

D.U.P. No. 2012-7

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-2011-147

INTERNATIONAL ASSOCIATION OF  
FIREFIGHTERS LOCAL 2883,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by IAFF Local 2883 against Edison Township. The charge alleges that the Township posted a notice soliciting applicants for the title, "fire official," the duties of which have been performed exclusively since 2008 by the unit title, chief fire inspector. The charge alleges that the Township unlawfully failed to provide Local 2883 the opportunity to negotiate over ". . . this change in unit work," violating 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 official position.

The Director found that the Township's principal reason for deciding to hire a civilian to perform enforcement and inspections which had been performed exclusively by the chief fire inspector was to bolster the number of firefighters and officers available for duty on all shifts and that economics was not the sole basis for the Township's actions. The Director determined that the Township made a policy determination concerning how to best manage department resources and assign firefighters to maximize use of their specialized skills. The Director concluded that the Township's interests outweigh Local 2883's, and that the Township has a managerial prerogative to civilianize the chief fire inspector position.

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Appearances:

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

For the Charging Party, Cohen, Leder, Montalbano &  
Grossman, LLC (Bruce D. Leder, of counsel)

REFUSAL TO ISSUE COMPLAINT

On October 8, 2010, IAFF Local 2883 (Local 2883) filed an unfair practice charge against Edison Township, together with an application for interim relief. The charge alleges that on September 15, 2010, the Township posted a notice soliciting applicants for the title, "fire official," the duties of which have been performed exclusively since 2008 by the unit title, chief fire inspector. The charge alleges that the Township unlawfully failed to provide Local 2883 the opportunity to negotiate over ". . . this change in unit work," violating

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 official position.

On November 30, 2010, a Commission Designee denied the application for interim relief, finding that Local 2883 had not demonstrated a substantial likelihood of success on the merits of its case. Tp. of Edison, I.R. No. 2011-26, 36 NJPER 470 (¶183 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 2883 represents superior officers, including battalion chief, captain, lieutenant and chief fire inspector employed by the Township. The parties' most recent collective negotiations agreement extended from January 1, 2005 through December 31, 2009. The parties are engaged in negotiations for a successor agreement.

Charles Lynch has been employed by the Township for many years as a chief fire inspector and is included in Local 2883's unit. On September 15, 2010, Lynch read a job posting for the civilian title, "fire official." The title is located in the Township department of planning and engineering. The job description provides that the title ". . . directs the enforcement of provisions of relevant fire safety codes and related regulations, establishes day-to-day operating routines of the code enforcement agency and coordinates and supervises activities of any fire safety specialists or other staff employed by the agency." The title is responsible for inspecting or directing inspection of structures for the purpose of ". . . ascertaining and causing to be corrected any conditions liable to cause fire, [etc.]" and investigating or causing to be investigated ". . . every reported fire or explosion" within the Township.

Lynch exclusively performed those duties since March 2008.

The number of sworn firefighters and officers employed by the Township has declined from 148 in 2005 to 125, currently. 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 duties of fire inspector were transferred to the Township's department of planning and engineering. The officer will be returned to firefighting functions in an engine or ladder company and included in "the 24/7/365 duty schedule." The officer 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 taxpayers."

#### 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 POBA, 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), aff'd 26 NJPER

169 (¶31066 App. Div. 2000), certif. denied 165 N.J. 489 (2000), 26 NJPER 330 (¶31134 Sup. Ct. 2000), 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 a civilian to perform enforcement and inspections which have been performed exclusively by the chief fire inspector 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 and officers available for duty on all shifts and, as it certifies, to ". . . uphold its duty to taxpayers." No firefighters or officers will be laid off as a consequence of the Township's decision, just as no officers were laid off in Jersey City and Bogota. As in Bogota, the facts presented here indicate that economics was not the sole basis for the Township's actions.

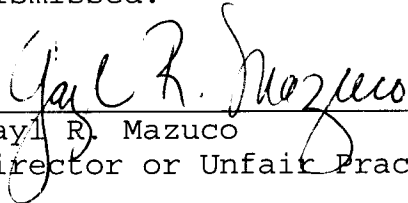
Local 2883 alleges that the Township's actions are distinguishable from Jersey City because they neither concern a reorganization of the fire department nor are the positions those that have been normally or exclusively held by civilians. However, Jersey City instructs that an employer may have a prerogative 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. Furthermore, the Township is concerned with "who would do the job," 154 N.J. at 582, in the sense that it concluded that firefighters should concentrate on field assignments instead of serving as fire inspectors. Accordingly, as in Jersey City, the Township made a policy determination concerning how to best manage department resources and assign firefighters to maximize use of their specialized skills.



Based upon these facts, the Township's interests outweigh Local 2883's, and the Township has a managerial prerogative to civilianize the chief fire inspector position.

ORDER

The unfair practice charge is dismissed.

  
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Gayl R. Mazuco  
Director of Unfair Practices

DATED: September 30, 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.**