

I.R. NO. 2011-46

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF TRENTON,

Respondent,

-and-

Docket No. CO-2011-263

POLICEMEN'S BENEVOLENT ASSOCIATION
LOCAL 11 and TRENTON SUPERIOR
OFFICERS ASSOCIATION,

Charging Parties.

SYNOPSIS

A Commission Designee denies the PBA's and SOA's application for interim relief on its unfair practice charge alleging the City of Trenton unilaterally changed its off-duty and non-police employment policy without negotiations. The designee finds that the PBA and SOA did not demonstrate a substantial likelihood of success on the merits of the case.

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Appearances:

For the Respondent
Ruderman & Glickman, attorneys
(Steven S. Glickman, of counsel)

For the Charging Parties
Kroll Heineman, attorneys
(Raymond Heineman, of counsel)

INTERLOCUTORY DECISION

On January 6, 2011, Policemen's Benevolent Association Local 11 (PBA) and the Trenton Superior Officers Association (SOA) filed an unfair practice charge against the City of Trenton (City). The PBA and SOA allege that since December 28, 2010, the City unilaterally implemented changes to the Off-Duty and Non-Police Employment Policy without negotiations in violation of 5.4a(1) and (5)^{1/} of the New Jersey Employer-Employee Relations

^{1/} These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with,
(continued...)"

Act, N.J.S.A. 34:13A-1 et seq. (Act). On February 22, 2011, the PBA and SOA filed an application for interim relief, a proposed Order to Show Cause, exhibits, a certification and brief. The application seeks an Order enjoining the City from unilaterally changing terms and conditions of employment during negotiations.

On April 6, 2011,^{2/} I issued an Order to Show Cause, specifying May 9, 2011 as the return date for argument. I also directed the City to file a response by April 11, 2011, together with proof of service upon the PBA and SOA. On the return date, the parties argued their cases. The following facts appear.

The PBA and SOA are signatories to collective negotiations agreements with the City. The effective date of the agreement between the PBA and the City is January 1, 2006 through December 31, 2010. The effective date of the agreement between the SOA and the City is January 1, 2006 through December 31, 2011. The PBA and the City are entering into negotiations for a new agreement.

1/ (...continued)
restraining or coercing 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 the majority representative."

2/ By agreement of the parties, the interim relief application was held in abeyance from the date of its filing until April for the purpose of exploring a voluntary resolution. No settlement was achieved.

The uncontested facts as presented by the PBA and SOA are as follows:

On or about April 12, 2002, the Employer issued General Order 01-7 regarding guidelines for off-duty and non-police employment by police officers employed by the City of Trenton. On or about December 28, 2010, the Employer issued a Revision of General Order 01-7 (the "Order") regarding off-duty and non-police employment, effective January 1, 2011. The new amendments to the General Order deal primarily with the methods of assignment and rates of pay for off-duty assignments,^{3/} as well as strict regulations regarding non-police employment.

Where the 2002 Order merely required reporting to the City outside and off-duty employment, the purpose of the 2010 Order is to "regulate and monitor those members of the Department who engage in approved outside employment." To effectuate this purpose, the Order requires an officer to submit a request to work off-duty employment, and if approved, mandates that the officer submit a schedule of his/her off-duty employment. Previously, permission was not required from the City, mere notification was sufficient for off-duty or outside employment. The Order also -- for the first time -- prohibits officers from engaging in non-police construction traffic control.

^{3/} Although an uncontested fact, nowhere in the General Order are rates of pay addressed.

The City implemented all of these changes without negotiations or discussion with the Union or its members.^{4/}

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 Commission has held that an employer violates its duty to negotiate when it unilaterally alters an existing practice or work rule governing a term and condition of employment even where that practice or rule is not specifically set forth in a collective agreement. Tp. of Middletown, P.E.R.C. No. 98-77, 24 NJPER 28 (¶29016 1997), aff'd 334 N.J. Super. 512 (App. Div. 1999), aff'd 166 N.J. 122 (2000); Sayreville Bd. of Ed., P.E.R.C. No. 83-105, 9 NJPER 138 (¶14066 1983). Several aspects of off-duty employment are mandatorily negotiable. See Township of

^{4/} Respondent submitted argument to the contrary, however, no facts were proffered to support same.

Montclair, P.E.R.C. No. 91-13, 16 NJPER 449 (¶21194 1990);
Township of Mine Hill, P.E.R.C. No.87-93, 13 NJPER 125 (¶18056
1987). The Commission has also held that the allocation of off-
duty employment opportunities among qualified police officers is,
in general, mandatorily negotiable. Hanover Township, P.E.R.C.
No. 94-85, 20 NJPER 85 (¶25039 1994). However, an employer has a
managerial prerogative to administer the off-duty employment
system and to require approval before the work is performed.
City of Paterson, P.E.R.C. No. 2004-6, 29 NJPER 120 (2003).

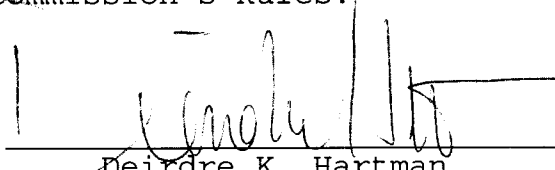
The PBA and SOA argue that the City unilaterally changed the
off-duty and non-police work policy to "regulate and monitor"
outside employment, specifically requiring an officer to obtain
approval from the City, and changed construction traffic control
from non-police work to off-duty work. These changes while
unilaterally made, appear to implicate the administration and
approval of outside or off-duty employment, which are managerial
prerogatives. Paterson.

Having considered all of the facts and arguments presented
in this matter, I conclude that one of the requirements for
securing interim relief -- a substantial likelihood of success on
the merits of the case -- has not been met. However, other
provisions of the revised order, not presented herein, may be
mandatorily negotiable under Montclair and Mine Hill.

Accordingly, a plenary hearing may be necessary to establish whether or not those provisions have been unilaterally changed.

ORDER

The application for interim relief is denied. The charge will be forwarded to the Director of Unfair Practices for processing in accordance with the Commission's Rules.



Deirdre K. Hartman
Commission Designee

DATED: June 10, 2011
Trenton, New Jersey