

I.R. No. 2021-27

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Respondent,

-and-

Docket No. CO-2021-258

NEWARK FIRE OFFICERS UNION  
LOCAL 1860, IAFF, AFL-CIO,

Charging Party.

**SYNOPSIS**

A Commission Designee grants an application for interim relief based on an unfair practice charge alleging that the public employer unilaterally imposed EMS duties on fire officers, whose job descriptions did not require such duties and whose certifications for emergent medical responses lapsed. The Designee cited Maplewood Tp., P.E.R.C. No. 97-80, 23 NJPER 106 (¶28054 1997), noting that the imposed assignment of tasks weren't "incidental to or comprehended within" unit employees' job descriptions and no apparent emergency existed.

An Order restraining the employer from imposing the contested duties issued, subject to negotiations. The case was returned to regular processing.

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Appearances:

For the Respondent,  
Kenyatta K. Stewart, Corporate Counsel  
(Frances Casseus, Assistant Corporate Counsel)

For the Charging Party,  
Zazzali Fagella Nowak Kleinbaum & Friedman, attorneys  
(Paul L. Kleinbaum, of counsel)

**INTERLOCUTORY DECISION**

On June 10, 2021, Newark Fire Officers Union, Local 1860, IAFF, AFL-CIO (Local 1860) filed an unfair practice charge against the City of Newark (City), together with an application for interim relief seeking a temporary restraint. The charge alleges that on May 25, 2021, the City Public Safety Director unilaterally issued General Order B-21, requiring fire officers to perform Emergency Medical Services (EMS) duties for the first time. The charge alleges that in the past, the fire department has assisted EMS - provided by University Hospital - to lift

patients into an ambulance and officers may have performed basic first aid at a fire scene or auto accident or in the firehouse.

The charge alleges that unit employees have been trained and received certifications in AED, CPR and basic first aid, but those certifications have expired. Unit employees are allegedly not required by either their Civil Service or municipal job descriptions to perform any duties concerning "first responder or medical aid duties and responsibilities," nor are such certifications or licenses required. The charge also alleges that on May 31, 2021, Local 1860 requested the City to rescind General Order B-21 and to negotiate over the new duties and their impact. It also requested information from the City. The City allegedly hasn't replied to Local 1860. Finally, the charge alleges that parties are in negotiations for a successor collective negotiations agreement (CNA). The City's actions allegedly violate section 5.4a(5) and derivatively, a(1)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq. (Act).

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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. (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."

The application seeks an immediate restraint on the implementation of G.O. B-21; a directive requiring the City to negotiate with Local 1860 over the implementation of G.O. B-21 and its impact and a directive requiring the City to provide the information requested.

On June 10, 2021, I issued an Order to Show Cause without a temporary restraint, setting dates for the City's response, Local 1860's reply, and argument in a telephone conference call. A request for an extension of time for the City's response was provided. On June 17, 2021, the parties argued their respective cases in a telephone conference call.

The City contends that General Order B-21 is a policy determination for which its implementation is not negotiable. It avers that it has a compelling interest in providing life - saving aid in a timely manner that outweighs Local 1860's interest in negotiations. It contends that firefighters are first responders, pursuant to job descriptions; that fire officers have received training; that the Fire Chief met with Local 1860's president to discuss issues related to G.O. B-21; and that citizens will suffer irreparable harm if the requested relief is granted.

The following facts appear.

Local 1860 represents a collective negotiations unit of about 160 fire officers, including battalion chiefs, deputy

chiefs, captains and others, excluding "fire fighters and other non-supervisory employees" employed by the City, as set forth in Article 2 of the parties' expired collective negotiations agreement.

The expired agreement includes a "management rights" provision (Article 14) that reserves to the City executive management and administrative control of property, facilities and activities of employees; the determination of employee qualifications and conditions for continued employment or assignment - subject to the provisions of law; and the adoption of rules, regulations and practices limited by the terms of the agreement.

The parties are in negotiations for a successor CNA (Local 1860 President Tarantino cert., page 2).

The City is a Civil Service jurisdiction. The unit titles of fire captain, battalion chief and deputy chief are Civil Service titles. The Civil Service job specifications for each title neither identify nor include first responder duties, medical aid duties and/or concomitant licences or certifications (Local 1860 Exhibits B, C, D; Tarantino cert., para.3). On March 1, 1988, the City promulgated job descriptions for captain, battalion chief and deputy chief, none of which specifically provide for the performance of first responder duties, medical aid duties or licenses or certifications associated with such

tasks. The final responsibility enumerated for each title is a general requirement to "perform such duties" as may be directed by a superior officer or in the case of deputy chiefs, performing tasks directed by the Director and Chief, including assisting, ". . . in administrative areas, span of control and incident response" (Local 1860, Exhibit E).

The Civil Service title, "fire fighter" is defined in part as an employee who "administers emergency medical treatment." In provided "examples of work," a fire fighter "aids victims at scene of emergency by administering emergency medical treatment such as first aid, CPR or EMT treatment;" "prepares victims for transportation n an ambulance;" and "may be required to transport victims to hospital or other emergency treatment facility" (City Exhibit A). Other abilities include applying principles of emergency medical and first aid training after a period of training; administering first aid, CPR and other medical care, after a period of training; ability to apply techniques used in pulmonary and cardiac resuscitation," etc. (City Exhibit A).

Local 1860 President Anthony Tarantino is a fire captain and has been employed by the City since 1989. He certifies that during the time of his employment, fire officers were not required to be "primary responders" in EMS calls that have historically been answered by University Hospital. Tarantino admits that fire officers may perform basic first aid at the

scene of a fire, auto accidents or in the firehouse, but they are not trained to perform ALS (Advanced Life Support), BLS (Basic Life Support) or EMT-D (EMTs trained to deliver defibrillation). Nor have officers been trained to check someone's vital signs or to administer oxygen or to transport victims to a hospital (Tarantino cert., para. 6,7). Tarantino also certifies that in the past, officers were trained and received certifications in AED, CPR and "bleeding control" (Basic First Aid) but all those certifications expired in 2019 (Tarantino cert., para. 6; supplemental cert., para. 3; City Exhibit B).

On May 25, 2021, City Public Safety Director Brian O'Hara issued General Order B-21, "First Responder & Medical Aid," to the "fire division." The order directs all fire division personnel to "adhere to the established guidelines for emergency medical response," fixing responsibility of instruction and enforcement on fire officers. Personnel are to be able to administer AED, ALS, BLS, EMT-D, and First Responder tasks. The Order directs all personnel to participate in two hours of training every month; under "Medical Responsibilities," the Order provides: "The Fire Division will arrive and begin medical treatment of all patients, including patient assessment, basic first aid, and CPR, as necessary. The patient's vital signs will be recorded and monitored until the arrival of University Hospital EMS" (City Exhibit C; Local 1860 Exhibit F).

Fire Chief Rufus Jackson certifies that the Order "codifies" treatment services administered for years, ". . . by Newark fire fighters, i.e., assessment, basic first aid and CPR until the arrival of EMS" (Jackson cert., para 11). He certifies that the Order was drafted to create a uniform response to an increased need for emergency responders ". . . and more efficient delivery of service, following incidents of slower responses by EMS due to volume" (Jackson cert., para. 12). He certifies that EMS has historically contacted Fire dispatch for immediate assistance and that fire stations throughout the City can dispatch employees to arrive on a scene sooner to provide CPR, etc. (Jackson cert., para. 14).

On May 31, 2021, Tarantino wrote a letter to Director O'Hara, objecting to "a unilateral change in terms and conditions of employment by requiring fire officers to assume duties outside their job titles and beyond their normal duties." He requested the Director to rescind General Order B-21 and to negotiate with Local 1860 ". . . over the policy and its impact, including compensation for the additional duties during negotiations for a successor contract." Tarantino also requested responses to twelve questions seeking information related to General Order B-21, including records of first responder annual refresher training in AED, CPR and controlled bleeding; a copy of the "checklist" for the apparatus medical bag; copies of training



records for oxygen administration, patient restraint, tourniquet application, etc.; cleaning of gear after body fluid exposure; the investigation procedure if a patient care issue is reported; whether the fire division will be allowed to respond to a "working fire" while on a first responder call, and other matters (Local 1860, Exhibit G). Tarantino did not receive a response (Tarantino cert., para. 8).

### **ANALYSIS**

A charging party may obtain interim relief in certain cases. To obtain 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); Whitmeyer 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 Act requires negotiation over "terms and conditions of employment." Section 5.3. More specifically, it requires that "[p]roposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established" Id. The collective negotiations scheme also recognizes that some matters

are outside the scope of negotiations because agreement on them would significantly interfere with the determination of governmental policy. Local 195, IFPTE v. State, 88 N.J. 393 (1982). Local 195 provides the test for determining whether a subject is an employment condition requiring negotiations or a non-negotiable governmental policy:

[A] subject is negotiable between public employees 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 a 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.

[Id. at 404-405]

See also Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78, 92 (1981). No preemption arguments have been presented. Contrast City of Camden, P.E.R.C. No. 83-116, 9 NJPER 163, 164 (¶14077 1983) (statute stating that firefighters shall have and use police powers when going to, attending, and returning from fires preempts proposal prohibiting assignment of police duties to firefighters).

Employees may seek to negotiate for contractual protections against being required to assume duties outside their job titles

and beyond their normal duties. See, e.g., New Jersey Highway Auth. and IFPTE Local 193 (Toll Supervisors of America, AFL-CIO), P.E.R.C. No. 2002-76, 28 NJPER 261 (¶33100 2002), aff'd 29 NJPER 276 (82 App. Div. 2003); In re Byram Tp. Bd. of Ed., 153 N.J. Super. 12, 25 (App. Div. 1977); Somerset Raritan Valley Sewerage Auth., P.E.R.C. No. 97-49, 22 NJPER 403 (¶27220 1996; Nutley Tp., P.E.R.C. No. 89-65, 15 NJPER 28 (¶20012 1988). Obtaining contractual protection against the imposition of unrelated and out-of-title duties protects the integrity of the equation between negotiated salaries and the required work. Woodstown-Pilesgrove Reg. H.S. Dist. Bd. of Ed. v. Woodstown-Pilesgrove Reg. Ed Ass'n, 81 N.J. 582 (1980); Somerset Raritan Valley Sewerage Auth.

In Maplewood Tp., P.E.R.C. No. 97-80, 23 NJPER 106 (¶28054 1997), the Commission held that the public employer had a managerial prerogative to have firefighters assume ambulance/EMS responsibilities and to create a firefighter/EMT job title (that was distinct from the then-current firefighter title). The exercise of the prerogative required the employer to negotiate over salaries and employment conditions in that new title. Id. The Commission preliminarily reviewed the firefighter job description, finding that it did not encompass ambulance driving or "emergency medical services."

In this case, it appears that fire officer titles, as set forth in both Civil Service job specifications and in the City's job descriptions for battalion chief, deputy chief, and captain do not and have not required training in, nor performance of EMS duties. These omissions are in sharp contrast to the "emergency medical treatment" duties specifications for "firefighters" prescribed by Civil Service. That fire officer certifications in AED, CPR and basic first aid all lapsed in 2019 underscores the apparent absence of such tasks in their job responsibilities.

In Maplewood Tp., the Commission also observed that employers may unilaterally assign new duties to employees if they are "incidental to or comprehended within an employee's job description and normal duties" or if such assignments, ". . . are necessary to respond to emergencies such as riots or strikes." Id., 23 NJPER at 111. It appears that the above-referenced job descriptions sufficiently demonstrate that the contested duties are neither incidental to, nor comprehended within the normal duties of battalion chiefs, deputy chiefs, and captains. Nor may I reasonably find that an uptick in EMT service calls demonstrates an "emergency" for purposes of forgoing a negotiations requirement (The Designee in Maplewood, I.R. No. 97-9, 23 NJPER 7 (¶28007 1996), found an emergency and permitted the employer to assign EMS duties to firefighters temporarily). The Director's assignment of AED, ALS, BLS, EMT-D and first responder

tasks in this matter appears to be permanent, exceeding the parameters of lawful employer conduct prescribed by both the Designee and the Commission in Maplewood Tp. For these reasons, it appears that Local 1860 has a substantial likelihood of succeeding in a plenary hearing on its factual and legal allegations.

Local 1860 has demonstrated irreparable harm. A unilateral change in terms and conditions of employment during any stage of collective negotiations has a chilling effect on employee rights guaranteed by the Act and undermines labor stability. Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n., 78 N.J. 25 (1978); City of Newark (Superior Officers Assn.), I.R. No. 2020-3, 46 NJPER 167 (¶41 2019), mot. for recon. den., P.E.R.C. No. 2020-29, 46 NJPER 271 (¶65 2019). The parties do not dispute that General Order B-21 issued during their successor negotiations.

In weighing relative hardship to the parties, I find that the scale tips in favor of Local 1860, which suffers irreparable harm by the City's apparent unilateral change in terms and conditions of employment. No facts indicate that fire officers will not provide basic first aid to victims in appropriate circumstances. Nor do the facts suggest that firefighters first arriving on accident or fire scenes cannot provide adequate emergent care until EMS arrives, indicating that the public interest will not be harmed by a grant of interim relief.

**ORDER**

The City is restrained from continuing to require Local 1860 unit employees to perform EMS duties, pursuant to General Order B-21, including AED, ALS, BLS, EMT-D and first responder tasks, other than basic first aid in appropriate circumstances. If the City wishes to assign such tasks to Local 1860 unit employees, it shall first negotiate such assignments and compensation before implementation. Upon initiating negotiations, the City shall also provide responses to questions posed in Local 1860's May 31, 2021 letter to the Director. See, Morris Cty. and CWA Local 1040, AFL-CIO, P.E.R.C. No. 2003-32, 28 NJPER456 (¶33168 2002), aff'd 371 N.J. Super 246 (App. Div. 2004), certif. den. 182 N.J. 427 (2005).

This Order shall remain in place pending further litigation in this matter and/or resolution. This case shall be assigned for normal processing.

/s/ Jonathan Roth  
Jonathan Roth  
Commission Designee

DATED: June 22, 2021  
Trenton, New Jersey