I.R. NO. 90-2

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF ESSEX,

Respondent,

-and- Docket No. CO-89-368

P.B.A. LOCAL 157,

Charging Party.

SYNOPSIS

In an interim relief proceeding, a Commission Designee restrains the Respondent County of Essex from requiring employees to schedule vacation for specified blocks of time. In its unfair practice charge, PBA Local 157 alleges that the County violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), by unilaterally changing its vacation policy; the new policy requires employees to schedule vacation in two-week minimum time blocks. Based upon the record herein, it appears that the County unilaterally changed a term and condition of employment -- vacation scheduling -- and that the old vacation scheduling system would not interfere with the employer's staffing requirements. Finding that the Charging Party had established a substantial likelihood of success on the merits of the charge, that it would suffer irreparable harm if denied the requested relief and that the County would not be unduly burdened by the interim relief order, the Commission Designee orders the County to rescind the policy requiring employees to schedule vacation for specified blocks of time and permit employees to schedule the amount of consecutive vacation time desired, consistent with the parties' prior practice and the employer's established staffing requirements.

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Appearances:

For the Respondent
Essex County Counsel's Office
(Lucille LaCosta-Davino, Assistant County Counsel)

For the Charging Party
Raymond M. Codey, Esq.

INTERLOCUTORY DECISION AND ORDER

On June 14, 1989, PBA Local 157 ("Local 157") filed an unfair practice charge with the Public Employment Relations Commission ("Commission") against the Essex County Department of Public Safety ("County"), alleging that the County had violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). More specifically, the PBA alleges that the County violated subsections 5.4(a)(1), (3) and (5) of the Act by unilaterally altering its vacation policy with respect to the

employees in the unit represented by Local 157.[1/] Also on June 14, 1989, Local 157 filed an Order to Show Cause with the Commission, asking that the County be required to demonstrate why an order should not be issued restraining the County from further implementing any vacation policy inconsistent with the prior practice of the parties.

On June 23, 1989, I executed an Order to Show Cause with a return date of June 30, 1989. On that date, I conducted a show cause hearing, having been delegated such authority to act upon requests for interim relief on behalf of the full Commission. N.J.A.C. 19:14-9.2. Both parties submitted affidavits, documents and briefs and argued orally at the hearing.

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

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1/ 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. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage 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."

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.[2/]

Local 157 alleges that the County unilaterally altered the method used by employees in selecting vacations. More specifically, it alleges that prior to March 1989, employees selected vacations in accordance with the following practice: employees would designate the vacation time sought on a vacation schedule circulated by the shift commander. The jail administration set the minimum manning levels for each shift -- referred to as "tolerances" by the parties -- an acknowledged managerial prerogative. Conflicts in the vacation schedule -- i.e., where several officers sought the same vacation time and the resultant absences would exceed the tolerance level for that shift -- were resolved through application of seniority. Local 157 notes that neither the parties' most recent contract (1984-86) nor their February 1989 interest arbitration award addressed or altered their vacation selection procedure. Local 157 also notes that there was no negotiations concerning the selection procedure. In March 1989, Local 157 asserts that the County altered the existing vacation scheduling procedure when it imposed the requirement that all vacation time be scheduled in

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2/ 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).

two-week time blocks. Local 157 argues that the granting and scheduling of vacation time is a mandatory subject of negotiations, that the County was obligated to negotiate any changes in the vacation selection system and that the County violated the Act when it unilaterally altered the vacation selection system.

Local 157 contends that several of its members will be financially harmed by these changes, that its status as majority representative will be undermined by allowing these unilateral changes to stand and finally, that its members will be irreparably harmed through their loss of time/vacation opportunities -- i.e., that, once gone, they cannot "recapture" July, August and September vacation opportunities. Accordingly, Local 157 urges that its requested interim relief be granted.

The County argues that no interim relief order should issue herein. The County contends that the March 1989 vacation policy was created to ensure that minimum staffing levels could be met throughout the year. It states that the staffing levels were arrived at as part of an overall reorganization of the institution. The County argues that the requirement that vacations be scheduled in two-week time blocks is related to the efficient operation of the jail and to curbing vacation leave abuses. The County contends that scheduling vacation in the two-week time blocks is inextricably linked to staffing levels and that because minimum staffing is not a mandatory subject of negotiations, its implementation of the vacation time block policy need not be negotiated. Accordingly, the

County argues that the PBA has not demonstrated a substantial likelihood of success on the merits.

Finally, the County argues that the PBA has not shown that it would suffer irreparable harm should interim relief not be granted. The County states that any financial losses resulting from its vacation scheduling policy can be fully remedied at the conclusion of a plenary hearing.

The record reveals the following facts. Local 157 and the County have had a succession of collective negotiations agreements, the most recent one covering the period from January 1, 1984 through December 31, 1986. That contract contains a vacation provision (Article XX) which addresses only the total amount of vacation time to which each unit employee is annually entitled, based upon seniority (Exhibit C-2, Attachment A). The 1984-86 contract also contains a maintenance of benefits clause (Article IV). In February 1989, an interest arbitration award was issued to and accepted by both parties. The arbitration award did not address vacation issues. The parties have not negotiated or agreed upon a change in vacation selection procedures.

Prior to March 1989, the parties' practice regarding employee vacation selections was to have each shift commander circulate a work schedule among the employees on their shift. Each employee then designated on the schedule the vacation which s/he desired. The jail administration designated minimum staffing levels for the facility. Vacation selections could not reduce staffing to

levels below designated minimums. Conflicts in the vacation schedule -- that is, where vacation selections would reduce staffing below management's designated minimum levels -- were resolved through the application of seniority.

In March 1989, the County issued a policy which altered the above-referred selection procedure. The Charging Party objects to the requirement that vacations be scheduled in two-week time blocks. Prior to March 1989, there were no requirements concerning the minimum or maximum length of vacation selections. There are no facts alleged which indicate that minimum staffing levels were changed. Charging party does not complain that minimum staffing levels were changed; indeed, Local 157 concedes that a minimum staffing requirement is not a mandatory subject for negotiations. The parties did not negotiate nor agree upon any changes in the vacation selection procedure.

Local 157 filed several grievances concerning the new vacation scheduling policy; they were denied by the County.

After the present Essex County Director of Public Safety assumed his office, a study was made to insure that the Essex County Jail Annex was being efficiently run. A minimum staffing level was determined as was the number of employees from each shift who could be on vacation simultaneously. There are presently three vacancies in correction officer titles.

Three correction officers came forward and indicated that they would suffer financial losses if their vacation requests were not reinstated. Each situation was accommodated by the County.

The Commission has consistently held that the granting and scheduling of time off is mandatorily negotiable so long as the selection system does not interfere with the employer's minimum staffing determinations. City of Elizabeth, P.E.R.C. No. 82-100, 8 NJPER 303 (¶13134 1982), aff'd App. Div. Dkt. No. A-4636-81T3 (3/23/84); Town of West New York, P.E.R.C. No. 89-131, 15 NJPER ___ (¶_____ 1989); City of Orange Tp., P.E.R.C. No. 89-64, 15 NJPER 26 (¶20011 1988); Town of Harrison, P.E.R.C. No. 83-114, 9 NJPER 160 (¶14075 1983); and Town of Kearny, P.E.R.C. No. 82-12, 7 NJPER 457 (¶12201 1981). Thus, within the framework of the employer's staffing requirements, the scheduling of vacations -- the total amount of vacation time to which employees are entitled, the procedures for vacation selection, when employees may select vacations and the amount of consecutive vacation time which may be taken -- is mandatorily negotiable. West New York.

In City of Orange, P.E.R.C. No. 79-10, 4 NJPER 420 (¶4188 1978), the charging party alleged that the employer unilaterally changed the established practice for scheduling vacations. Prior to the change, employees selected their vacations by seniority at the beginning of each calendar year. They designated on a schedule when they would take vacations and the length of each vacation period. When the employer implemented a reorganization, it changed vacation selection procedures and specifically, the amount of consecutive vacation time permitted. The Commission concluded that once the employer had determined its staffing requirements, it was obligated

to negotiate such vacation scheduling issues as the amount of consecutive time off permitted.

In this matter, Local 157 does not challenge the County's right to establish staffing levels at the jail. Local 157's complaint concerns the employer's newly-imposed requirement that vacations be taken in minimum, two-week time blocks. The County contends that taking vacations in two-week blocks contributes to an efficient operation and is related to staffing levels.

There are no facts in the record which suggest that absent vacations being scheduled in two-week blocks, staffing levels would fall below the employer's designated minimum. Staffing determinations remain within the employer's control whether vacations are taken in one-day blocks or 14-day blocks. Further, there is no factual indication in the record of how the staffing level is differently affected by one employee on vacation for 14 days in succession or by two employees each on vacation for 7 days, over two successive weeks. The County did not establish that in returning to the prior vacation selection procedure it would be unduly inconvenienced or that it would be unable to meet its staffing requirements.

Accordingly, based upon the record herein, it appears that the employer unilaterally changed a term and condition of employment -- vacation scheduling -- about which the parties had an established agreement. Further, there is no indication that the old vacation selection system -- particularly, the amount of consecutive vacation

time which could be taken -- did or would significantly interfere with the employer's staffing requirements or any other prerogatives. Based upon the the foregoing analysis and the record herein, I conclude that the charging party has established a substantial likelihood of success on the merits of its charge.

The County contends that Local 157 has not shown that it would be irreparably harmed should interim relief not be granted. Local 157 notes that as a result of the changed vacation selection system, its members will suffer financial losses, its status as majority representative would be undermined and its members will lose time/vacation opportunities.

Forcing employees to take vacation in minimum two-week blocks forces employees to use earned time off in ways which they might not want to use it; they may be left unable to take time when they want it because they were forced to use all or most of it in large blocks or because other employees were forced to take minimum two-week blocks and thus filled the vacation schedule. For example, an employee entitled to two weeks of vacation would no longer be able to take one week in the summer and another in the winter. Forcing the use of time in this way by a unit of employees effectively takes away from employees vacation opportunities. For the employees, the time/vacation opportunities are lost forever. Thus, I conclude that unit employees will experience irreparable harm in the absence of an interim relief order.

Accordingly, I conclude that Charging Party Local 157 has established a substantial likelihood of success on the merits of its charge and that it would be irreparably harmed if no interim relief order is issued herein. Finally, I conclude that in granting Local 157's requested interim relief, Respondent County of Essex will not be unduly burdened.

INTERIM ORDER

IT IS HEREBY ORDERED that the County of Essex rescind that aspect of its March 1989 vacation scheduling policy which requires employees to schedule vacation for specified blocks of time;

IT IS FURTHER ORDERED that the County permit employees to schedule the amount of consecutive vacation time desired, consistent with the parties' practice prior to March 1989 and the employer's established staffing requirements.[3/]

Charles A. Tadduni
Commission Designee

DATED: July 14, 1989
Trenton, New Jersey

3/ Tp. of Marlboro, P.E.R.C. No. 87-124, 13 NJPER 301 (¶18126 1987), n. 7; City of Orange, at 421.