

I.R. NO. 2000-8

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WOODBRIDGE,

Respondent,

-and-

Docket No. CO-2000-139

WOODBIDGE PBA LOCAL NO. 38,

Charging Party.

**SYNOPSIS**

A dispute arose between the parties concerning the manner in which patrol officers would be assigned to squads. The Commission Designee found that the parties' respective positions concerning the manner in which patrol officers are to be assigned to squads was based upon their interpretation of the collective agreement. Consequently, relying upon New Jersey Department of Human Services, the Commission Designee found that PBA Local No. 38 did not establish a likelihood of success on the merits, a requisite element to obtain interim relief and denied the PBA's application.

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Appearances:

For the Respondent,  
Genova, Burns and Vernioia, attorneys  
(James J. McGovern, III, of counsel)

For the Charging Party,  
Loccke & Correia, attorneys  
(Leon B. Savetsky, of counsel)

**INTERLOCUTORY DECISION**

On December 2, 1999, the Woodbridge PBA Local No. 38 (PBA) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the Township of Woodbridge (Township) committed unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act) by violating N.J.S.A. 34:13A-5.4a(1), (2), (5) and (7).<sup>1/</sup>

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<sup>1/</sup> These provisions 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. (2) Dominating or

The unfair practice charge was accompanied by an application for interim relief. On December 6, 1999, an order to show cause was executed and a return date was set for December 29, 1999. The parties submitted briefs, affidavits and exhibits in accordance with Commission rules and argued orally on the return date. The following facts appear.

PBA Local No. 38 represents all of the police officers below the rank of sergeant employed by the Township. The parties have entered into a collective negotiations agreement covering the period January 1, 1999 through December 31, 2001.

Patrol officers in the police department's regular patrol division work four consecutive days, consisting of a 10 hour 15 minute shift, and, thereafter, receive 4 consecutive days off. Patrol division officers work any one of six shifts. For example, a shift begins at 6 a.m. and concludes at 4:15 p.m.; another shift begins at 5:15 p.m. and conclude at 3:30 a.m. Each shift is divided into two squads: even and odd. When the even shift works its four-day duty period, the odd squad is scheduled off, and vice-versa.

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1/ Footnote Continued From Previous Page

interfering with the formation, existence or administration of any employee organization. (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. (7) Violating any of the rules and regulations established by the commission."

In accordance with the parties' past practice and the language reflected in the collective agreement, the Township permits officers in the patrol division to bid for shifts according to seniority.<sup>2/</sup> Officers begin selecting shifts on October 1 of the year prior to the year the selection becomes effective. Shift selections are completed by October 14 and are posted by November 1. Officers are normally granted their chosen shift as long as the Township's staffing needs are maintained. The Township contends that while it strongly considers each officers squad preference, it never guarantees the officers that they will remain on their preferred squad. In December 1998, the PBA filed an unfair practice charge (Docket No. CO-99-195) alleging, among other things, that the Township unilaterally changed the squad assignments of certain patrol officers in order to balance the experience level in each squad. The parties were successful in voluntarily resolving the unfair practice charge during discussions facilitated by a Commission staff agent. The parties executed a memorandum of understanding which included the following provision:

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<sup>2/</sup> The unfair practice charge states that the eight officers assigned to the bicycle patrol unit and the four officers assigned to the traffic enforcement unit were not permitted to bid in their shift squad. During oral argument, the PBA stated that it would not address the circumstances of employees in the bicycle patrol and traffic enforcement units. The Township asserted that officers assigned to the bicycle patrol and traffic enforcement units have never been included in the patrol divisions' shift selection process. I do not consider issues pertaining to employees in the bicycle patrol or traffic enforcement units in this decision.

The Township agrees that employees will be allowed to bid on their shift selection preference per the parties' current practice, except that the parties mutually agree that employees will be assigned to a squad on an alternating basis in descending order of seniority, provided, however, that employees may be assigned out of order when special qualifications are needed for particular tasks, training is required, personal conflicts exist or emergencies occur.

Subsequently, the parties entered into a 1999-2001 successor agreement which at Article XL, Scheduling, states in part:

Each member will select his/her steady shift based on the current Departmental Seniority List as it pertains in his/her Division except that the parties mutually agree that employees will be assigned to a squad on an alternating basis in descending order of seniority, provided however, that employees may be assigned out of order when special qualifications are needed for particular tasks, training is required, personnel conflicts exist or emergencies occur.

As the result of the parties' new shift/squad selection procedure, approximately 47 patrol officers' squads changed from calendar year 1999 to calendar year 2000. Relying upon language contained in the Memorandum of Agreement which states that employees will be allowed to bid on their shift selection preference "per the parties current practice", the PBA alleges that the most senior officer on each shift must be assigned to the squad to which he/she was assigned the prior calendar year. The PBA contends that the Township made squad assignments for calendar year 2000 which were not in accord with the current practice and resulted in wholesale squad shifts which affected almost half of the members of the patrol division. Relying upon the language contained in the collective

agreement, the Township argues that it has retained the right to "assign" employees to a squad, the exercise of such right remaining consistent with the past practice.

Additionally, the union contends that the Township retaliated against it by seeking the withdrawal of three pending unfair practice charges and one grievance in return for the Township's willingness to resolve the squad assignment dispute. In or around the second or third week of October 1999, the union contends that in discussions between PBA President Harry Jacques and Police Chief William Trenery, conducted for the purpose of attempting to resolve the squad assignment dispute, the Chief stated that the squad assignment matter could be resolved to the PBA's satisfaction if the PBA would agree to withdraw three unfair practice charges and one grievance which were pending against the Township. The scope of squad changes was known to the parties prior to the meeting between Trenery and Jacques.

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).

Both parties rely upon specific provisions contained in the collective agreement as justification for their respective positions in this matter. The PBA contends that the Township has failed to properly apply language contained in paragraph 4 of the Memorandum of Agreement, which is incorporated into the collective agreement, to support its argument that the Township has not adhered to the current practice in assigning employees to squads. The Township defends its actions regarding squad assignment by relying upon Article XL, Scheduling. Consequently, both parties point to specific provisions expressed in the collective agreement as support for its respective claims.

In New Jersey Department of Human Services, P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984), the Commission concluded:

a mere breach of contract claim does not state a cause of action under subsection 5.4(a)(5) which may be litigated through unfair practice proceedings and instead parties must attempt to resolve such contract disputes through their negotiated grievance procedures.

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The Act delineates seven unfair practices by public employer, N.J.S.A. 34:13A-5.4(a), as well as five unfair practices by public employee organizations. 5.4(b). The breach of a collective negotiations agreement is not enumerated as an unfair practice. We deem this omission to be significant and to evidence a legislative intent that claims merely alleging a breach of contract based on apparent good faith differences over contract interpretation would not, even if proven, rise to the level of a

refusal to negotiate in good faith under subsection 5.4(a)(5). Rather than make such claims the subject of unfair practice proceedings, our Legislature has indicated that such claims must be resolved, if possible, through the parties' agreed-upon grievance procedures. [Id. at 421. Citations omitted.]

While the PBA has characterized its unfair practice charge as a repudiation of the collective agreement, it appears that the PBA is actually seeking the enforcement of the express language contained in the Memorandum of Understanding. The Township is defending its actions on the basis of express language set forth in the scheduling article of the contract. Thus, it appears that the dispute between the parties revolves around a claim of breach of the collective negotiations agreement. In accordance with Human Services, a mere breach of contract claim does not constitute an unfair practice. Accordingly, with respect to the PBA's allegation that the Township has repudiated the collective agreement, I find that the PBA has not demonstrated that it has a substantial likelihood of prevailing in a final Commission decision, one of the requisite elements to obtain interim relief.

The PBA also alleges that when the Township sought to settle pending unfair practice charges and arbitrations in return for its willingness to adjust the manner in which employees are assigned to squads, the Township retaliated against the PBA for exercising its rights protected under the Act. The Commission has held that timing is an important factor when assessing circumstantial evidence of discriminatory conduct. The timing of



events helps assess motivation. City of Margate, P.E.R.C. No. 87-145, 13 NJPER 498 (¶18183 1987); Downe Tp. Bd. of Ed., P.E.R.C. No. 86-66, 12 NJPER 3 (¶17002 1985). In this case, the facts do not appear to support the PBA's retaliation contention. The Township made squad assignments before it met with the PBA to discuss the resolution of the squad assignment dispute and before it invited the PBA to negotiate settlements in other unrelated, pending disputes. Nonetheless, by its very nature, establishing a parties' motivation is a fact-intensive exploration and does not readily lend itself to a grant of interim relief. Even where the timing of events may appear suspicious, the required hostility element of the Bridgewater<sup>3/</sup> standard may not prove out. See Mendham Borough Bd. of Ed., P.E.R.C. No. 97-126, 23 NJPER 300 (¶23138 1997); Jackson Tp. Bd. of Ed., P.E.R.C. No. 93-94, 19 NJPER 241 (¶24118 1993). In this case, the PBA's contention that the Township retaliated against it for exercising rights protected by the Act does not appear to be supported either by the timing of the employer's suggestion to settle other unrelated, pending disputes or other assertions which might establish hostility under Bridgewater. Therefore, I find that the PBA has not established a likelihood of success on the retaliation issue.

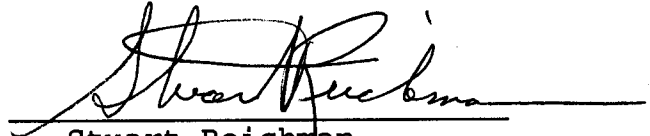
The PBA has not established the requisite elements for a grant of interim relief. Consequently, this case will proceed through the normal unfair practice processing mechanism.

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3/ Bridgewater Tp. v. Bridgewater Public Works Association, 95 N.J. 235 (1984).

ORDER

The PBA's application for interim relief is denied.

  
Stuart Reichman  
Commission Designee

DATED: January 10, 2000  
Trenton, New Jersey