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STATE OF MINNESOTA DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT
Case Type: Employment
Judge: Leonardo Castro

Saint Paul Police Federation, Case No.: 62-CV-21-6135

Plaintiffs,

v.

City of Saint Paul,

Defendant.

International Association of Firefighters Local 21 (St. Paul Fire), Case No.: 62-CV-21-6323

v.

City of Saint Paul,

Defendant.

The Tri-Council (IUOE Local 49, Teamsters Local 120 and LIUNA Local 363), Case No.: 62-CV-21-6384

v.

City of Saint Paul,

Defendant.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ON DECLARATORY AND INJUNCTIVE RELIEF

The above-entitled matters came before the Honorable Leonardo Castro, Chief Judge of District Court, Ramsey County, Second Judicial District, on joint motions for Summary Judgment, made by all the parties pursuant to Minn. R. Civ. P. 56.01. The Saint Paul Police Federation

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("Police") was represented by Kevin M. Beck, Esq., the International Association of Firefighters Local 21 ("Firefighters") and the Tri-Council ("Tri-Council") were represented by Christopher K. Wachtler, Esq. (collectively "Plaintiffs"). The City of Saint Paul ("City" or "Defendant") was represented by Megan Hafner, Assistant St. Paul City Attorney.

The question before this Court is limited in scope. Plaintiffs ask this Court to decide if the City's failure to meet and negotiate the City's mandatory COVID-19 vaccination policy (the "Policy") constitutes an unfair labor practice under the Public Employee Labor Relations Act ("PELRA"). On December 22, 2021, the Honorable Judge Robert Awsumb issued a Temporary Restraining Order temporarily enjoining the City from enforcing the Policy. The parties agreed to submit memoranda and requested that the Court decide the legal issue on stipulated facts. The summary judgment motion practice upon which the parties engage here functions as a trial on the merits, by agreement of the parties, with respect to the legal issue.

This Court having considered the facts, arguments, and all the files, pleadings, records, submissions, and proceedings herein, now issues the following:

FINDNGS OF FACT

The stipulated facts and corresponding exhibits can be found in Indexes 33-37 in 62-CV-21-6323, Indexes 47-51 in 62-CV-21-6384, and Indexes 31-35 in 62-CV-21-6135. Having reviewed the stipulated facts, this Court adopts those facts as its findings.

The City executed collective bargaining agreements (CBA) with all three Plaintiffs. Each CBA contained a similar managerial rights clause reserving the City's inherent managerial rights and recognizing the City's rights "to operate and manage its affairs in all respects in accordance with applicable laws and regulations . . .." (*See Federation CBA*, Art. 5.1, Ex A; *Firefighter CBA*, Art. 5.1, Ex. G; and *Tri-Council CBA*, Art. 5.1, Ex. L.)

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On October 21, 2021, the City announced that all City employees would be required to complete a COVID-19 vaccination series by December 31, 2021, and provide proof of vaccination and attest to vaccination status by January 14, 2022. The Policy "applies to all City Workers, defined as employees, volunteers, commission members and interns of the City." (*See* Ex. B.) According to the Policy, employees are allowed to request a medical accommodation or religious exemption (the qualifications for the accommodation and exemption are not relevant to this motion), but are not allowed to opt-out and provide proof of negative tests. Failure to comply with the Policy would subject employees to discipline, up to and including termination.

The Plaintiffs argue that the City has engaged in unfair labor practices by failing to negotiate the Policy's implementation. Their position is that because the Policy impacts terms and conditions of employment, the City is required, under PELRA, to negotiate in good faith, and in reaching an impasse, submit the matter to interest arbitration. The City argues that the Policy is within its inherent managerial authority, and that the establishment and implementation of the Policy are so intrinsically interwoven that negotiation of its implementation would be tantamount to negotiating the Policy itself.[1]

CONCLUSIONS OF LAW

Standard of Review

Summary Judgment

Summary judgment is appropriate when there is no genuine issue of material fact and a party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03. "A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and

[1] This case is not about the wisdom of the Policy or the efficacy of COVID vaccination. Nor is it about constitutionally protected rights under the First or Fourteenth Amendments of the U.S. Constitution. And it is not about civil, religious or human rights. None of these issues have been raised by Plaintiffs.

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admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993) (citing Minn. R. Civ. P. 56.03). Summary judgment is not appropriate when reasonable minds could differ and draw different conclusions from the evidence presented. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997) (citing *Ill. Farmers Ins. Co. v. Tapemark Co.*, 273 N.W.2d 630, 634 (Minn. 1978)). The parties have stipulated to the material facts presented in this case; therefore, summary judgment is appropriate.

Declaratory Judgment

A declaratory judgment is a declaration of rights or a determination of "whether or not further relief is or could be claimed." Minn. Stat. § 555.01. Under the statute, any person may seek construction of a statute and may "obtain a declaration of rights, status, or other legal relations thereunder." Minn. Stat. § 555.02. As our supreme court explained in *Montgomery v. Minneapolis Fire Dep't Relief Assn*, "[t]he main characteristic of the declaratory judgment, which distinguishes it from other judgments, is the fact that, by the act authorizing it, courts are empowered to adjudicate upon disputed legal rights whether or not further relief is or could be claimed." 15 N.W.2d 122, 124 (Minn. 1944) (internal citations removed). Therefore, a declaratory judgment is proper when the court is "merely declaring the complainant's rights so as to relieve him from a present uncertainty and insecurity." *Holiday Acres No. 3 v. Midwest Fed. Sav. and Loan Ass'n*, 271 N.W.2d 445, 448 n. 3 (Minn. 1978).

PELRA: Terms and Conditions of Employment

The City is a public employer and as such is subject to the provisions of PELRA. Minn. Stat. § 179A.01 *et. seq*. The purpose of PELRA is "to promote orderly and constructive relationships between all public employers and their employees." Minn. Stat. § 179A.01(a).

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"Unresolved disputes between the public employer and its employees are injurious to the public as well as to the parties. Adequate means must be established for minimizing them and providing for their resolution." Minn. Stat. § 179A.01 (c).

PELRA requires a public employer to meet and negotiate the terms and conditions of employment and subsequent changes before implementation. Minn. Stat. § 179A.03, subd. 19 defines "terms and conditions" as:

> [t]he hours of employment, the compensation therefor including fringe benefits except retirement contributions or benefits other than employer payment of, or contributions to, premiums for group insurance coverage of retired employees or severance pay, and *the employer's personnel policies affecting the working conditions of the employees*. (Emphasis added.)

The Minnesota Supreme Court has held that disciplinary actions constitute a term and condition of employment, and therefore are a mandatory subject of bargaining. *Internat'l Brotherhood of Teamsters Local 320 v. City of Minneapolis*, 225 N.W.2d 254, 257 (Minn. 1975).

The City does not strongly dispute that the Policy constitutes a change in the terms and conditions of employment, particularly because employees who fail to comply with the Policy will be disciplined up to and including termination. Therefore, the City has an obligation to meet and negotiate under PELRA before implementation. Failing to reach an agreement[2], the parties should certify the matter for interest arbitration. *See* Minn. Stat. § 179A.16, subds. 1 and 2.

"A public employer commits an unfair labor practice when the employer refuses 'to meet and negotiate in good faith' over the terms and conditions of employment." *Minnesota Teamsters Pub. & L. Enf't Emps. Union, Loc. 320 v. Cty. of St. Louis*, 726 N.W.2d 843, 850 (Minn. Ct. App. 2007) citing Minn. Stat. § 179A.13, subd. 2(5). In this case the City argues that it has no duty to

[2] The City understood that it had some obligation to meet and negotiate or confer before implementation of the Policy. The record is clear that the parties met on numerous occasions to discuss the Policy, but the City never engaged in a negotiation on the Plaintiffs' request to have a testing option in lieu of vaccination.

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negotiate because the Policy involves a matter of inherent managerial authority, and therefore it did not engage in an unfair labor practice. *See Univ. Educ. Ass'n v. Regents of Univ. of Minnesota*, 353 N.W.2d 534, 542 (Minn. 1984) ("the district court's determination that the tenure and promotion, faculty evaluation and academic calendar issues are not terms and conditions of employment . . . is correct. The Regents, therefore, did not commit an unfair labor practice.")

Unlike in *Regents*, this Court concludes that the Policy is a term and condition of employment as defined in PELRA. However, as this case involves overlap between the City's authority to implement policies and the duty to negotiate a term and condition of employment, further analysis is required.

Inherent Managerial Authority

Under PELRA, public employers are not required to negotiate with unions on matters of "inherent managerial policy." Minn. Stat. § 179A.07, subd. 1. Inherent managerial policies "include, but are not limited to, such areas of discretion or policy as the functions and programs of the employer, its overall budget, utilization of technology, the organizational structure, selection of personnel, and direction and the number of personnel." Minn. Stat. § 179A.07, subd. 1. The City argues that the Policy falls under "selection" and "direction" of personnel. Under this interpretation the City argues that it is *selecting and directing* all of its employees to meet a certain new minimum "standard" in order to keep their jobs.

The City's interpretation of "selection" stretches the boundaries of inherent managerial authority too far. While this Court agrees that it would be wholly acceptable for the City not to hire a prospective employee because they have not been vaccinated, it is not within a public employer's purview to unilaterally change the existing minimum qualifications of current employees and require their compliance in order for them to keep their jobs. To allow this would

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be to greatly dilute the purpose and spirit of PELRA. Although "selection" under PELRA has in some cases been applied to current employees (*see, e.g.*, *IUOE, Local No. 49 v. Minneapolis*, 233 N.W.2d 748 (Minn. 1975) ("selection of personnel" using competitive examinations for promotion purposes); *Univ. Educ. Ass'n v. Regents of Univ. of Minnesota*, 353 N.W.2d 534 (Minn. 1984) ("selection of personnel" to determine tenure designation)), this Court is not persuaded that "selection" can be interpreted, under the inherent managerial authority umbrella, as enabling public employers to create a new minimum qualification as a condition to retain one's current employment.[3]

There is no bright-line rule or litmus test that allows a court to determine whether a policy that impacts a term and condition of employment of current employees is an inherent managerial right. "[M]any inherent managerial policies concomitantly and directly affect the terms and conditions of employment." *Regents*, 353 N.W.2d at 539. In cases such as this one, where the possible inherent managerial authority and terms and conditions of employment overlap, courts must apply a two-part test. "[T]o decide whether negotiation is required, the court must first determine whether the public employer's management decision has an impact on 'terms and conditions of employment.' If it does, the court must then further ascertain whether the establishment of the policy is distinct and separable from its implementation. If the two are not so distinct and separate, negotiation is not required." *Law Enforcement Labor Services, Inc. v Hennepin Cnty.*, 449 N.W.2d 725, 727-728 (Minn. 1990). Having concluded that the City's Policy impacts terms and conditions of employment, this Court must now determine whether the establishment of the policy is distinct and separable from its implementation. In cases where the policy decision "is so intrinsically interwoven with its implementation that to require the public

[3] This Court does not address circumstances in which public employers are bound to impose a new term and condition of employment because of the enactment of an enabling state statute.

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employer to negotiate its implementation would also force it to negotiate the underlying policy decision, no negotiation is required." *Id.* at 727. On the other hand, if establishment and implementation are separate and distinct, implementation is subject to bargaining. *City of West St. Paul v. Law Enforcement Labor Servs., Inc.*, 481 N.W.2d 31, 34 (Minn. 1992).

In this case, establishment of the Policy and its implementation are separate and distinct. No one disputes that the City has a right and duty to keep its employees and the public safe from the spread and infection of COVID. The Policy itself provides that its purpose is to "prevent infection and reduce the spread of COVID." (Ex. B.) The City has chosen to effectuate that purpose by requiring vaccines. In implementing the Policy, the City has allowed for religious and medical exemptions, with the expectation that those employees receiving an exemption would be required to comply with other safety protocols (e.g., masking, social distancing, remote work option, etc.) to effectuate the Policy's purpose. Although not a direct acknowledgment by the City that the Policy and its implementation are separate and distinct, the exemptions are representative of the fact that the Policy decision and its implementation are not so intrinsically interwoven as to avoid negotiation.

This Court further recognizes the damage such a Policy can have on the employer-employee relationship and appreciates Plaintiffs' argument regarding the "unusually intrusive" nature of the Policy and the "profound impact" it will have on its members. *See Hill v. City of Winona*, 454 N.W.2d 659, 661-662 (Minn. Ct. App. 1990) ("it is evident that the exam itself could have 'profound impact' on appellant's employment . . . [and] we cannot overlook the intrusive characteristics of the examination"). Plaintiffs' efforts in attempting to negotiate the implementation of the Policy are highly consistent with the public policy reasons for PELRA. Namely, "to promote the orderly and constructive relationships between all public employers and

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their employees." Minn. Stat. § 179A.01(b). Plaintiffs do not argue in this case that under the CBAs or PERLA the City has no right to establish a vaccination policy. They simply seek good faith negotiations, and if necessary, interest arbitration, on how the Policy is implemented. Under the Policy as written, if Plaintiffs' members fail to provide proof of vaccination, they will suffer disciplinary action including termination. If Plaintiffs' members are not allowed to negotiate the Policy implementation, they will be required to be involuntarily vaccinated by way of needle injection. It is difficult for this Court to imagine what could be more intrusive and more destructive to the employer-employee relationship than requiring employees to forfeit their bodily autonomy in the name of maintaining their livelihood.

Permanent Injunction

"The party seeking a permanent injunction must show that legal remedies are inadequate and that the injunction is necessary to prevent great and irreparable harm." *River Tower Ass'n v. McCarthy*, 482 N.W.2d 800, 805 (Minn. Ct. App. 1992) (citing *Cherne Indus., Inc. v. Grounds & Assocs., Inc.,* 278 N.W.2d 81, 91 (Minn. 1979)). PELRA specifically provides for injunctive relief if an unfair labor practice is established. Plaintiffs now seek a permanent injunction of the Policy, pursuant to Minn. Stat. § 179A.13 subd. 1, which provides in pertinent part:

> The practices specified in this section are unfair labor practices. Any employee, employer, employee or employer organization, exclusive representative, or any other person or organization aggrieved by an unfair labor practice as defined in this section may bring an action for injunctive relief and for damages caused by the unfair labor practice in the District Court of the County in which the practice is alleged to have occurred . . .

By not engaging in negotiations on the implementation of the Policy, the City engaged in an unfair labor practice. Legal remedies available in this case would be inadequate. Police officers and firefighters are essential employees, and as such they do not have the option to strike. The choice is to get involuntarily vaccinated or find another job. As Judge Awsumb noted in his order

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granting temporary injunctive relief, "the vaccination cannot be 'undone.'" (Amended Temporary Restraining Order, p.14.) The option of forcing a public servant to undergo vaccination, especially those who risk their lives in the protection and safety of us all, is not an option at all. Therefore, the permanent injunction will be granted until such time as the implementation of the Policy has been negotiated in good faith, or if an impasse is reached, it has been submitted to interest arbitration and a decision has been rendered.

No Bad Faith

It must be noted that this Court's finding that the City engaged in an unfair labor practice is not tantamount to a finding of bad faith. On the contrary, the record aptly reflects that the City did not act in bad faith nor in willful disregard of the rights of the union members when it implemented the Policy without engaging in negotiations. "A unilateral change by an employer in the terms and conditions of employment is a prima facie violation of the employees' collective-bargaining rights." *West St. Paul Fed'n of Teachers v. Indep. Sch. Dist. No. 197*, 713 N.W.2d 366, 375 (Minn. Ct. App. 2006) citing *Educ. Minnesota–Greenway, Local 1330 v. Indep. Sch. Dist. No. 316,* 673 N.W.2d 843, 849 (Minn. Ct. App. 2004), *review denied* (Minn. Apr. 20, 2004). However, "[a] unilateral change is not per se an unfair labor practice." *Id.* And an unfair labor practice is not per se done in bad faith. The City was faced with the height of a pandemic and based its actions upon what it believed to be in the best interest of the health and safety of its employees and the public. There was no malice, conspiracy or employee targeting involved. Although the City was not prepared to negotiate the implementation of Policy, it did engage in multiple discussions with union representatives regarding the Policy itself. The City's actions were not so unreasonable so as to warrant a finding of bad faith or willful disregard for right of its employees.

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ORDER

1. Plaintiffs' Motions for Summary Judgment are **GRANTED**.

2. Defendant's Motion for Summary Judgment is **DENIED**.

3. This Court declares, as a matter of law, that unilateral implementation of the COVID-19 Vaccination Policy without negotiating is an unfair labor practice under Minn. Stat. § 179A.13, subd. 2(5). The City's COVID Vaccination Policy is not an inherent managerial right, and the parties must meet and negotiate as to its implementation.

4. The City is permanently enjoined from implementing and enforcing the COVID Vaccination Policy until such time as the parties have reached a negotiated agreement on the implementation and enforcement of the Policy, or if no agreement can be reached, until the parties have complied with the interest arbitration requirements of PELRA.

IT IS SO OREDERED.

Date: June 2, 2022

BY THE COURT:

Castro, Leonardo (Judge)
Jun 2 2022 10:52 AM

Leonardo Castro
Chief Judge
Second Judicial District