

I.R. NO. 97-9

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF MAPLEWOOD,

Respondent,

-and-

Docket No. CO-97-144

MAPLEWOOD FIREMEN'S MUTUAL BENEVOLENT
ASSOCIATION, LOCAL NO. 25,

Charging Party.

SYNOPSIS

A Commission Designee issues an order rescinding the Township of Maplewood's directive requiring firefighters to perform EMT non-firefighting duties. Such duties are not historically part of the primary duties of uniformed personnel in Maplewood. However, the order was not effective for a period of 10 weeks in light of an emergency situation existing in the Township.

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Appearances:

For the Respondent,
Grotta, Glassman & Hoffman, attorneys
(Beth A. Hinsdale, of counsel)

For the Charging Party,
Fox and Fox, attorneys
(Stacey B. Rosenberg, of counsel)

INTERLOCUTORY DECISION

On November 4, 1996, the Maplewood Firemen's Mutual Benevolent Association, Local No. 25, filed an unfair practice charge with the Public Employment Relations Commission alleging that the Township of Maplewood committed an unfair practice within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4(a)(1) and (5).^{1/} It was specifically alleged that the

^{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

parties are engaged in negotiations for a successor agreement to one which expired on December 31, 1995. One of the negotiations issues has been the Township's desire to locate an ambulance or ambulances at the firehouses; obtaining the FMBA's consent to have firefighters engage in full-time ambulance duties; and additional compensation for these duties. Currently the Township relies on a volunteer ambulance squad.

On November 1, 1996, the Township's Fire Chief Sam Santucci issued an order requiring all firefighters to assume the responsibility for responding to EMT calls in the Township effective November 4, 1996. The new duties require firefighters, for the first time, to respond to non-fire related ambulance calls. During the first 30 days, EMT instructors from St. Barnabas Hospital will train firefighters in these new duties and during this time, firefighters will respond to calls from 8 a.m. to 6 p.m. Thereafter, firefighters will respond 24 hours a day, 7 days a week.

It was alleged that this unilateral action in assigning EMT duties concerns a mandatory subject of negotiations and thus violates the Act.

1/ Footnote Continued From Previous Page

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."

An Order to Show Cause was submitted by FMBA Local 25. The Order was executed and made returnable for November 7, 1996. At that time, both sides argued orally and submitted evidence and briefs in support of their positions.^{2/}

The Township does not dispute the allegations of the charge except that it asserts it has a managerial prerogative to assign ambulance duty and such an assignment is neither negotiable nor arbitrable. Accordingly, it has no obligation to negotiate with Local 25 concerning the assignment of EMT duties. It also argues the assignment was due to an emergency in the community; as there are no longer sufficient volunteers to staff the ambulances.

FINDINGS OF FACT

Prior to November 1, firefighters did not respond to ambulance calls. Article XXVII of the parties collective negotiations agreement entitled "Performance of Fire Related Duties" provides: "no firemen of the Fire Department shall be assigned to perform any duty which is unrelated to firefighting, fire prevention and care and maintenance of firefighting equipment and all other fire related duties which heretofore [sic] been performed."

There are 39 firefighters in the Fire Department - 16 presently have EMT training.

^{2/} After the close of the hearing, both parties submitted supplemental filings. These filings have not been considered in rendering this decision.

In 1995, of the 384 ambulance calls in the Township, over 150 had to be serviced by using ambulance squads from surrounding communities. The number of volunteers in the Township's ambulance squad has dropped significantly in the past several years and there are not enough active volunteers to meet the Township's needs. The response time for ambulances has grown to 25 minutes. Recently, a Township resident had to wait over 50 minutes before an ambulance from the City of Newark arrived to provide assistance. A public meeting concerning poor ambulance response time was held last month (October 1996) after a local employer complained about excessive ambulance response time for one of its employees.

ANALYSIS

To obtain interim 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); Whitmyer 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).

Based on the facts before me, I believe an emergency currently exists within the Township concerning the response time of ambulances. In emergency situations, employers have a managerial prerogative to make assignments unrelated to the primary duties of uniform personnel. In re Kearny, P.E.R.C. No. 82-12, 7 NJPER 456, 457 (¶12201 1981) and Tp. of Nutley, P.E.R.C. No. 89-65, 15 NJPER 28 (¶20012 1988).

In non-emergency situations, employers have a managerial prerogative to require uniformed employees to perform duties incidental to their primary duties. To the extent assignments are not incidental, they are mandatorily negotiable. Nutley. Mercer Cty. Park Commission, P.E.R.C. No. 81-43, 6 NJPER 491 (¶11250 1980); Tp. of W. Orange, P.E.R.C. No. 83-14, 8 NJPER 447 (¶13210 1982). See also, Somerset Raritan Valley Sewerage Authority and Utility Workers Union of America, AFL-CIO, Local No. 423, P.E.R.C. No. 97-49, 22 NJPER ____ (¶_____ 1996).

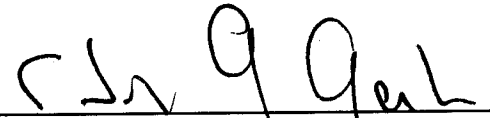
The assignment here was not made on a temporary emergency basis; it is permanent. Over half the firefighters are not qualified EMTs and cannot perform ambulance work. Accordingly, these duties cannot be considered incidental to their regular firefighter duties since most employees cannot perform them.^{3/} Accordingly, the assignment of ambulance duty on a non-emergency

^{3/} Neither party has argued that statute or regulation requires that firefighters man ambulances for non-firefighting incidents.

basis is not a managerial prerogative and is mandatorily negotiable. The contract provision limiting work assignment is a valid, enforceable term and condition of employment.

Since the parties are now in interest arbitration, this unilateral alteration of a term and condition of employment places an impermissible chill on interest arbitration. See N.J.S.A. 34:13A-21. State of New Jersey, I.R. No. 96-31, 22 NJPER 257 (127134 1996). Such harm is irreparable.

Accordingly, the November 1, 1996 order of Chief Santucci will remain in effect for 10 weeks from the date of this order so that the Township may find a permanent solution to its current emergency. However, in ten weeks (70 days) from the date of this decision, it is hereby ORDERED that the Township rescind its directive requiring firefighters to perform EMT non-firefighting duties.


Edmund G. Gerber
Commission Designee

DATED: November 14, 1996
Trenton, New Jersey