

I.R. No. 2006-22

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NORTH HUDSON REGIONAL FIRE
AND RESCUE,

Respondent,

-and-

Docket No. CO-2006-279

NORTH HUDSON FIREFIGHTERS ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee grants in part and denies in part an application for interim relief seeking to restrain the North Hudson Regional Fire and Rescue from denying more than the contractual minimum four summer vacation days per employee when any of the ten contractually provided summer vacation slots were available on any particular day. The Regional raised contractual defenses which the Designee found needed to be resolved through arbitration and, therefore, concluded that there was not a substantial likelihood of success at least on the issue of whether the Regional was required to automatically allow more than four summer vacation days per employee if any of the ten summer vacation slots were available. However, the Designee also found that the Regional has been granting many requests for more than four summer vacation days per employee, and, therefore, orders the Regional to continue to review and respond in a reasonable time to requests to use more than the minimum four summer vacation days.

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Appearances:

For the Respondent, Scarinci & Hollenbeck, LLC,
attorneys (Mark S. Tabenkin, of counsel)

For the Charging Party, Cohen, Leder, Montalbano &
Grossman, LLC, attorneys (Bruce D. Leder, of counsel)

INTERLOCUTORY DECISION

On May 15, 2006, the North Hudson Firefighters Association (Association), filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that North Hudson Regional Fire and Rescue (Regional) committed unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), specifically, N.J.S.A. 34:13A-5.4a(1) and (5).^{1/} The charge was accompanied by

^{1/} 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. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and
(continued...)

an application for interim relief, seeking to restrain the Regional from denying more than four summer vacation days per employee when openings existed on the contractually provided ten summer vacation slots per day. The Association claims the Regional is violating the parties recent agreement on taking summer vacations.

An Order to Show Cause was signed on May 18, 2006 scheduling a return date for June 13, 2006. Both parties submitted documentation and argued orally on the return date. After considering the parties written submissions, oral argument and in response to settlement efforts, I reserved decision on the merits of the application and directed the Regional to respond to employee requests for more than four summer vacation days. The Regional responded as directed on June 21, 2006, granting some and denying some requests for more than four summer vacation days. The Association responded to that submission on June 22, 2006, reiterating its legal position on the application and asking that I issue a decision on its application. The following facts appear:

The parties 1999-2004 collective agreement covered vacations in Article 14. The pertinent sections of that Article provide:

1/ (...continued)
conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

C. Vacation leave may be taken in 12 as well as 24 hour blocks except during the summer months (June, July and August), when vacation leave shall be taken in blocks of 24 hours. During the summer months, vacation use shall be limited to four (4) 24 hour tours per Firefighter. The taking of a 12 hour block for vacation is contingent upon the remaining 12 hours of that Firefighter's tour of duty be covered on a non-overtime basis. The Executive Director or his designee retains discretion to approve a Firefighter's obtaining of a vacation day from a Firefighter assigned to a different company.

D. There will be one Firefighter allowed off for vacation per company.

The vacation policy agreed upon for 2004 states in pertinent part:

B2. SUMMER VACATION PICKS: (Picked 2nd)

There will be at least ten (10) firefighters slots off during the summer period.

These days shall be picked by firefighters in seniority rotation. The summer vacation period will be from June 16th to September 11th. During the summer vacation period, vacation use shall be limited to a maximum of four (4) 24-hour tours per firefighter. Summer days can only be used as a 24-hour day.

F. Firefighters may bid on vacation use by seniority. The Regional shall allow for vacation use throughout the year. While vacation use may cause the need for some overtime, the Regional may consider whether the granting of vacation would cause an undue or excessive amount of overtime before granting its us.

On January 13, 2006, the parties reached and signed a memorandum of agreement for a new collective agreement to be

effective from July 1, 2004 through June 30, 2009. That January memorandum, and another memorandum of agreement reached and signed on March 27, 2006 were ratified by the parties. The Regional began implementation of the terms of the new agreement on or about April 13, 2006, but the parties had not reduced a new complete agreement to writing.

The January 13th memorandum included specific changes to Vacation, Article 14.

New Article 14 Section D provides in pertinent part:

The number of Firefighters permitted off on all summer days will be 10.

New Article 14 Section E provides in pertinent part:

B2. ALL OTHER VACATION PICKS: (Picked 2nd)

These days shall be picked by firefighters in seniority rotation. The summer vacation period will be from the middle of June to the middle of September. All firefighters are guaranteed a minimum of (4) four 24-hour tours off. Summer days can only be used as a 24-hour day. All other days could be used in 12-hour time intervals. If a member splits a 24-hour tour into two (2) 12-hour intervals, the second (2nd) 12-hour interval can not create overtime.

Neither of the 2006 memorandums of agreement referred to Article 14 Sections C or F. The parties apparently agree that the language in Article 14 Section F is still included, but disagree on whether the language in Article 14 Section C survived the new language in Article 14 Section E B2 of the January 13th memorandum of agreement.

In April 2006, firefighters made their vacation requests for the summer, and several employees requested more than four (4) summer vacation days. On or about May 1, 2006, the Regional declined to automatically allow more than four summer vacation days for any one employee even if slots were available from the ten (10) contractual summer vacation slots.

By letter of May 2, 2006, the Association grieved the Regional's refusal to permit firefighters to schedule more than four summer vacation days even though some of the ten summer vacation slots were available on certain days. The Regional did not respond to the grievance but is not opposed to submitting the grievance to arbitration.

The Regional has granted more than four 2006 summer vacation days to several firefighters on various shifts, and agrees to consider and respond to other such requests, but relies on what it believes is existing contractual language in denying several such requests.

The Association argues the Regional has repudiated and refused to implement the terms of the January 13, 2006 memorandum of agreement which it claims allows employees more than four summer vacation days if any of the ten summer vacation slots are available. The Regional argues it has complied with the terms of the memorandum of agreement, and relies on what it claims is still the language in Article 14 Sections C and F of the parties

expired agreement as justification for its actions. The Regional thus argued that this case involved a contractual dispute and, therefore, the interim relief standards were not met. It argued the application be dismissed.

ANALYSIS

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).

The scheduling of vacation leave is mandatorily negotiable, provided the employer can meet its minimum staffing requirements. City of Trenton, I.R. No. 2003-4, 28 NJPER 368, 371 (¶33134 2002); Pennsauken Twp., P.E.R.C. No. 92-39, 17 NJPER 478 (¶22232 1991). While employers may deny vacation time to ensure minimum staffing, it can legally allow vacation even if doing so requires overtime compensation. Overtime costs do not make vacation scheduling non-negotiable. Borough of Rutherford, P.E.R.C. No.

97-12, 22 NJPER 322 (¶27103 1996); Town of Secaucus, I.R. No. 2000-6, 26 NJPER 83 (¶31032 1999).

The parties in this case commendably made the effort to settle their contract and avoid contractual disputes. But despite their best efforts and intentions, a dispute exists as to the intent and meaning of the new language in Article 14 Sections D and E, whether Article 14 Section C survived that memorandum, and whether it did or did not, whether the Regional violated the new collective agreement by refusing all requests for more than four summer vacation days when any of the ten summer vacation slots were still available. Since this case involves the interpretation of the parties collective agreement(s), and since it is more appropriate for an arbitrator and not the Commission to make that interpretation, I cannot conclude that a substantial likelihood of success exists that would support a grant of interim relief.

The Association relied upon City of Trenton to support its argument here, but the facts of that case are inapposite. In Trenton, a Commission Designee did restrain the City from denying the use of certain vacation days, but that was because it was found that the City unilaterally changed a prior practice and repudiated clear contract terms. The Designee, however, also declined to issue an order on a related vacation issue because it involved contract interpretation and was more appropriate for the

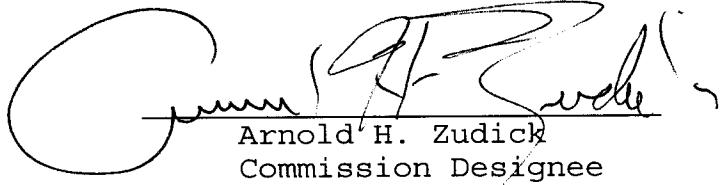
grievance procedure. This case does not concern a unilateral change nor clear contract language. In fact, it concerns the meaning of new contract language which was being implemented for the first time. In Township of Logan, I.R. No 95-23, 21 NJPER 243 (¶26152 1995), a Commission Designee also denied interim relief on a vacation usage issue finding it was more a matter of contract interpretation than repudiation and should be resolved in arbitration. See also, State of New Jersey (Division of State Police), I.R. No. 2006-21, ___ NJPER ___ (¶ 2006); New Jersey Institute of Technology, D.U.P. No. 2003-1, 28 NJPER 365 (¶33133 2002).

Based upon the above findings and analysis, I deny the Association's application to require the Regional to automatically grant more than four summer vacation days when any of the 10 vacation slots are available. However, that does not entirely end the inquiry. The Regional conceded that employees may receive more than four summer vacation days, in fact, it has granted several requests for additional summer vacation days. During the time this matter is proceeding to arbitration, the Regional must continue to respond to requests for more than the minimum four summer vacation days.

Accordingly, I issue the following:

ORDER

The Regional shall respond in a reasonable and timely fashion to requests for more than the minimum four summer vacation days. All other remedies sought by the application for interim relief are denied.



Arnold H. Zudick
Commission Designee

DATED: June 30, 2006
Trenton, New Jersey