

I.R. NO. 91-4

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,

Respondent,

-and-

Docket No. CO-91-12

UNIFORMED FIRE FIGHTERS ASSOCIATION
OF JERSEY CITY, LOCAL 1066, IAFF and
UNIFORMED FIRE OFFICERS ASSOCIATION
OF JERSEY CITY, LOCAL 1064, IAFF,

Charging Parties.

SYNOPSIS

The Chairman of the Public Employment Relations Commission restrains the City of Jersey City from unilaterally rescinding or modifying an existing rest period policy during the pendency of an unfair practice charge filed by the Uniformed Fire Fighters Association, Local 1066 and the Uniformed Fire Officers Association, Local 1064. The Chairman concluded that the unions have established a likelihood of success on the merits of the unfair practice charge and that termination of a 30 year practice will irreparably undermine employee morale and welfare.

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Appearances:

For the Respondent, Joseph Healy, Corporation Counsel
(Paul W. Mackey, Assistant Corporation Counsel)

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

DECISION AND ORDER

On July 10, 1990, the Uniformed Fire Fighters Association of Jersey City, Local 1066, IAFF and the Uniformed Fire Officers Association of Jersey City, Local 1064, IAFF filed an unfair practice charge with the Public Employment Relations Commission alleging that the City of Jersey City violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (5) and (7), when on July 10, 1990, the Acting Chief of the Fire Department promulgated General Order No. 9048. That Order stated that effective immediately "no member of the Jersey City Fire Department will be allowed to sleep

while on duty." The Unions further allege that the City has directed that any fire fighter violating the General Order will be terminated.^{1/}

The unfair practice charge was accompanied by an Order to Show Cause which was executed and made returnable on July 25, 1990. Additionally, the Unions sought, and I granted, temporary restraints pending the return date. On July 25, 1990, the parties presented evidence and argued on the merits of the Unions' application that the City be restrained from enforcing the departmental order pending litigation of the unfair practice charge.^{2/}

Many facts are not in dispute. The City operates 22 engine companies. The fire fighters work a 24 hour shift and then receive 72 hours off. The normal work week is 42 hours per week over an 8 week cycle. The work day commences at 8:00 a.m.

^{1/} The unfair practice charge was amended on July 16, 1990 to allege a violation of N.J.S.A. 34:13A-5.4(a)(3).

^{2/} The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when addressing similar applications. The moving party must demonstrate that it has a substantial likelihood of success in a final Commission decision on the legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, in evaluating such requests for relief, the relative hardship to the parties in granting or denying the relief must be considered. Crowe v. DeGioia, 90 N.J. 126 (1982); Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975).

For at least the past 30 years, fire fighters have been permitted to sleep or rest in beds provided by the City between the hours of 9:30 p.m. and 7:15 a.m. Resting is permitted only when a fire fighter is not required to perform official duties such as responding to alarms, attending drills, and cleaning and storing gear. At least one fire fighter serves as a night watch during the rest period. The labor agreement obligates the City to provide "beds, mattresses, blankets and pillows."^{3/}

The Fire Department maintains Rules and Regulations. According to these rules, the chief shall prescribe the time to be devoted as the night rest period.^{4/} The labor agreement expires December 31, 1990 and provides that the Rules and Regulations of the Fire Department "be maintained for the life of this agreement"^{5/} and that "proposed new rules or modifications of existing rules governing working conditions which are not exclusively within the discretion of management be negotiated prior to implementation."^{6/}

The Unions argue that the City would repudiate the labor agreement by eliminating or modifying the rest period, removing all or some of the beds, ordering fire fighters not to sleep during their shift, and terminating fire fighters who do. The Unions contend that the City is bound to maintain the existing practice

^{3/} Joint Ex. 1.

^{4/} Rules and Regulations, Section 95 (Union Ex. 1).

^{5/} Article 2, Sec. A (Joint Ex. 1).

^{6/} Article 2, Sec. B (Joint Ex. 1).

concerning the rest period and may not modify this practice without prior negotiations.

The City agrees that the rest period has been 9:30 p.m. to 7:15 a.m. for at least 30 years, but argues that it is not bound to maintain the time of this rest period. The City contends that the time for the rest period is not memorialized in the contract nor departmental rules and that the time for any rest period is subject to the discretion of the fire chief. The City believes that the timing of the rest period, the length of the rest period, and whether the rest period is continuous or intermittent is a management right reserved to the City under the labor agreement^{7/} and the rules of the department.

Resting or sleeping during a shift in this instance does not constitute break time as commonly associated with periods such as coffee breaks. During such breaks a worker is not expected to perform any required tasks. Here, a fire fighter works a 24 hour shift and is required to perform the duties of the job at all times. Neither party disputes that a fire fighter may be required to work an entire shift without rest since any resting is subject to the absence of any required tasks to perform. Thus, a rest period does not constitute guaranteed time off from the job, but a time for rest during a shift when the fire fighter is not required to perform an official duty. The fire chief is not precluded from resting a fire fighter prior to 9:30 p.m.

^{7/} See Article 8, Sec. B (Joint Ex. 1).

While this issue has not been the subject of a prior Commission decision, I have no hesitation in concluding that there is a substantial likelihood that rest time under these circumstances for a fire fighter is a mandatorily negotiable term and condition of employment. It directly and intimately affects the work and welfare of a fire fighter, is not preempted by statute, and does not significantly interfere with the setting of governmental policy. See State v. Local 195, IFPTE, 88 N.J. 393 (1982).

Given the substantial duration of this practice, the City must point to a clear contractual provision in order to modify the practice during the term of the agreement without engaging in collective negotiations. The City concedes that the contract binds it to provide a rest period, but argues that it does not bind it to the rest period which has been uniformly prescribed for at least the last 30 years. The City relies on Section 95 of the Rules and Regulations which provide for a rest period, but does not set a specific time, and the management rights clause of the labor agreement. I find, however, that the City has not demonstrated, at this juncture of the proceedings, that its contractual right is sufficiently clear to overcome the duration and consistency of this practice.

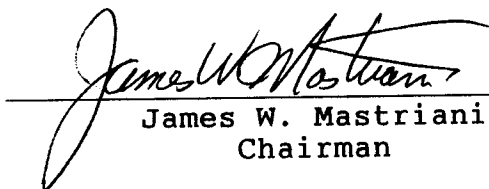
I conclude, given the duration and consistency of the practice, that the Unions have established a likelihood of success on the merits of the unfair practice charge and that termination of this 30 year practice will irreparably undermine employee morale and welfare. The Unions are therefore entitled to a restraint pending

the issuance of a Complaint and formal hearings. Further, the City has not demonstrated that the continuation of the status quo during the pendency of these proceedings will cause any harm to the City, especially in the absence of any evidence that the practice interferes with the assignment of fire fighters or the ability of fire fighters to perform their duties. The City, during formal hearings on the unfair practice charge, may present evidence to demonstrate that the labor agreement reserves to it the right to unilaterally alter or modify the existing rest period.

Based upon the foregoing, I grant the Unions' request for interim relief pending litigation of the instant unfair practice charge.

ORDER

The City of Jersey City is hereby restrained from unilaterally rescinding or modifying the existing rest period policy during the pendency of the unfair practice charge.


James W. Mastriani
Chairman

DATED: Trenton, New Jersey
August 2, 1990