

P.E.R.C. NO. 99-27

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Respondent,

-and-

Docket No. CO-99-29

NEWARK FIREFIGHTERS UNION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Newark Firefighters Union for reconsideration of a Commission designee's denial of interim relief. The Union filed an unfair practice charge and request for interim relief alleging that the City of Newark violated the New Jersey Employer-Employee Relations Act by requiring firefighters to sit for an entry level firefighter examination being developed by the New Jersey Department of Personnel. The designee found that the charge raises a breach of contract claim and does not appear to state a cause of action under N.J.S.A. 34:13A-5.4a(5) and the charge is subject to administrative dismissal.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Respondent, Darryl M. Saunders, Assistant  
Corporation Counsel

For the Charging Party, Fox and Fox, attorneys  
(Craig S. Gumpel, of counsel)

DECISION

On August 21, 1998, the Newark Firefighters Union moved for reconsideration of I.R. No. 99-3, 24 NJPER 447 (129206 1998). In that decision, a Commission designee denied the Union's request for an interim relief order based on its unfair practice charge against the City of Newark. The charge alleges that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1) and (5),<sup>1/</sup> by requiring

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<sup>1/</sup> These provisions 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."

firefighters to sit for an entry level firefighter examination being developed by the New Jersey Department of Personnel. The charge alleges that sitting for the test is outside the employees' job description and that requiring employees to travel to the test in their own vehicles violates the parties' collective negotiations agreement.

On August 13, 1998, the designee denied interim relief. I.R. No. 99-3. He found that the charging party's unilateral change allegation was subsumed within its allegation that the City breached Articles XXXI and XXXV of the parties' collective negotiations agreement. Article XXXI sets out the duties of firefighters and Article XXXV provides that employees shall not be required to use their own vehicles except where this is presently the practice. Relying on State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984), the designee concluded that the union's claim that the City breached the collective agreement does not appear to state a cause of action under 5.4a(5) and subjects its charge to administrative dismissal.


On August 21, 1998, the Union moved for reconsideration by the full Commission. It argues that the designee incorrectly held that the charge raises a breach of contract claim and not a matter which could be the subject of an unfair practice charge. On September 3, the City filed a response opposing reconsideration. On September 17, the Union filed a reply.

In its motion of reconsideration, the Union contends that by ordering firefighters to take the Department of Personnel examination, the City has "disregarded the specific language of the contract." This assertion is consistent with the designee's finding that the Union's claim appears to be a breach of contract claim that should be resolved through the parties' negotiated grievance procedure. There are no extraordinary circumstances warranting reconsideration of that decision.

ORDER

Reconsideration of I.R. No. 99-3 is denied.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Boose, Buchanan, Finn, Klagholz and Ricci voted in favor of this decision. None opposed. Commissioner Wenzler was not present.

DATED: September 24, 1998  
Trenton, New Jersey  
ISSUED: September 25, 1998