P.E.R.C. NO. 2024-49

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ATLANTIC CITY,

Respondent,

-and- Docket No. CO-2022-200

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS LOCAL 198,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies both IAFF Local 198 and the City of Atlantic City's cross motions for summary judgment on the Local's unfair practice charge, and remands this dispute for an evidentiary hearing. The charge alleges that the City violated the Act by failing to participate in impact negotiations after unilaterally requiring additional training of employees. The Commission finds that genuine issues of material fact exist to preclude summary disposition. Specifically, the parties dispute whether the imposition of the training program affected certain terms and conditions of employment, such as: hours of work, the scheduling of leave, or employee discipline, thereby triggering the duty to engage in impact negotiations.

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, Ruderman & Roth, LLC (Steven S. Glickman, of counsel)

For the Charging Party, O'Brien, Belland & Bushinsky, LLC (David Watkins Jr., of counsel, Matthew B. Madsen, on the brief)

DECISION

On April 1, 2022, International Association of Fire Fighters Local 198 ("Local 198" or "the Local") filed an unfair practice charge (UPC) against the City of Atlantic City (City). Local 198's UPC alleges that the City violated the New Jersey Employer-Employee Relations Act (the Act), N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1) and (5),[1/] when the City unilaterally

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1/ N.J.S.A. 34:13A-5.4 prohibits 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" and "(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
(continued...)

implemented Hazardous Material (HAZMAT) training without negotiating the impact on working conditions after the Local made repeated demands to negotiate.

On July 14, 2022, the Commission issued a Complaint and the City filed an Answer on July 29. Thereafter, the parties engaged in settlement discussions and discovery. On December 19, 2023, Local 198 filed a motion for summary judgment on the UPC, and on January 25, 2024, the City filed opposition and a cross-motion for summary judgment. The Local filed its opposition to the cross-motion on March 6. Local 198's motion was supported by briefs, exhibits, and the certifications of its counsel, Matthew B. Madsen, and its President, John Varallo. The City's motion was supported by briefs, exhibits, and certifications by its counsel, Steven S. Glickman, and Deputy Fire Chief James Gillespie. The parties' motions for summary judgment were referred to the Commission for a decision pursuant to N.J.A.C. 19:14-4.8(a). Based upon the record submitted, we find the following undisputed facts.

FINDINGS OF FACT

1. The City and Local 198 are, respectively, a public employer and public employee representative within the meaning of the Act.

1/ (...continued)
representative."

2. Local 198 represents all uniformed fire department personnel employed by the City, except the fire chief, and all other employees employed by the City.[2/]

3. The City and the Local are parties to a series of collective negotiations agreements (CNA). The most recent contains a term of July 1, 2022 through December 31, 2025.

4. In the past, the parties had agreed that if certain conditions were met, negotiations unit members could receive compensation for completing educational courses based on the number of credits earned or the level of degree achieved.

5. The first iteration of this benefit was negotiated in the 2000-2002 CNA.

6. With some modification, the last CNA to include compensation for increased educational attainment was the 2015-2017 CNA.

7. The current CNA contains a provision that establishes a Personnel Committee, made up of employees and management, that, among other duties, determines "whether or not a particular employee is suited for special training available to the members of the Atlantic City Fire Department."

2/ The Commission takes administrative notice of this fact. It is contained in Article 2b of the most recent CNA located on the Commission website. We note that the words "except the fire chief" were added at some point after December 31, 2017.

8. In February of 2022, the City unilaterally, without notice or negotiation, required fire department personnel to undergo HAZMAT training.

9. The HAZMAT training consisted of several days of training, including classroom and "hands-on" training, along with written tests.

10. In February of 2023, John Varallo, the Local President, made information requests and demanded to negotiate over the HAZMAT training, which included a request for additional compensation.

11. The City never responded to these requests.[3/]

12. In August of 2023, during negotiations for a successor agreement to the then-current CNA, City Business Administrator Anthony Swan informed the Local that it would not negotiate the impact of the HAZMAT training.

13. To date, the City has never negotiated the impact of the HAZMAT training, because it contends the decision had no impact on working conditions.

14. Prior to the filing of the charge, the President of the Local and the Fire Chief had a discussion to ensure a Firefighter's pre-planned vacation was not interrupted by the

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3/ We note that Local 198 did not pursue an unfair practice charge related to the failure to respond to the information requests.

HAZMAT training, but neither party asserts that this constituted negotiations.

STANDARD OF REVIEW

Summary judgment will be granted if there are no material facts in dispute and the movant is entitled to relief as a matter of law. Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995); Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 73-75 (1954). N.J.A.C. 19:14-4.8(e) provides:

> If it appears from the pleadings, together with the briefs, affidavits and other documents filed that there exists no genuine issue of material fact and that the movant or cross-movant is entitled to its requested relief as a matter of law, the motion or cross-motion for summary judgment may be granted and the requested relief may be ordered.

In determining whether there exists a "genuine issue" of material fact that precludes summary judgment, we must "consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party." Brill, 142 N.J. at 540. We "must grant all the favorable inferences to the non-movant." Id. at 536. The summary judgment procedure is not to be used as a substitute for a plenary trial. Baer v. Sorbello, 177 N.J. Super. 183 (App. Div. 1981), certif. denied, 87 N.J. 388 (1981). Summary judgment "should be denied unless

the right thereto appears so clearly as to leave no room for controversy." Saldana v. DeMedio, 275 N.J. Super. 488, 495 (App. Div. 1995).

ARGUMENTS

Local 198 argues that it is entitled to summary judgment because the uncontested facts establish that the City violated sections 5.4(a)(1) and (5) of the Act when it refused to negotiate the impact of its decision to require unit members acquire HAZMAT certification. Specifically, the Local sought to negotiate additional pay for the additional certification. Local 198 avers that even if the decision to require the training was a managerial prerogative, the impact of that decision on working conditions is mandatorily negotiable and the City's refusal to engage in negotiations is an unfair practice.

The City, in its cross-motion, argues that the factual record supports granting its summary judgment motion seeking dismissal of the complaint. The City maintains that its refusal to negotiate over the impact of the HAZMAT training is not an unfair practice because the implementation of the training had no impact on working conditions.

In reply, Local 198 argues that Commission precedent cited by both parties favors its position that the HAZMAT training requirement, in and of itself, is a change in the terms and conditions of employment of firefighters. In the alternative,

the Local argues that a hearing will be necessary to determine whether other terms and conditions of employment were impacted by the additional training requirement, as those facts are in dispute.

ANALYSIS

We deny Local 198's motion for summary judgment and deny the City's cross-motion, and remand this case for an evidentiary hearing. While the City did not have a duty to negotiate over its decision to impose the HAZMAT training, a hearing will be necessary to determine whether existing terms and conditions of employment were impacted by the mandatory training, a key issue in dispute. The City contends that there were no changes to working conditions, including contractually impermissible schedule changes, no additional hours of work, no changes to scheduled vacations or the scheduling of vacation, and no impact on outside employment. Local 198, in its charge, asserted that there were changes to the scheduling of vacations and failure of the HAZMAT exams may have been cause for discipline, along with other changes to terms and conditions of employment.

N.J.S.A. 34:13A-5.3 authorizes a majority representative to negotiate terms and conditions of employment on behalf of unit employees. The same section also defines when an employer has the duty to negotiate before changing working conditions:

> Proposed new rules or modifications of existing rules governing working conditions

> shall be negotiated with the majority representative before they are established.

Rutgers, P.E.R.C. No. 2016-31, 42 NJPER 255 (¶72 2015) (citing Middletown Tp., P.E.R.C. No. 98-77, 24 NJPER 28 (¶29016 1997), aff'd 334 NJ. Super. 512 (App. Div. 1999), aff'd, 166 N.J. 112 (2000). "[C]hanges in negotiable terms and conditions of employment, therefore, must be addressed through the collective negotiations process, because unilateral action is destabilizing to the employment relationship and contrary to the principles of our Act." Id.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), articulates the standards for determining whether a subject is mandatorily negotiable:

> [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.
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> [Id. at 404-405.]

Here, the Local does not dispute that the City has a non-negotiable managerial prerogative to require HAZMAT training of its workforce, but instead seeks a finding that the unilateral imposition of the training, in and of itself, has an impact on working conditions. Local 198 notes that firefighters may have been entitled to additional pay for completing HAZMAT training under prior CNAs, but does not allege that any current CNA provision or practice was unilaterally modified.

We reject the Local's contention that the decision to require a certain training, standing alone, impacts the terms and conditions of employment, thus triggering a duty to negotiate. This position is inconsistent with longstanding Commission precedent, including a case involving the instant parties, which held that "[a]n employer has a prerogative to decide which employees will be trained, how they will be trained, and how long they will be trained." Atlantic City, P.E.R.C. No. 2015-63, 41 NJPER 439 (¶137 2015), a'ffd in relevant part, 2017 N.J. Super. Unpub. LEXIS 2366 (App. Div. 2017). On this point, we find that Local 198's reliance on State of NJ, Kean University, P.E.R.C. No. 2018-18, 44 NJPER 221 (¶116 2018) is misplaced. That case does not stand for the proposition that mandatory training by definition creates a severable impact on working conditions. Instead, it stands for the notion that where an employer's required training actually affects working conditions, such as

requiring additional on-campus participation (i.e. increasing the number of workdays) as was the case in Kean, the employer must negotiate to impasse prior to unilaterally taking its desired action.

However, since there is a dispute as to whether the HAZMAT training had an impact on certain working conditions, the matter must proceed to an evidentiary hearing. If terms and conditions of employment were altered, the duty to negotiate the impact of the training would be triggered. See e.g., Fort Lee Bd. of Ed., P.E.R.C. No. 2017-71, 44 NJPER 19 (¶7 2017) (impact negotiations required where employer's exercise of managerial prerogative interfered with use of leave and work schedules); see also Kean University, supra; N.J.S.A. 34:13A-5.3 (discipline is specifically a negotiable subject). Should a Hearing Examiner determine that the Local's claims on impact issues are supported by the evidence, proposals for additional compensation would be mandatorily negotiable. See e.g., Somerset Hills Bd. of Ed., P.E.R.C. No. 2015-34, 41 NJPER 249 (¶82 2014) (additional compensation for increase in workload is mandatorily negotiable).

ORDER

IAFF Local 198's motion for summary judgment, and the City of Atlantic City's cross-motion for summary judgment are denied. This case is remanded for an evidentiary hearing.

BY ORDER OF THE COMMISSION

Chair Hennessy-Shotter, Commissioners Eaton, Ford, Higgins, Kushnir and Papero voted in favor of this decision. None opposed.

ISSUED: April 25, 2024

Trenton, New Jersey