P.E.R.C. NO. 2013-35

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

EDISON TOWNSHIP,

Respondent,

-and- Docket No. CO-2011-120

INTERNATIONAL ASSOCIATION OF
FIREFIGHTERS LOCAL 1197,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies a request for review and affirms the decision of the Director of Unfair Practices in D.U.P. No. 2012-6, 38 NJPER 241 (¶79 2012) refusing to issue a complaint in an unfair practice charge filed by the International Association of Firefighters, Local 1197 against the Township of Edison. The charge alleges that the Township violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it advertised for civilian fire inspectors to replace bargaining unit work without prior negotiations with Local 1197. The Commission holds that there is no requirement in the Act that a public employer exercise its managerial prerogative to hire civilians so long as that exercise is not clearly arbitrary or capricious.

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, DeCotiis, Fitzpatrick & Cole, LLP, attorneys (Louis N. Rainone, of counsel)

For the Charging Party, Kroll Heineman, attorneys (Raymond G. Heineman, of counsel)

DECISION

On September 22, 2010, International Association of Firefighters Local 1197 (Local 1197) filed an unfair practice charge against the Township of Edison, together with an application for interim relief. The charge alleged that on or about August 19, 2010, the Township advertised for civilian fire inspectors to replace bargaining unit work without prior negotiations with Local 1197. The Township's conduct allegedly

violated 5.4a(1) and (5)[1/] of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act).

The Township denied violating the Act, asserting that its staffing needs required it to assign all firefighters to firefighter duties, and that it had a managerial prerogative to assign civilian employees to the fire inspector position.

On November 29, 2010, a Commission Designee denied the application for interim relief, finding that Local 1197 had not demonstrated a substantial likelihood of success on the merits of its case. Tp. of Edison, I.R. No. 2011-25, 36 NJPER 469 (¶182 2010).

The Commission has authority to issue a complaint where it appears that the Charging Party's allegations, if true, may constitute an unfair practice within the meaning of the Act, or when that standard is not met, to decline to issue a complaint N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1; N.J.A.C. 19:14-2.3. In the instant matter that authority was delegated to the Director of Unfair Practices who declined to issue a complaint on

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1/ 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."

September 29, 2011, D.U.P. No. 2012-6 (2011). We affirm that determination.

Local 1197 represents firefighters, firefighter /EMTs and firefighter/inspectors employed by the Township. In accordance with Article 4 of the Agreement between the Township and Local 1197; "Duties of Firefighters" provides that unit employees may be assigned to perform "any duties related to firefighting, rescue, salvage, fire prevention, training, care and limited maintenance of firefighting equipment apparatus, overhaul work, maintenance or housekeeping of firehouses and community relations." This language was contained within both the parties' 2005-2009 agreement, and the negotiated successor agreement with a duration of January 1, 2010 through December 31, 2013.

The main duties of the firefighter/inspectors which appear to be undisputed on the record were to perform "life hazard inspections in schools, warehouses and other larger buildings, smaller regularly scheduled inspections and are also trained firefighters so that they often assist firefighters on the scene of a fire."

Between 2005 and 2010 the number of sworn firefighters and officers was reduced from 148 members to 125, including the three (3) firefighter/inspectors. One of the Township's seven fire stations remains unmanned due to lack of manpower, and the minimum manning level has been reduced from 22 firefighters and

officers to 20 firefighters and officers. In order to return the firefighters to traditional firefighting duties, the Township determined to transfer the fire inspection duties to its Department of Planning and Engineering and to staff the function with civilian employees.

Local 1197 claims that this action constitutes an improper transfer of work traditionally performed by bargaining unit members to non unit employees in violation of the unit work rule as set forth in Hudson County Police Department, P.E.R.C. No. 2004-14, 29 NJPER 409,410 (¶ 136 2003). In City of Jersey City v. Jersey City PBA, 154 N.J. 555, 568 (1998), our Supreme Court held that the negotiability balancing test set forth in Local 195, IFPTE v. State, 88 N.J. 393 (1982) must be explicitly applied to determine whether in a given set of circumstances, an employer may unilaterally transfer duties previously performed by police officers to civilians. That test provides:

> [A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public

> employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions. 88 N.J. at 404-405.

In applying the dispositive third prong, the Court agreed with the City that its actions (civilianization of dispatching duties) were taken primarily to augment its ability to combat crime by increasing the number of police officers in field positions. It concluded that because the City implemented the reorganization for the purpose of improving the police department's "effectiveness and performance," the City's actions constituted an inherent policy determination that under Local 195, would be impermissibly hampered by negotiations. Id. at 573. The Director relied upon Jersey City, supra, as well as the Commission decision in Bogota Borough, P.E.R.C. No. 99-77, 25 NJPER 129 (¶30058 1999) to conclude that the Township exercised its managerial prerogative to make the change in allocation of work that it did.

On appeal, Local 1197 seeks to distinguish these precedents on the basis that the Township did not conduct outside studies to determine whether the change in operations would deliver services more effectively and efficiently. Simply put, there is no requirement under our Act that the public employer exercises its

prerogatives by any particular means, so long as that exercise is neither pretextual nor clearly arbitrary or capricious. The question of whether the employer has appropriately reached its conclusion within those parameters is not a matter for this Commission to substitute its judgement with regard to, but for the voters to treat with at election time.

ORDER

The decision of the Director of Unfair Practices is affirmed, and the unfair practice charge is dismissed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Voos and Wall voted in favor of this decision. Commissioner Jones voted against this decision.

ISSUED: November 19, 2012

Trenton, New Jersey