

I.R. NO. 96-31

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY  
(OFFICE OF EMPLOYEE RELATIONS),

Respondent,

-and-

Docket No. CO-96-40

STATE LAW ENFORCEMENT CONFERENCE  
OF THE NEW JERSEY STATE POLICEMEN'S  
BENEVOLENT ASSOCIATION,

Charging Party.

SYNOPSIS

The Acting Chair of the Public Employment Relations Commission grants the request of the State Law Enforcement Conference of the New Jersey State Policemen's Benevolent Association for interim relief with respect to paid leaves for Association activity. The request for interim relief with respect to unpaid leaves, uniform allowance and eye care benefits is denied.

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Appearances:

For the Respondent, Deborah T. Poritz, Attorney General  
(Michael L. Diller, Senior Deputy Attorney General)

For the Charging Party, Zazzali, Zazzali, Fagella &  
Nowak, attorneys  
(Robert C. Fagella and Paul L. Kleinbaum, of counsel)

INTERLOCUTORY DECISION AND ORDER

On August 4, 1995, the State Law Enforcement Conference of the New Jersey State Policemen's Benevolent Association filed an unfair practice charge against the State of New Jersey (Office of Employee Relations). The charge alleges that the employer violated subsections 5.4(a)(1) and (5)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when,

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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. (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."

during successor contract negotiations, it stopped paying uniform allowances and eye care benefits and stopped providing paid and unpaid union leaves to employees represented by the PBA.

The PBA applied for an interim relief order requiring the employer to resume providing these benefits and leaves. The employer opposed that application. Certifications, exhibits, and briefs were filed. As the Commission's designee, James W. Mastriani heard oral argument.

The PBA represents State police employees in a negotiations unit of specified titles including corrections officers, weights and measure employees, rangers, parole officers, ABC investigators, and certain police officers. The parties have negotiated four contracts covering these periods and signed on these dates:

7/1/83 -- 6/30/86	Signed April 12, 1984
7/1/86 -- 5/30/89	Signed May 1, 1987
7/1/89 -- 6/30/92	Signed February 15, 1990
7/1/92 -- 6/30/95	Signed March 29, 1993

These contracts took effect retroactively.

The parties are now engaged in negotiations over a contract to succeed the 1992-1995 contract. On July 21, 1995, the employer's Director of Employee Relations sent the PBA's Chairman a letter stating that "with the expiration of the PBA contracts, certain contractual items are no longer operative." Enclosed was a memorandum stating that uniform allowances, eye care benefits, and union leave provisions in the PBA's contract had expired and would not be provided during successor contract

negotiations. The instant charge ensued. On the day it filed the charge, the PBA also petitioned to begin the interest arbitration process.

To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975).

## I. Uniform Allowances

### A. Facts

Article XXXIX of the parties' 1992-1995 contract is entitled Uniform Allowance. It provides:

The State agrees to continue its practice of making initial issues of uniforms to all new employees in this unit.

The State agrees to provide a cash payment of \$1235 for uniform maintenance payable on January 1, 1993, and a cash payment of \$1335 on January 1, 1994, and a cash payment of \$1435 on January 1, 1995 to all employees in the unit who have attained one (1) year of service as of December 31, 1992, December 31, 1993 and December 31, 1994.

Employees serving in the titles of Correction Officers Recruit and Senior Correction Officer, will be granted, in lieu of any uniform allowances other than the initial issues, the following cash payments: \$705 in July, 1992 to those employees with at least one (1) year of service as of June 30, 1992; \$705 in January, 1993, to those employees with at least one (1) year of service as of December 31, 1992; \$755 in July, 1993 to all employees with at least one (1) year of service as of June 30, 1993; \$755 in January, 1994 to all employees with at least one (1) year of service as of December 31, 1993; \$805 in July, 1994 to all employees with at least one year of service as of June 30, 1994; and \$805 in January, 1995 to all employees with at least one year of service as of December 31, 1994.

It is understood that the above cash payments are to be used for items of uniform or their maintenance and that all employees in the unit are expected to meet prescribed standards and regulations concerning individual items of uniform which are required and the reasonable standards of maintenance of such uniforms.

Similar provisions have appeared in previous contracts.

Since May 1990, uniform allowances have been included in an employee's base pay for purposes of calculating overtime compensation. The employer asserts that it included uniform allowances in base pay because the Fair Labor Standards Act, 29 U.S.C. §207, required inclusion. When the employer stopped paying uniform allowances after June 30, 1995, it also stopped including uniform allowances in base pay. As a result, the hourly overtime rate for corrections officers was decreased by \$1.16.

Uniform allowances have been paid to correction officers twice a year, in January and July. Other unit employees have

received uniform allowances once a year, in January. According to an Employee Relations Coordinator, after previous contracts expired the employer stopped paying uniform allowances until successor contracts were settled or interest arbitration awards were issued and then made payments retroactively; documents attached to his certification evidence that retroactive payments were made in 1984 and 1990. The PBA's president asserts that the July uniform allowances for corrections officers were delayed once in the last 10 years and the January uniform allowances for unit employees were never delayed even when contracts had not been settled by January. The president also asserts that the employer did not decrease the overtime compensation rate during the last hiatus between contracts.

During the current round of negotiations, the employer has proposed deleting the uniform allowance program and replacing it with a voucher system. It has also proposed that employees who are not required to wear uniforms not be granted uniform allowances or allowed to participate in voucher programs. The PBA seeks to retain the uniform allowance program. The employer has continued to issue initial uniforms under the first paragraph of Article XXXIX.

**B. Analysis**

I deny interim relief on this issue because it does not appear that the employees or their representative will suffer irreparable harm if uniform allowances are not paid at this

junction. The parties are engaged in interest arbitration proceedings and may present and justify their negotiations positions on uniform allowances and voucher systems to the interest arbitrator. The interest arbitration system places its participants on the equal footing of proof and persuasion. If the arbitrator determines that uniform allowances should be continued, the arbitrator has the authority to consider granting full relief on this monetary issue retroactively. Crowe. Moreover, while there is a factual dispute over whether uniform allowances have always been paid retroactively, it appears based on documents submitted by the employer that retroactive payments were made after the 1983-1986 and 1989-1992 contracts were settled or decided. Under these circumstances, I do not believe that the PBA and the employees it represents will suffer irreparable harm if uniform allowances (and corresponding overtime adjustments) are not paid during interest arbitration proceedings.

## II. Eye Care

### A. Facts

Article XIV of the parties' 1992-1995 contract is entitled Salary Compensation Plan and Program. Section B sets forth the salary increases for the fiscal years covered by the contract. Section E is entitled Eye Care Plan. It provides:

Full time employees and eligible dependents shall be eligible for the State-administered Eye Care Program. The program shall provide for each eligible employee and dependents to receive a \$35.00

payment for prescription eye glasses with regular lenses and a \$40.00 payment for such glasses with bifocal lenses. Each eligible employee and dependent may receive only one payment during the two year period that this program will be in effect. The extension of benefits to dependents shall be effective only after the employee has been continuously employed for a minimum of sixty (60) days.

Full-time employees and eligible dependents as defined above shall be eligible for a maximum payment of \$35.00 or the cost, whichever is less, of an eye examination by an Ophthalmologist or an Optometrist.

Each eligible employee and dependent may receive only one payment for glasses and one payment for examinations during the period of July 1, 1991 to June 30, 1993 and one payment for glasses and one payment for examinations during the period July 1, 1993 to June 30, 1995. This program ends on June 30, 1995.  
[Emphasis added]

Similar provisions have appeared in previous contracts.

According to the Employee Relations Coordinator, after previous contracts expired the employer never paid eye care benefits until successor contracts were settled or interest arbitration awards were issued and it then made payments retroactively; documents attached to his certification evidence that retroactive payments were made in 1981 and 1989. The PBA's president asserts that the employer never terminated eye care benefits during a contractual hiatus.

During this round of negotiations, neither party has made a proposal concerning eye care benefits.

#### **B. Analysis**

I deny interim relief on this issue because I am not persuaded that the PBA has a substantial likelihood of success on



the merits. The PBA contract expressly provides that the "[Eye Care] program ends on June 30, 1995." While the status quo of existing employment conditions must be maintained during negotiations, Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25, 48-49 (1978), the status quo as of July 1, 1995 appears to be that there is no eye care program. It is thus unlikely that the PBA can prove that the employer has changed the status quo with respect to the eye care program.

### III. Unpaid and Paid Union Leaves

#### A. Facts

Article XXV of the 1992-1995 contract is entitled Leave of Absence Without Pay. It provides:

A. A permanent employee, upon written application setting forth the reason, may be granted a leave of absence without pay for a maximum period of one (1) year. Further, leave in exceptional situations may be granted where it is in the public interest.

B. The appointing authority shall request approval from the Department of Personnel for a leave of absence without pay up to a maximum period of one (1) year for an employee elected or appointed to a full-time position with the Association or the State P.B.A. Such leave may be renewed on an annual basis as the term of office of such position requires to a total period not exceeding four (4) years. This privilege may be extended to a maximum of three (3) employees at any one time.

C. All requests for leave of absence or renewal are subject to approval.

According to the Employee Relations Coordinator, no one was taking an unpaid leave of absence when the 1992-1995 contract expired.

Nor does it appear on this record that anyone has applied for an unpaid leave of absence since then.

Article XXVI of the 1992-1995 contract is entitled Leave for Association Activity. It provides:

A.1. The State agrees to provide leaves of absence with pay for delegates of the Association to attend Association activities. A total of 155 days of such leave may be used in the year July 1, 1992 to June 30, 1993; 155 days during the period July 1, 1993 to June 30, 1994 and 155 days during the period July 1, 1994 to June 30, 1995.

2. The total number of days of such leave which may be used in each year shall be exclusive of leave provided under the provisions of New Jersey law and ordinarily granted under that statute.

B. This leave is to be exclusively for participation in the monthly delegate meetings of the New Jersey State Policemen's Benevolent Association or for other Association activities for which appropriate approval by the State is required. Such approval will not be unreasonably withheld.

C.1. Application for the use of such leave on behalf of the delegate or officers of the Local shall be made in writing fourteen (14) days in advance by the Association President to the Office of Employee Relations.

2. Timely requests for such leave will be approved based upon the condition that the employee's absence will not cause undue hardship or the inability of the work unit to function effectively. When possible, work schedules will be adjusted to eliminate this problem.

3. Leaves will be granted to individuals authorized by the President. Authorized leave granted to an individual shall not exceed a

maximum of twenty (20) days in a year period except where special approval of an exception may be granted by the State.

D. Any leave not utilized in a yearly period shall not be accumulated except where a written request of the Association for carry over of such leave for a particular purpose is made not later than thirty (30) days prior to the end of the year period. This request may be approved in whole or in part by the State.

E. In addition, the State agrees to provide leave of absence without pay for delegates of the Association to attend Association activities approved by the State. A total of 130 days of such leave of absence without pay may be used during the period July 1, 1992 to June 30, 1993; 130 days of leave of absence without pay during the period July 1, 1993 to June 30, 1994 and 130 days during the period July 1, 1994 to June 30, 1995.

This additional leave of absence without pay is to be used under the same conditions and restrictions expressed in connection with the leaves of absence with pay.

Similar provisions have appeared in previous contracts. Under these provisions, the employer must approve any requested leaves and may deny leaves interfering with its operational considerations.

According to the Employee Relations Coordinator, after previous contracts expired the employer stopped permitting union business leaves until successor contracts were executed. According to the PBA's president, such leaves continued. Neither party submitted documents concerning this point.

During this round of negotiations, the employer initially proposed eliminating "Article XXV, Leave for

Association Activity."<sup>2/</sup> The employer has stopped permitting paid leaves under Article XXVI but has continued permitting paid leaves to attend negotiations and grievance meetings under Article VIII (Association Rights).

**B. Analysis**

I deny interim relief on the issue of unpaid leaves because no evidence suggests that any employees have been or soon will be affected by the employer's position that the terms of Article XXV have lapsed.

I grant interim relief on the issue of paid union leave. That employment condition, which also implicates the Charging Party's statutory obligations, existed when the most recent contract expired and no contractual provision comparable to the eye care provision explicitly and specifically ends the paid leave program as of a certain date or waives the employees' statutory right to have that employment condition maintained during successor contract negotiations. City of Newark, I.R. No. 89-10, 15 NJPER 81 (¶20033 1988); City of Vineland, I.R. No. 81-1, 7 NJPER 324 (¶12142 1981). The duty to maintain the status quo does not require the employer to extend contractual provisions but simply to maintain the terms and conditions of employment in effect when the predecessor contract expired. Thus, a charging party need not establish that employees have a

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<sup>2/</sup> Article XXV addresses unpaid leaves of absence and Article XXVI addresses leaves of absence for Association activity. I assume that the employer proposed eliminating Article XXVI.

continuing contractual right to receive benefits after a contract's expiration. See State of New Jersey, I.R. No. 82-2, 7 NJPER 532 (¶12235 1981); contrast Spotswood Bd. of Ed., P.E.R.C. No. 86-34, 11 NJPER 591 (¶16208 1985) (no mid-negotiations reduction in work hours; issue was whether successor contract preserved work hour guarantee). I also believe that the PBA and the employees it represents will suffer irreparable harm if interim relief is denied. Galloway at 48. Unlike the issue of uniform allowances where full retroactive monetary relief may be sought, leaves such as these which are not taken are lost forever. There is also a public interest in avoiding disruption in benefits and practices concerning union meetings and activities during the negotiations period when there is a strong need for labor relations stability. Id.; cf. Local 195, IFPTE v. State, 88 N.J. 393, 419 (1982) (recognizing importance of interest in continuity of relationship between employees and their majority representative). Finally, the public interest in the efficient delivery of governmental services will not be injured because the employer must approve any requested leaves and may deny any leave conflicting with its operational considerations. For these reasons, I will order the employer to continue to permit union leave during successor contract negotiations. Any leave days used need not exceed the amounts set by the predecessor contract and may be charged against any amounts set by the successor contract.

ORDER

The State of New Jersey (Office of Employee Relations) is ordered to provide leaves for the Association activity referred to in Article XXVI during successor contract negotiations. Any leaves during this period need not exceed the amounts set by the predecessor contract and may be charged against any amounts specified by the successor contract. The application for interim relief is otherwise denied.

BY ORDER OF THE COMMISSION



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Millicent A. Wasell  
Acting Chair

DATED: June 28, 1996  
Trenton, New Jersey