

I.R. NO. 90-5

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEW BRUNSWICK,

Petitioner,

-and-

Docket No. SN-90-5

FIREMAN'S MUTUAL BENEVOLENT
ASSOCIATION, LOCAL 17,

Respondent.

SYNOPSIS

A Commission designee grants a temporary restraint of arbitration pending the disposition of an order to show cause application. N.J.A.C. 19:14-9.2(c). The FMBA filed a grievance concerning scheduling of firefighters' vacations. The City contends that the grievance would affect its minimum staffing levels; the FMBA argues that time off is mandatorily negotiable so long as the employer is not prevented from meeting its minimum staffing needs. The FMBA here contends the employer is not so prevented.

Concluding that the employer's minimum staffing levels may be affected by the disputed grievance, the Commission designee granted a temporary restraint of arbitration pending the disposition of the City's order to show cause application.

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Appearances:

For the Petitioner
Gerald L. Dorf, Esq.

For the Respondent
Marc Abramson, Field Representative

DECISION ON REQUEST FOR TEMPORARY RESTRAINTS

On July 25, 1989, the City of New Brunswick ("City") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission ("Commission") seeking a determination as to whether certain matters in dispute between the City and FMBA Local 17 ("FMBA") are within the scope of negotiations. The petition was accompanied by an Order to Show Cause requesting that the FMBA demonstrate why an order should not be issued staying the arbitration of this dispute scheduled, for July 28, 1989, pending a final determination of the negotiability issue by the Commission. On July 27, 1989, the City filed a further request for temporary restraints in this matter. N.J.A.C. 19:14-9.2. I conducted a hearing on the temporary restraints application, by telephone conference call, on July 27, 1989, having

been delegated such authority to act upon requests for interim relief on behalf of the full Commission.

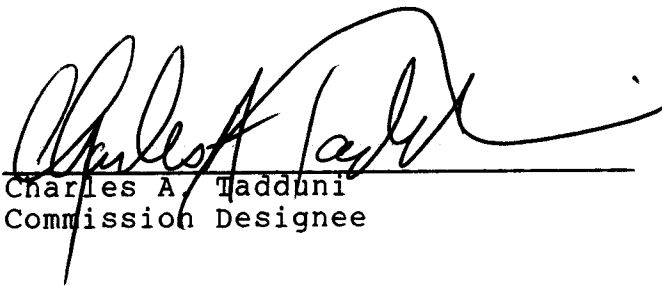
N.J.A.C. 19:14-9.2 provides that temporary restraints may issue where petitioner has a likelihood of success on the merits and that irreparable harm will result before an order to show cause hearing can be convened. I must also consider the relative hardship to the parties in granting or denying the requested relief.^{1/}

The FMBA is seeking to arbitrate a grievance which, if successful, will permit a minimum of three firefighters to schedule vacation on any given date. Based upon the materials available at this time, it appears that the normal fire department staffing complement is sixteen employees (superior officers and rank-and-file firefighters) per shift; that not all shifts are staffed up to full strength; that because of the City's strained financial resources, it is unable to hire additional firefighters and recently narrowly averted laying off firefighters; and that because of these circumstances, the City must minimize the use of overtime. It appears that allowing a minimum of three firefighters to schedule vacation on any given day would, when taken together with average absences for sick, bereavement and personal leaves, affect the employer's minimum staffing level. The Commission has held that the granting and scheduling of time off is mandatorily negotiable so

^{1/} Crowe v. DeGioia, 90 N.J. 126 (1982).

long as it does not interfere with the employer's minimum staffing levels. Town of West New York, P.E.R.C. No. 89-131, 15 NJPER ____, (¶ ____ 1989).

As it now appears that the employer's minimum staffing levels may be affected by the disputed grievance, petitioner has met the requirement for temporary restraints. Accordingly, the arbitration scheduled for July 28, 1989 is temporarily restrained pending the return date on the Order to Show Cause. The Order to Show Cause hearing shall be held on August 3, 1989, at 2:30 p.m. in the Commission's Trenton Offices.



Charles A. Tadduni
Commission Designee

DATED: July 27, 1989
Trenton, New Jersey