go home and received 8 hours of pay after completing his route in less than eight hours, and that neither he nor other bargaining unit members in the sanitation division have ever been told that they must remain at the Borough for additional duties after their routes were completed. Brown's father, John Melton, was formerly

employed in the sanitation division and recalls that for at least the past thirty years, the Borough has permitted Local 97 bargaining unit members to go home after their routes were completed and paid them for 8 hours if the route was completed in less than eight hours.

Karl Vander-Sluis has been employed by the Borough in its sewer division since September 1, 2001. Vander-Sluis asserts that Local 97 bargaining members have never been told that they must remain at their place of employment for additional duties after route completion, and have always received 8 hours pay if the route was completed in less than eight hours.

ANALYSIS

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).

Local 97 argues that the parties have always interpreted Article XV, Section 7 of the agreement as an "incentive route clause," to encourage bargaining unit members to complete their assigned routes in a timely and efficient manner. Local 97 asserts that by unilaterally changing a longstanding past practice, the Borough has repudiated the clause, caused irreparable harm by chilling and undermining Local 97's ability to represent its members, and reduced the confidence of their members during ongoing successor negotiations.

The Borough argues that there is no language in the provision which permits employees to leave work prior to the expiration of 8 hours; providing only that employees will be compensated for eight hours of work, regardless of how long it takes for them to complete their route, and says nothing about permitting employees to return home once the route is complete. The Borough cites a recent Appellate Division decision in Morris County Sheriff's Office v. Morris County PBA, 418 N.J. Super. 64 (App Div. 2011) (holding that the elimination of wasteful practices such as those permitting employees to leave work and return home while still being paid, is within an employer's managerial prerogative, and thus non-negotiable, because it implicates an essential duty of government to spend public funds wisely). The Borough further argues that granting interim relief on this issue "would jeopardize the public finances of the

Borough as it would constitute a premature and inefficient allocation of taxpayer dollars without the Commission first issuing its ruling with regard to the propriety of same." The Borough also asserts that representatives of Local 97 have previously agreed that employees must work a full eight hour day, during a closed work session with the Mayor and council on August 26, 2008, and in a settlement agreement on a prior unfair practice charge (CE 2009-10); thus, no past practice has been clearly established.

This application presents multiple factual disputes. The parties disagree about both the meaning of the contractual language, -- i.e. whether Article XV, Section 7 provides for payment for an eight-hour shift whether the assigned route takes less, or more, than eight hours to complete, and the existence and or extent of the parties' practice concerning employees' permission to leave work after completion of their assigned routes, but prior to the scheduled completion of the shift.

Local 97 has submitted this issue to arbitration, and it may be appropriate to defer these issues to that process. See State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 41 (¶ 15191 1984) (Commission held that charge allegations stating a mere breach of contract claim do not warrant the exercise of the Commission's unfair practice jurisdiction; noting that the National Labor Relations Board has

refused to issue complaints when all that is involved is a good faith dispute over the interpretation of an ambiguous contract clause.)

Due to the material factual dispute in the parties' perception of the practice, along with the lack of clarity in the contractual language, I cannot find that Local 97 has demonstrated a substantial likelihood of success on the merits of its claim that the Borough unilaterally altered, or repudiated, Article XV, Section 7.

Since at least one element of the interim relief standard cannot be met, this application must be denied. Having determined that charging parties lack a substantial likelihood of success, I need not reach analysis of the irreparable harm standard. This charge will be returned to investigation for further processing.

Accordingly, based upon the above findings and analysis, I issue the following:

ORDER

The application for interim relief is denied.



Patricia Taylor Todd
Commission Designee

DATED: March 30, 2011
Trenton, New Jersey