

L.D. NO. 94-4

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION
LITIGATION ALTERNATIVE PROGRAM

In the Matter of
CITY OF NEWARK,

Respondent,

-and-

Docket No. CO-92-255

NEWARK PBA LOCAL 3,

Charging Party.

Appearances:

For the Respondent
Michelle Hollar-Gregory, Corporation Counsel
(Wendy L. Young, Assistant Corporation Counsel)

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

DECISION

On February 14, 1992, Newark PBA Local 3 filed an unfair practice charge with the Public Employment Relations Commission alleging that the City of Newark violated subsection 5.4(a)(1) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when, during the pendency of a petition

^{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. (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."

questioning the representation of employees now represented by the PBA, the City negotiated and signed an agreement with the FOP to defer the payment of certain salary benefits. A Complaint and Notice of Hearing had issued here on August 12, 1992, but by November 1993 the parties had agreed to resolve this dispute through the Commission's Litigation Alternative Program.

On February 2, 1994, the parties, in lieu of a hearing or briefs, submitted stipulations of fact, attached to which was a copy of the agreement between the City and the FOP. The stipulations of fact provide:

1. The PBA and the City are parties to an agreement which covers the period from January 1, 1992 through December 31, 1994.
2. The PBA is the exclusive majority representative of Police Officers employed by the City. The PBA was certified as the majority representative on January 22, 1992.
3. The City received the Certification of Representative on or about January 24, 1992.
4. Prior to the PBA's certification as the exclusive majority representative, FOP Lodge 12 represented the Police Officers employed by the City.
5. On January 22, 1992, the FOP signed a Memorandum of Understanding authorizing the City to defer payment of the salary for the last pay periods in 1993 and 1994. A copy of the Memorandum of Understanding is attached. The City signed the Memorandum of Understanding on January 23, 1992, before receiving notice of the PBA's certification as majority representative.
6. The City proposed the Memorandum of Understanding because of its financial condition and in order to avoid layoffs of any Police Officers. The City entered into substantial similar Memoranda of Understanding with the unions representing the other uniformed services at or about the same time.

The Memorandum of Understanding between the City and FOP that was attached to the stipulations provides:

WHEREAS, the City of Newark is the employer of public safety employees, among them Police Officers, and

WHEREAS, reasonable measures must be taken in order to maintain the delivery of these vital services to the residents of the City of Newark,

THEREFORE, with primary emphasis upon the spirit of cooperation between the City of Newark (hereinafter "City") and Fraternal Order of Police (hereinafter "FOP"), the parties herein agree as follows:

1. The last regularly scheduled pay in calendar year 1992 totalling 9 days pay shall be deferred to the subsequent calendar year and payable no later than January 1, 1993 for all titles covered by the labor agreements between the City and the FOP. The last regularly scheduled pay in calendar year 1993 totalling 10 days pay shall be deferred and payable no later than January 1, 1994.

2. Prior to the effective date of the layoff, the layoffs notices heretofore received by Police Officers shall be rescinded and the N.J. Department of Personnel shall be notified of same. In addition, the City shall guarantee that no layoffs of employees represented by the FOP shall become effective during the remainder of calendar year 1992 and said guarantee shall remain effective for all current police officers for the entirety of the calendar year 1993.

These facts show that the problem here resulted from a unique set of circumstances. The City, in early 1992, was faced with a serious financial crisis, at the same time, coincidentally, that the PBA had challenged the FOP to be majority representative of police employees. In order to avoid employee layoffs of uniformed personnel, the City entered into agreements with the unions representing uniformed employees. Those agreements deferred the salary payment for the last pay periods in 1992 and 1993, until

January 1993 and January 1994, respectively, in exchange for a no layoff guarantee by the City for 1992 and 1993.

The agreement between the City and the FOP was signed on January 22, 1992. Although the PBA had, before that date, already won an election to represent police employees, the City was not aware until January 24 that the PBA had been certified as the majority representative on January 22, 1992.

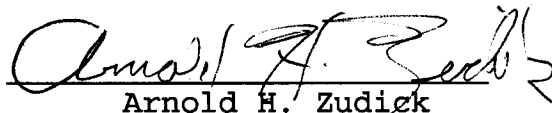
The allegation here is that the City violated the Act by negotiating over, and signing an agreement with, the FOP to change certain terms and conditions of employment during the pendency of a petition concerning the representation of police employees. The City obviously reached an agreement with the FOP during the pendency of the PBA's representation petition that changed a term and condition of employment. Generally, such action is a violation of the Act. Compare, Middlesex County (Roosevelt Hosp), P.E.R.C. No. 81-129, 7 NJPER 266 (¶12118 1981); Bergen County, P.E.R.C. No. 84-2, 9 NJPER 451, 458 (¶14196 1983); Newark Housing and Redevelopment Auth., I.R. No. 86-6, 12 NJPER 54 (¶17019 1985).

But here, unlike in the above cases, the premise was not to take action to affect the outcome of a representation petition, rather, the City acted to avert a serious financial crisis and avoid layoffs. The Commission, in deciding whether to apply its decisions to a given set of facts, must often strike a balance between the technical nature of the action, and the practical effect the action had on the labor relations process. See Woodstown-

Pilesgrove Reg. H.S. Bd. of Ed. v. Woodstown-Pilesgrove Reg. Ed. Assn., 81 N.J. 582 (1980).

Here, that balance must be struck in the City's favor. The City's actions did not adversely impact on the PBA's ability to win representation rights, and they were not intended to avoid negotiations with the PBA. The PBA, technically, became the majority representative the day the agreement with the FOP was signed, but the City had no way of knowing that day when or whether the PBA would be certified, and the City needed to resolve the issue quickly.

By entering into deferral agreements with the FOP and the other unions representing uniformed employees, the City acted reasonably, and in a neutral manner, to quickly resolve its financial crisis and avoid layoffs. Accordingly, under these specific circumstances, I find that the City did not violate the intent or spirit of the Act.


Arnold H. Zudiek
Commission Designee

DATED: March 4, 1994
Trenton, New Jersey