

I.R. NO. 86-21

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF MINE HILL,

Respondent,

-and-

Docket No. CO-86-227-126

MINE HILL PBA LOCAL NO. 279,

Charging Party.

SYNOPSIS

A designee of the Public Employment Relations Commission grants interim relief restraining the Township from publishing an ordinance illegally adopted on June 5, 1986 and directing its repeal at the earliest possible date, pending the final disposition of this matter by this Commission.

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Appearances:

For the Respondent
Wiley, Malehorn & Sirota, Esqs.

For the Charging Party
Loccke & Correia, Esqs.

INTERLOCUTORY DECISION AND ORDER

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on February 24, 1986 by the Mine Hill PBA Local No. 279 (hereinafter the "Charging Party" or the "PBA") alleging that the Township of Mine Hill (hereinafter the "Respondent" or the "Township") has engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (hereinafter the "Act"), in that during the course of contract negotiations on December 24, 1985, the Mayor, in response to a disagreement by PBA representatives with the salary increase offered

by the Township, threatened that if the PBA sought interest arbitration there would be layoffs of personnel in the police department and cuts in the police budget, adding that there were "too many sergeants"; that thereafter on January 28, 1986, during negotiations, the Mayor stated that if the matter went to arbitration it would be members of the police department who would suffer; and thereafter on February 6, 1986, while contract negotiations were still pending, the Township introduced an ordinance reducing the number of sergeants from three to one; and although the ordinance has yet to be adopted, the reduction in the number of sergeants affects the PBA's three-member negotiating committee, two of whom are sergeants; all of which is alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1), (2), (3), (5) and (7) of the Act.^{1/}

Following the issuance of a Complaint and Notice of Hearing on February 28, 1986, hearings were held on April 16 and April 17,

^{1/} These subsections 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; (2) Dominating or interfering with the formation, existence or administration of any employee organization; (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage 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; and (7) Violating any of the rules and regulations established by the commission."

1986 before Hearing Examiner Alan R. Howe in Newark, New Jersey. Following the receipt of post-hearing briefs by May 2, 1986, the Hearing Examiner issued his Recommended Report and Decision on May 9, 1986 (H.E. No. 86-54), in which he found that the Respondent had violated N.J.S.A. 34:13A-5.4(a)(1) and (3) by the conduct of Mayor Stephen Young in the negotiations sessions of December 24, 1985 and January 28, 1986 where threats were made by him that if the PBA representatives attempted to initiate interest arbitration the police department would suffer and that there were "too many sergeants." A cease and desist order was recommended, including a direction that the Township cease and desist from attempting to enact the ordinance introduced on February 6, 1986 or any similar ordinance unless and until such time as it can be demonstrated that there exists a need to reduce the number of sergeants from three to one "for reasons of economy": N.J.S.A. 40A:14-143.

On May 23, 1986, the Charging Party filed with Edmund G. Gerber, the Director of Unfair Practices for the Commission, a proposed Order to Show Cause for Interim Relief with Temporary Restraints together with two certifications. A copy of this application was served upon counsel for the Respondent. On May 30, 1986, the undersigned executed an Order to Show Cause, returnable at the Commission's offices in Newark, New Jersey, on Tuesday, June 3, 1986, at 10:30 a.m. A hearing was held on the return date pursuant to N.J.A.C. 19:14-9.4, at which time the parties argued orally.

After hearing argument, the undersigned dissolved the temporary restraints and adjourned the matter until June 6, 1986,

having been persuaded that it was premature to attempt to restrain the Respondent before its Council had in fact enacted the ordinance in question: see Ringwood Solid Waste Mgt. Authority v. Ringwood, 131 N.J. Super. 61, 66 (1974).

On June 6, 1986, counsel for the parties informed the undersigned that the Council on June 5th had adopted the aforesaid ordinance, hence the decision and order hereinafter set forth:

The requirements for the issuance of a restraint or order pursuant to the Commission's interim relief rules are set forth in N.J.A.C. 19:14-9.2 (c). The Charging Party must demonstrate a substantial likelihood of success on the merits of the charge, both as to the facts and the law, and, further, that irreparable harm will result if the requested relief is not granted. Both requirements must be satisfied.

It is undisputed that since the close of the record on the instant Unfair Practice Charge on April 17, 1986, the following developments have occurred: On April 18, 1986 the Respondent introduced before its Council another ordinance which was passed on first reading, and which is identical in its terms to the ordinance that was previously introduced before the Council on February 6, 1986 (CP-6); and the newly introduced ordinance was adopted after public hearing on June 5, 1986.

Based upon the written submissions and oral arguments of the parties, and the facts as found in the plenary hearing on April 16 and April 17, 1986, and the additional factual developments since the latter date, supra, the undersigned Commission designee

concludes that the Charging Party has met the standard of establishing a substantial likelihood of success on the merits as to the facts. Further, the undersigned is convinced that he correctly applied the applicable law to the foregoing facts and that the Charging Party has, thus, established a substantial likelihood of success on the law before the Commission, which will be reviewing H.E. No. 86-54, supra, in due course.

As to irreparable harm, the undersigned is persuaded that when the ordinance was adopted on June 5, 1986, its immediate and irreparable effect was to reduce from the rank of sergeant to patrolman two sergeants, who, by existing seniority, are necessarily Charles F. Canfield and Jeffrey A. Oster, members of the PBA's negotiating committee. By the adoption of this ordinance the Township has succeeded in retaliating against Canfield and Oster for their exercise of protected activities as PBA negotiators (see Findings of Fact Nos. 6 & 7 in H.E. No. 86-54, supra). This retaliation will plainly have a chilling effect on the negotiations process and cannot be countenanced: see Galloway Twp. Bd. of Ed. v. Galloway Twp. Ed. Ass'n., 78 N.J. 25, 49 (1978) and County of Sussex, I.R. No. 84-7, 10 NJPER 192, 194 (¶15095 1984).

The PBA having satisfied the two requisites for interim relief, supra, the undersigned enters the following:

ORDER

The Township of Mine Hill is forthwith directed to repeal the ordinance it adopted on June 5, 1986, at the earliest possible date, the effect of such ordinance being to reorganize the

Township's police department so that it shall consist of one Chief of Police, one sergeant, one detective and five patrolmen "for reasons of economy": and it is;

Further ORDERED that publication of the said ordinance is restrained;

Such Orders to continue in effect until the final disposition of this matter by the Commission.



Alan R. Howe
Commission Designee

Dated: June 6, 1986
Newark, New Jersey