

I.R. NO. 96-8

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF RUTHERFORD,

Petitioner,

-and-

Docket No. SN-96-28

PBA LOCAL 300,

Respondent.

SYNOPSIS

A Commission Designee restrains an arbitration brought by PBA Local 300 against the Borough of Rutherford. Local 300 sought to arbitrate a grievance contending that the employer has established a new minimum level of staffing but has refused to increase the number of officers who can take vacation time at any one time. It was found that there was a substantial question of fact as to whether or not staff levels were reduced.

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Appearances:

For the Petitioner,
Scarinci & Hollenbeck, attorneys
(Lane J. Biviano, of counsel)

For the Charging Party,
Loccke & Correia, attorneys
(Joseph Licata, of counsel)

INTERLOCUTORY DECISION

On September 18, 1995, the Borough of Rutherford filed a scope of negotiations petition with the Public Employment Relations Commission seeking to restrain arbitration on a grievance brought by PBA Local 300. The Borough also seeks an interim restraint of the arbitration scheduled for October 6, 1995. An order to show cause was executed and made returnable for October 2, 1995.

The grievance contends the Borough established a new minimum level of staffing but has refused to increase the number of officers who can take vacation time.

On Saturdays, the normal police shift consists of five officers. One officer is stationed at a local theater, known as

Post A. Four officers are on patrol in the morning and five officers on patrol in the afternoon. The Borough contends that Post A is an unpopular assignment; the rate at which officers assigned to Post A take sick leave is excessively high and there is a correspondingly high overtime cost to fill the position. The Chief of Police therefore issued a directive stating that if a patrolman assigned to Post A calls in sick, that post will not be filled. Only the patrol assignments, four officers on the morning shift and five officers on the afternoon shift, will be staffed. The directive also stated that vacation scheduling will continue to be predicated on shifts of not fewer than five officers on days and six officers on the afternoons.

The Borough continues scheduling five and six officers on duty respectively, for the Saturday morning and afternoon shifts.

The Borough argues that it is not reducing its minimum manning levels. Rather, it has only decided not to assign overtime duties when Post A is not covered. Assignment of overtime is a non-negotiable, managerial prerogative. Town of Harrison, P.E.R.C. No. 83-114, 9 NJPER 160 (¶14075 1983). It continues to schedule an officer for Post A.

The PBA argues that the employer has created multiple minimum staff levels and should not be able to create a lower staffing level without allowing a concurrent increase in available vacation time.

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when addressing similar applications. The moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegations in a final Commission decision and that irreparable harm will occur if the requested relief is not granted. Further, in evaluating such requests for relief, the relative hardship to the parties in granting or denying the relief must be considered.^{1/}


Neither side disputes that the employer has the right to assign overtime and to establish minimum manning levels. It is significant that neither the number of officers who can take vacation, nor the complement of officers assigned to Saturday duty has changed. The Borough has maintained its preferred minimum manning level.

The PBA's argument is not without merit because the Borough now deviates from its preferred staffing level. On balance however, I find it likely that the Commission will find the employer did not change the minimum level of staffing and therefore the grievance

^{1/} Crowe v. DeGioia, 90 N.J. 126 (1982); Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975).

is non-negotiable. The Application for Interim Relief is sustained. The scheduled arbitration is restrained pending a final Commission decision.

BY ORDER OF THE COMMISSION



Edmund G. Gerber
Commission Designee

DATED: October 6, 1995
Trenton, New Jersey