

D.U.P. No. 2012-6

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

In the Matter of

TOWNSHIP OF EDISON,

Respondent,

-and-

Docket No. CO-2011-120

INTERNATIONAL ASSOCIATION OF  
FIREFIGHTERS LOCAL 1197,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by the International Association of Firefighters Local 1197 (Local 1197) against Edison Township. The charge alleges that the Township advertised for a civilian fire inspector to replace bargaining unit work without prior negotiations with Local 1197 in violation of 5.4a(1) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act). The Township denies violating the Act, asserting that its staffing needs required it to assign all firefighters to firefighter duties, and that it has a managerial prerogative to assign a civilian employee to the fire inspector position.

The Director found that the reason for the Township's decision to hire civilians to perform inspections which have been performed exclusively by firefighter/inspectors was to bolster the number of firefighters available for duty on all shifts. The Director found that Local 1197 proffered no facts to dispute the reduction in the number of sworn firefighters, the need to place more firefighters in field positions, or to support its contention that the civilianization is solely based on cost savings. The Director concluded that the Township's interests outweigh those of Local 1197, and the Township has a managerial prerogative to civilianize the fire inspector position.

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Appearances:

For the Respondent, DeCotiis, FitzPatrick & Cole, LLP  
(Louis N. Rainone, of counsel)

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

REFUSAL TO ISSUE COMPLAINT

On September 22, 2010, International Association of Firefighters Local 1197 (Local 1197) filed an unfair practice charge against Edison Township, together with an application for interim relief. The charge alleges that on or about August 19, 2010, the Township advertised for a civilian fire inspector to replace bargaining unit work without prior negotiations with Local 1197. The Township's conduct allegedly violates 5.4a(1)

and (5)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act).

The Township denies violating the Act, asserting that its staffing needs required it to assign all firefighters to firefighter duties, and that it has a managerial prerogative to assign a civilian employee to the fire inspector position.

On November 29, 2010, a Commission Designee denied the application for interim relief, finding that Local 1197 had not demonstrated a substantial likelihood of success on the merits of its case.  Tp. of Edison, I.R. No. 2011-25, 36  NJPER 469 (¶182 2010).

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. Based upon the following, I find that the complaint issuance standard has not been met.

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<sup>1/</sup> 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. (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."

Local 1197 represents firefighters, firefighters/EMTs and firefighter/inspectors employed by the Township. The parties' most recent collective negotiations agreement extended from January 1, 2005 through December 31, 2009. A petition to initiate interest arbitration was filed on June 23, 2010 (IA-2010-119).

Article 4 "Duties of Firefighters" of the agreement provides that unit employees may be assigned to perform "any duties related to firefighting, rescue, salvage, fire prevention, training, care and limited maintenance of firefighting equipment apparatus, overhaul work, maintenance or housekeeping of firehouses and community relations."

The Township employs three firefighter/inspectors who perform "life hazard inspections in schools, warehouses and other larger buildings, smaller regularly scheduled inspections and are also trained firefighters so that they often assist firefighters on the scene of a fire." Firefighter/inspectors are trained in fire prevention and are required to take continuing education courses. Inspectors have been included in the unit for many years. Fire inspectors work weekdays from 8 a.m. to 5 p.m.

The number of sworn firefighters (including inspectors) employed by the Township has declined from 148 in 2005 to 125 in 2010. Before July 14, 2010, minimum staffing was set at 22 firefighters and officers per company. After July 14, the

minimum was reduced to 20. On an unspecified date, the Township determined to transfer fire inspection duties to the Department of Planning and Engineering.

On or about August 19, 2010, the Township posted a notice soliciting applicants for two civilian positions, "fire official" and "fire prevention." The Township anticipates that inspection duties shall be performed by two civilian employees in the Department of Planning and Engineering. The three firefighter/inspectors ". . . will be returned to an engine or ladder company and included in the 24/7/365 duty schedule." They will not be laid off or demoted. The assistant public safety director certifies that the transfer of inspection duties to the Department of Planning and Engineering ". . . was necessary in order to provide the maximum number of sworn firefighters and officers available for community fire protection while at the same time upholding its duty to the taxpayers."

On or about October 29, 2010, Local 1197 filed a civil action in New Jersey Superior Court seeking to reverse the Township's decision to reduce minimum staffing at each fire company from 22 to 20.

#### ANALYSIS

The unit work rule provides that an employer must negotiate before using non-unit employees to do work traditionally performed by unit employees alone. See Hudson Cty Police Dept.,

P.E.R.C. No. 2004-14, 29 NJPER 409, 410 (¶136 2003). In City of Jersey City v. Jersey City PBA, 154 N.J. 555, 568 (1998), our Supreme Court held that the negotiability balancing test set forth in Local 195, IFPTE v. State, 88 N.J. 393 (1982) must be explicitly applied to determine whether in a given set of circumstances, an employer may unilaterally transfer duties previously performed by police officers to civilians. That test provides:

[A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions. 88 N.J. at 404-405.

In applying the dispositive third prong, the Court agreed with the City that its actions (civilianization of dispatching duties) were taken primarily to augment its ability to combat crime by increasing the number of police officers in field positions. It concluded that because the City implemented the reorganization for the purpose of improving the police department's

"effectiveness and performance," the City's actions constituted an inherent policy determination that under Local 195, would be impermissibly hampered by negotiations. Id. at 573.

The Commission applied Jersey City in Bogota Borough, P.E.R.C. No. 99-77, 25 NJPER 129 (¶30058 1999), where the employer created a civilian dispatcher position and announced that it planned to hire civilians to perform dispatching duties that had for many years been performed exclusively by police officers. Following a hearing examiner's report (H.E. No. 98-10, 24 NJPER 158 (¶29076 1998)) supplemented by its own findings of fact, the Commission determined that the Borough acted ". . . to reduce police overtime costs, maintain department resources and avoid layoffs, improve supervision and increase the availability of superior and other police officers for patrol [and other] duties." Bogota at 25 NJPER 131. The Commission noted that all those factors are "legally significant in applying the negotiability balancing test set forth in Local 195." Id. The Commission found that ". . . the balance weighs in the Borough's favor and that negotiations would significantly interfere with the Borough's governmental policy decision to civilianize dispatching functions to accomplish these goals." 25 NJPER at 132. The Commission noted that "after a plenary hearing and our review of the record, [the facts] indicate that economics was not the only basis for the Borough's action." 25 NJPER at 133.

The Township's decision to hire civilians to perform inspections which have been performed exclusively by firefighter/inspectors is equivalent to the employers' decisions in Jersey City and Bogota to civilianize dispatching duties. The Township's purpose is to bolster the number of firefighters available for duty on all shifts and, as it certified, to ". . . uphold its duty to taxpayers." Additionally, no firefighters will be laid off as a consequence of the Township's decision, just as no officers were laid off in Jersey City and Bogota.

Although Local 1197 questions the Township's motives for civilianizing the work, it proffered no facts to dispute the reduction in the number of sworn firefighters, the need to place more firefighters in field positions, or to support its contention that the civilianization is solely based on cost savings. Contrast Jersey City, 154 N.J. at 582; See Bogota (the employer's desire to reduce costs did not defeat its managerial prerogative to civilianize under Jersey City when that desire was one of many factors considered).

Local 1197 also alleges that the Township's actions are distinguishable from Jersey City because the nature and structure of the fire inspector position remains unchanged, and therefore the Township's actions do not constitute a reorganization. However, Jersey City instructs that an employer may have a prerogative to assign firefighters to field positions even if

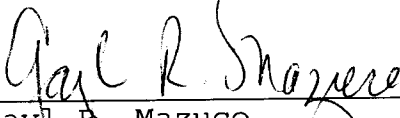


there is no change in the nature or structure of the jobs from which they were transferred. Bogota.

Accordingly, pursuant to these facts, the Township's interests outweigh those of Local 1197, and the Township has a managerial prerogative to civilianize the fire inspector position.

ORDER

The unfair practice charge is dismissed.

  
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Gayl R. Mazuco  
Director of Unfair Practices

DATED: September 29, 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 October 11, 2011.**