

D.U.P. No. 2012-4

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

CITY OF TRENTON,

Respondent,

-and-

Docket No. CO-2010-461

TRENTON SUPERIOR OFFICERS
ASSOCIATION AND PBA LOCAL
11,

Charging Parties.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by the Trenton Superior Officers Association and PBA Local 11 against the City of Trenton. The charge alleges that the City violated 5.4a(1) and (5) of the Act when it ceased permitting employees in both units from driving police cars to and from their homes.

The Commission has held that the decision to allow employees to use employer-owned vehicles for commuting purposes is a managerial prerogative, but an employer is required to negotiate over offsetting compensation for the economic loss suffered by its employees. The Director dismissed the instant charge because the charging parties did not allege that they requested negotiations over offsetting compensation, and absent such requests, the City could not have refused to negotiate in good faith. The filing of an unfair practice charge is not a request to negotiate. Monroe Tp. Bd. Ed., P.E.R.C. No. 85-35, 10 NJPER 569 (¶15265 1984), aff'g H.E. No. 84-66, 10 NJPER 400 (¶15186 1984).

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

CITY OF TRENTON,

Respondent,

-and-

Docket No. CO-2010-461

TRENTON SUPERIOR OFFICERS
ASSOCIATION AND PBA LOCAL
11,

Charging Parties.

Appearances:

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

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

REFUSAL TO ISSUE COMPLAINT

On June 1, 2010, the Trenton Superior Officers Association (Association) and PBA Local 11 (Local 11) filed an unfair practice charge against the City of Trenton (City). The charge alleges that on May 1, 2010, the City violated 5.4a(1) and (5)^{1/}

^{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; 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 (continued...)"

of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq. (Act) when it ceased permitting employees in both units from driving police cars to and from their homes.

The Commission has authority to issue a complaint where it appears that the Charging Party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the complaint issuance standard has not been met, I may decline to issue a complaint. N.J.A.C. 19:14-2.3. On August 16, 2011, I wrote to the parties, advising that I was not inclined to issue a complaint in this matter and set forth reasons for that conclusion. The parties were provided an opportunity to respond. Neither party filed a response. I find these facts.

On May 1, 2010, the City ceased permitting employees in both units from commuting to and from headquarters in police cars. The City's decision was made unilaterally and without prior notice to the charging parties.

ANALYSIS

The Commission has held that the decision to allow employees to use employer-owned vehicles for commuting purposes is a managerial prerogative, but an employer is required to negotiate

1/ (...continued)
representative."

over offsetting compensation for the economic loss suffered by its employees. Morris Cty. and Morris Cty. Park Commission, P.E.R.C. No. 83-31, 8 NJPER 561 (¶13259 1982), aff'd 10 NJPER 103 (¶15052 App. Div. 1984), certif. den. 97 N.J. 672 (1984). See also Union Cty. Pros'r, P.E.R.C. No. 2010-91, 36 NJPER 233 (¶83 2010).

The charge filed by the Association and Local 11 does not allege that they requested negotiations over offsetting compensation for the economic loss suffered by employees who were no longer permitted to use police cars for commutation. The filing of an unfair practice charge is not a request to negotiate. In Monroe Tp. Bd. Ed., P.E.R.C. No. 85-35, 10 NJPER 569 (¶15265 1984), aff'g H.E. No. 84-66, 10 NJPER 400 (¶15186 1984), the Board subcontracted its cafeteria operation and did not offer to negotiate over the severable aspects of the decision such as procedural issues, notice, severance pay and recall rights. However, the union did not demand negotiations over those items; instead, it alleged that the Board had the duty to come forward and offer to negotiate prior to implementing its decision. The Commission held that since the decision to subcontract was managerial, and since the Board was not repudiating the parties' contract or altering existing terms and conditions of employment, the union had the burden of demanding

negotiations on the severable aspects of the managerial decision.

The Commission held:

The important point here, however, is that the Association had the obligation to request negotiations on severance pay and related matters, and the Board had the right to an opportunity to respond, before the filing of an unfair practice charge. [*Id.*, 10 NJPER at 570]

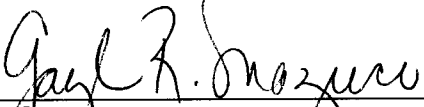
See State-Operated Sch. Dist. of the City of Newark, P.E.R.C. No. 98-68, 24 NJPER 11 (¶29007 1997), *aff'g* H.E. No. 97-29, 23 NJPER 327 (¶28149 1997); Trenton Bd. of Ed., P.E.R.C. No. 88-16, 13 NJPER 714 (¶18266 1987) (Commission dismissed Complaint where charge alleged Board violated Act when it unilaterally increased unit member's workload and refused to negotiate additional compensation for the increase, where Association never requested negotiations over compensation).

The Association and Local 11 have not alleged that they requested negotiations over offsetting compensation. Absent such requests, the City could not have refused to negotiate in good faith. Nor can I infer from the remedy requested by the charging parties - the restoration of the status quo "pending good faith negotiations over the effects of its decision" - that a request to negotiate offsetting compensation was made.

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Gayl R. Mazuco
Director of Unfair Practices

DATED: September 6, 2011
Trenton, New Jersey

This decision may be appealed to the Commission pursuant to
N.J.A.C. 19:14-2.3.

Any appeal is due by September 16, 2011.