

I.R. NO. 2006-4

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WEST ORANGE,

Respondent,

-and-

Docket No. CO-2005-336

PBA LOCAL 25,

Charging Party.

SYNOPSIS

A Commission Designee denies a request for interim relief based upon an unfair practice charge filed by the PBA, alleging that the public employer rescinded the parties' practice of allocating overtime opportunities to patrol officers with the least amount of overtime previously worked. The charge alleges that overtime assignments to Colgate Park are "hand picked" and not recorded in the "roll book", as was the alleged practice. The charge further alleges that the Colgate Park overtime assignments require no special training or experience. The employer filed papers in opposition to the application and certified that patrol officers assigned to the Colgate Park "detail" were selected for their "personal and communication skills" to "anticipate, prevent and control" criminal conduct among "youth and young adults in a targeted area."

The Designee determined that the factual dispute was material and that the moving party (PBA) had not established the requisite likelihood of success to obtain interim relief.

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Appearances:

For the Respondent, Kenneth W. Kayser, attorney

For the Charging Party, Klatsky, Sciarrabone &
De Fillippo (David J. De Fillippo, of counsel)

INTERLOCUTORY DECISION

On June 7, 2005, West Orange PBA Local No. 25 filed an unfair practice charge against the Township of West Orange. The charge alleges that soon after May 23, 2005, the Township "improperly rescinded the parties' past practice and custom of allocating overtime opportunities to patrol officers with the least amount of overtime previously worked." The charge specifically alleges that daily afternoon-evening overtime assignments at municipal Colgate Park are awarded to a "small number" of "hand picked patrol officers" by a (non-unit) police sergeant with "unfettered discretion." The charge further alleges that the unit employees assigned such overtime are

performing "routine duties in a concentrated area" at Colgate Park. Finally, the charge alleges that the rescission has occurred "while the parties are in-between collective bargaining agreements."^{1/} The Township's conduct allegedly violates 5.4a(1), (2), (3), (4), (5), (6) and (7) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq.

The charge was accompanied by an application for interim relief seeking reinstatement of the practice of allocating all overtime assignments, specifically the "Colgate Park" details, to patrol officers by seniority with the least amount of overtime previously worked. On June 27, 2005, I signed an order to show cause which set forth a return date for oral argument of July 26, 2005. The parties submitted briefs, affidavits and exhibits and argued on the scheduled return date. The following facts appear.

No provision of any collective agreement signed by the parties concerns overtime procedures. Directive 3:7 was issued in 1995 and provides:

3:7-1 PURPOSE

The purpose of this directive is to establish a fair and consistent procedure for hiring sworn and civilian personnel for overtime assignments as the need develops for such assignments.

^{1/} On July 26, the return date for oral argument on the application for interim relief, the PBA withdrew its contention that the alleged rescission of the practice of assigning overtime occurred during collective negotiations or interest arbitration proceedings.

3:7-2 PROCEDURE FOR PATROL DIVISION

3:7-2.1 OFFICERS

When a shortage of manpower develops on any shift the Tour Commander or his designee will call officers by seniority with the least amount of overtime in the following order:

- a. officers from the shift that the shortage is on.
- b. patrol officers on either of the other shifts
- c. officers in special units (DB, JAB, etc.)

In 2003, Directive 3:7 was modified to bolster "accounting procedures" and sections 3:7-2.1(a) and (b) were deleted and replaced with "patrol and traffic officers." Overtime assignments are maintained in a "roll book" to ensure their fair and equitable distribution. The PBA asserts that patrol officer overtime assignments to Colgate Park are not recorded in the roll book.

On or about May 23, 2005, an incident of "aggravated assault" in Colgate Park prompted an increase in the number of police personnel assigned there. Captain John Buoye is the commanding officer of the Criminal Investigation division. He certified that the geographic area in and around Colgate Park ". . . was experiencing a growing concern with 'quality of life' issues and concerted criminal activity [i.e., gangs] among youths and young adults" (certif. p.2). On June 1, Buoye "staff[ed] a

specialized unit", determining that a named sergeant and two named patrol officers would be "temporarily assigned to the Criminal Investigation unit . . ." and report to a lieutenant Cali. Buoye certified that Cali was instructed "to hire personnel that were best suited to meet our goals, [including] the further development of intelligence and the prevention and control of concentrated criminal activity among the area's youth and young adults" (certif., p.2). He certified that the assignment "requires more than the average police officer's personal and communication skills and a knack for exercising good judgment in pressure situations. . ."

Detective lieutenant James Laing has been the commanding officer of detective bureau of the Criminal Investigation division since 1996. A portion of his duties require the development, supervision and implementation of "special tactical operations" in response to "abnormal workload", such as a substantial increase in burglaries in a certain area. Laing certified that "during the course of special operations, [he has] personally selected the personnel to be assigned to such detail, based upon [his] [good faith] judgment." He also certified that when "special details" are required, "the supervisor in charge of the detail is given the authority and discretion to personally select the personnel assigned to such detail (for example, Fourth

of July events; St. Patrick's Day parade; and other large scale events)" (certif., p.2).

Laing certifies that the disputed Colgate Park detail is a "special operation" which is "not the same as normal patrol operations." The goal of the Colgate Park detail is:

to utilize existing intelligence information and develop new intelligence information through social networking to anticipate, prevent and control concerted criminal activity among youths and young adults in the targeted area. The personnel in this detail must work well under pressure, have thorough knowledge of the criminal code and a host of intangible personal qualities and skills which make them better at handling inflammatory situations. [certif., p.2]

The Colgate Park overtime assignments generally run daily from 2 p.m. to 10:30 p.m., and are scheduled indefinitely. Detectives and patrol officers are assigned to the detail. Patrol officers wear standard uniforms and ride in marked patrol vehicles. Detectives wear plain clothes and ride in unmarked vehicles.

Sergeant Charles Bryant oversees the Colgate Park overtime assignments and selects or "hand picks" the patrol officers to work them. He does not select patrol officers by seniority with the least amount of overtime previously worked.

Patrol officer Terrence Rippon has twice worked the Colgate Park overtime detail. He certified that sergeant Bryant told him of the "need for high visibility of patrol officers working this

detail [and was] encouraged to enforce 'quality of life' issues, such as prohibiting loitering; breaking up large groups; enforcing noise restrictions [and] the 10 p.m. curfew." He certified that none of the assigned duties "fall outside of a patrol officer's normal and ordinary work requirements" (certif. p.2).

Patrol officer Ronald Torromeo has twice been selected to work and has worked the Colgate Park overtime detail. He was instructed to enforce the "quality of life" ordinance and the 10 p.m. curfew. Torromeo wore the standard uniform and rode in a marked police vehicle. Patrol officer McCrone worked the Colgate Park overtime detail three separate occasions and certifies that he and other assigned officers are encouraged to enforce "quality of life" issues and are not instructed to "gather data for intelligence purposes." He certified that none of the assigned duties fall outside of patrol officer "normal and ordinary work requirements" and that "no special skills or experience are required to perform the detail" (certif., p.2).

On June 20, 2005, PBA president Robert Verzi filed a grievance regarding the "improper allocation of overtime by the department for enhanced patrol in and around Colgate Park", specifically contesting the "ad-hoc and arbitrary basis" for offering the detail to officers. On June 21, Chief James Abbott issued a memorandum to Verzi, denying the grievance.

In a reply certification, PBA president Verzi wrote that all patrol officers are encouraged to prepare and submit reports on a "gang intelligence form" in appropriate circumstances. He also certified that events on the Fourth of July and St. Patrick's Day are "one day only" and "typically four or five hours in duration" and are staffed on occasion by auxiliary officers, in the absence of unit volunteers. He also certified that many of the officers selected to patrol Colgate Park on overtime "have limited police experience", citing two named officers who "only recently completed their field training program."

ANALYSIS

Interim relief may be ordered in appropriate cases. To obtain relief, a moving party must demonstrate that it has a substantial likelihood of prevailing in a final Commission decision on its factual and legal allegations and that irreparable harm will occur if the requested relief is not granted. The moving party must also show that the public interest will not be injured by an interim relief order. Finally, the relative hardship to the parties in granting or denying relief must be considered. Crowe v. DeGioia, 90 N.J. 126, 132-134 (1982).

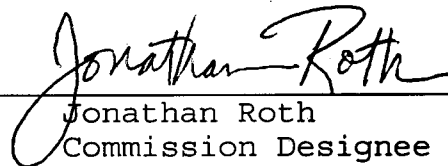
In this case interim relief must be denied. The City has asserted that officers assigned to overtime shifts at Colgate Park have superior "personal and communication skills", work well

"under pressure" and possess "intangible personal qualities" that enable them to diffuse "inflammatory situations" [i.e., gang-related conflict]. The overall goal is to "develop new intelligence . . . , to anticipate, prevent and control concerted criminal activity among youths in [Colgate Park]." The PBA has provided certifications disputing both the Township's articulated goal and the duties actually assigned and performed by officers awarded the Colgate Park overtime detail. The PBA essentially contends that all unit employees are qualified to perform the work.

This factual dispute inextricably concerns the legal issue raised by the parties' papers; namely, does the Township have the right in this case to deviate from an uncontested overtime allocation system in order to protect the public interest? See City of Elizabeth, P.E.R.C. No. 97-115, 23 NJPER 234, 235 (¶28112 1997); City of Long Branch, P.E.R.C. No. 83-15, 8 NJPER 448 (¶13211 1982); also see, City of Elizabeth, P.E.R.C. No. 2000-15, 25 NJPER 407 (¶30177 1999); Jefferson Tp., P.E.R.C. No. 98-161, 24 NJPER 354 (¶29168 1998). Accordingly, I cannot find at this early stage of the administrative process that the PBA has demonstrated a substantial likelihood of prevailing on the merits of its charge in a final Commission decision.

ORDER

The application for interim relief is denied.


Jonathan Roth
Commission Designee

Dated: August 5, 2005
Trenton, New Jersey