

*Arlyn K. Lieberkind*

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION  
LITIGATION ALTERNATIVE PROGRAM

In the Matter of  
BORO OF DUNELLEN

DOCKET NO. CO-86-199  
LAP-86-12

-and-

DUNELLEN P.B.A. LOCAL 146

DECISION OF ARBITRATOR

On February 21, 1986, The Dunellen P.B.A. Local 146 ("PBA") and the Boro of Dunellen ("Boro") agreed to submit a contract dispute to binding arbitration through the Public Employment Relations Commission's Litigation Alternative Program. The arbitration was held on March 13, 1986 and the parties agreed that the question to be resolved was "did the Boro violate the agreement when it promulgated a memo on December 31, 1985 stating it would not allow split vacations."

There are two pertinent provisions in the parties' contract. Article VII, Vacation Time, Section I:

Each officer shall select the first fourteen (14) vacation days to which he is entitled as a single block of consecutive working days. Any additional vacation days to which an officer is entitled may be used as single days or in blocks of days, subject to the provisions of this Article.

Article XII, Retention of Benefits:

Except as otherwise provided herein, all fringe benefits, etc., which the Employees have heretofore received, and are presently receiving, including, without limitations, leave for sickness or injury, shall be maintained and continued by the Borough during the term of this Agreement. The provisions of ALL Municipal Ordinances and Resolutions, policies and procedures, except as specifically modified herein, shall remain in full force and effect during the term of this Agreement and shall be incorporated in this Agreement as if set forth herein at length.

The last negotiated agreement which contains the above quoted contract provisions expired December 31, 1985 and the parties are now engaged in negotiations for a successor agreement. The first negotiation session was held on December 16, 1985. The PBA was represented by its President, Patrolman Yeager and the Boro was represented by its Police Commissioner, Mr. Stransky.

The PBA submitted a list of contract proposals including the following:

Article VII, Vacation Time

Split vacation time to be continued as established by past practices.

The Boro had no proposals concerning split vacations and there were no significant dicussions at the negotiation session about this proposal. Two weeks later the Boro promulgated a memo stating there will be no split vacations in 1986. The memo was signed by Stransky and Chief of Police, William Leary. The

Association claims that the memo was a reaction to the Association's contract demand and further it violated the established past practice in the Boro which permitted taking split vacations.

The Boro, on the other hand, maintains there is no established past practice. Even if there were, the language of Article VIII effectively bars the taking of split vacations and any past practice would fall in light of the express language of Article VIII.

Beginning with 1980-1981, or for the past six years, the pertinent contract language has remained the same. Throughout these years there were not enough fourteen day vacation blocks to allow for every patrolmen to have a summer vacation in the prime summer months. Patrolman Yeager testified that officers were able to take seven day or split vacations in the summer, if such a vacation did not create additional overtime expenses for the Boro. Then in the summers of 1984 and 1985, there was an agreement whereby the Boro allowed split vacations and in exchange the PBA allowed Chief Leary to change shift assignments during the summer to insure proper police coverage. Chief Leary testified that there were no split vacations taken in 1981 and 1982. Yeager was not sure of these years.

In early January, three PBA members, Yeager, Moore and Ventriglia spoke to Chief Leary. Leary stated he would approve split vacations for the summer of 1986 if he could make shift changes as in the past.

There is a clear and fundamental difference between taking regular vacations and taking split vacations. Patrolman never could take split vacations without insuring the Boro that its manning needs would be met. This was done either on an individual basis, i.e. a patrolman had to show there would be no increase in overtime - or by way of agreement granting the Boro the right to freely transfer during the summer. No such restrictions exist when patrolmen take fourteen days vacation.

Under the circumstances, I do not believe there is a past practice binding on both parties.

In the absence of a written agreement, 'past practice' to be binding on both parties, must be (1) unequivocal; (2) clearly enunciated and acted upon; (3) readily ascertainable over a reasonable period of time and fixed on established practice accepted by both parties." How Arbitration Works, Elkouri & Elkouri, BNA 1985 pg. 465.


Here the past practice was never unequivocal and depended upon the specific agreement of the Boro. In fact Leary's offer in January to grant split vacations if he had the right to alter summer shifts is the same agreement the parties had the past two summers and is substantially equivalent to what existed since the 1980-1981 contract.

Since the Boro never unequivocally permitted split vacations there was no binding past practice. Therefore, the December memo stating there will be no split vacations in 1986 did not violate the agreement.

5.

AWARD

The Boro did not violate the contract. Accordingly, the grievance is denied.

  
Edmund G. Gerber

DATED: Trenton, New Jersey  
March 25, 1986

