

I.R. NO. 89-10

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK

Respondent,

-and-

Docket Nos. CO-89-167, CO-89-168  
CO-89-170, CO-89-171

NEWARK PBA No. 3, and  
PROFESSIONAL FIRE OFFICERS ASS'N,  
LOCAL 1860, and NEWARK FIREMEN'S  
MUTUAL BENEVOLENT ASSOCIATION,  
LOCAL No. 4 and FRATERNAL ORDER  
OF POLICE, LODGE No.12

Charging Parties.

SYNOPSIS

A Commission Designee restrains the City of Newark from discontinuing paid leaves of absence for full-time representatives of Newark PBA No. 3; Professional Fire Officers Ass'n, Local 1860; Newark Firemen's Mutual Benevolent Association, Local No. 4 and Fraternal Order of Police, Lodge No.12. The Commission has previously held that paid leaves to perform union business is a mandatorily negotiable subject and the City may not unilaterally alter these provisions of the respective contracts during the negotiations for successor agreements.

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Appearances:

For the City of Newark  
Vincent Leong, Esq.

For the Newark PBA No. 3 and Professional  
Fire Officers Association  
Zazzali, Zazzali, Fagella & Nowak, Esqs.  
(Paul L. Kleinbaum, of counsel)

For the Newark FMBA, Local No. 4  
Fox and Fox, Esqs.  
(Dennis J. Alessi, of counsel)

For the FOP Lodge No. 12  
Markowitz & Richman, Esqs.  
(Joel G. Scharff, of counsel)

INTERLOCUTORY DECISION

On December 16, 1988 and December 19, 1988, FOP Lodge #12,  
IAFF Lodge #1860, FMBA Local #4 and PBA Local #3 ("Association of  
Charging Party") filed unfair practice charges accompanied by

Applications for Interim Relief with the Public Employment Relations Commission ("Commission"). The charges allege that the City of Newark ("City") violated subsections 1, 3 and 5 of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.<sup>1/</sup>

The Applications for Interim Relief were granted and an Order to Show Cause was executed with a return date of December 21, 1988. A hearing was held on that date and all the parties were given an opportunity to submit briefs, introduce evidence and argue orally.

The City has labor relations contracts with the four charging parties which are all scheduled to expire on December 31, 1988. By letters dated December 1, 1988, the City advised the four charging parties that it would discontinue a provision common to the contracts of all four parties. The provisions provide for paid leave of absence for full-time Association representatives.

It was claimed by all four Associations that these provisions are mandatorily negotiable and that the City is required to negotiate such changes before their implementation. Such

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<sup>1/</sup> 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. (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."

unilateral alterations of these contract provisions constitute unfair practices and have a chilling effect on negotiations. The effects of these actions can be remedied only by the granting of interim relief restraining the City from implementing these contract alterations.

The City argues that these provisions are not mandatorily negotiable and, therefore, its actions are not unfair practices under the Act.<sup>2/</sup>

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 on the legal and factual allegations in a final Commission decision and that irreparable harm will occur if the requested relief is not granted. Further, in evaluating such requests for

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<sup>2/</sup> The City also argues that its contract with IAFF Lodge 1860 provides that leave time for union business is available "with the approval of the Director.... Such approval shall not be arbitrarily or unreasonably withheld by the Director." Accordingly, the City argues that the terms of this contract give the City the right to take this unilateral action even if the granting of paid leave is mandatorily negotiable. However, the City has not submitted any factual basis for its actions vis-a-vis the firefighters contract. Absent evidence of a good faith reason for this alteration, I do not believe the difference in the firefighters contract language is significant.

relief, the relative hardship to the parties in granting or denying the relief must be considered.<sup>3/</sup>

The Commission has dealt with this identical issue in a scope petition brought by the City of Newark in 1985 against FMBA Local #4 one of the charging parties here. City of Newark, P.E.R.C. 86-74, 12 NJPER 26 (¶17010 1985). The Commission decision in pertinent part states:

...proposals giving union leaders paid leave to perform union business with absolutely no job responsibilities have been held mandatorily negotiable. Cf. Querques v. City of Jersey City, 198 N.J. Super. 566, 568, 11 NJPER 178 (¶16078, App. Div. 1985)

Accordingly, here the charging parties have a substantial likelihood of success in prevailing on the law in this matter and the facts are not in dispute.<sup>4/</sup>

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<sup>3/</sup> 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).

<sup>4/</sup> The City argues that this holding violates Article 8, Section 3 of the New Jersey Constitution.

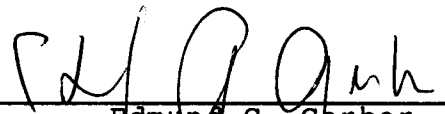
No donation of land or appropriation of money shall be made by the State or any county of municipal corporation to or for the use of any society, association or corporation whatever.

However, the City cannot cite any cases in support of its position. It is noted that the statute granting leave time with pay to PBA members to attend PBA conventions, N.J.S.A. 11:A6-10, has been upheld by the Appellate Division. Glassboro and PBA, 149 N.J. Super. 256, (App. Div. 1977).

The Commission has consistently held that a unilateral alteration of terms and conditions of employment during negotiations or interest arbitration unlawfully interfere with collective negotiations and/or the interest arbitration process. See City of Vineland, I.R. 81-1, 7 NJPER 324 (¶12142 1981), App. for enfor. granted, Mot. No. M-3982-80 (7/15/81) and Middlesex County Sheriff, I.R. 87-19, 13 NJPER 251 (¶18101 1987).

The officers of the respective Associations have been granted time off with pay for at least the past 10 years. Accordingly, no significant harm will occur to the City if the parties maintain the status quo during negotiations and/or interest arbitration. It should be noted that in the event of an emergency, the City may assign these union officers to active police duty.

Accordingly, the City is hereby restrained, pending a final Commission decision, from implementing the announced assignment of association officers without first negotiating such assignments or submitting them to binding arbitration with the charging parties.



Edmund G. Gerber  
Commission Designee

DATED: December 22, 1988  
Trenton, New Jersey