

I.R. No. 2010-3

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF EDISON,

Respondent,

-and-

Docket No. CO-2009-438

EDISON POLICE BENEVOLENT ASSOCIATION
LOCAL NO. 75,

Charging Party.

SYNOPSIS

A Commission Designee grants interim relief and orders the Respondent to rescind a unilaterally implemented new policy regarding vacation leave which repudiated the collective agreement and past practice. The SOA demonstrated a substantial likelihood of success on the merits and irreparable harm. The Township asserted they had a managerial prerogative to change the policy based on minimum staffing needs but offered insufficient factual support to conclude that there was an overriding governmental policy reason that made the policy non-negotiable.

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Appearances:

For the Respondent,
Ruderman & Glickman, attorneys
(Mark S. Ruderman, of counsel)

For the Charging Party
Mets, Schiro & McGovern, LLP, attorneys
(James M. Mets, of counsel)

INTERLOCUTORY DECISION

On May 26, 2009, the Edison Police Benevolent Association Local No. 75 (Superiors) (SOA) filed an unfair practice charge with the Public Employment Relations Commission alleging that the Township of Edison (Township) violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), specifically subsections 5.4a(1), (2), (3) and (5)^{1/} when it

^{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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (3) Discriminating in regard (continued...)"

unilaterally altered unit employees' vacation schedule selection policy during collective negotiations in repudiation of the parties' collective negotiations agreement and past practice. The SOA requests that the Township be ordered to reinstate the previous vacation schedule selection policy.

The unfair practice charge was accompanied by an application for interim relief seeking to restrain the Township from changing the vacation schedule selection policy. On May 28, 2009, I signed an Order to Show Cause with a return date for oral argument on June 18, 2009. The parties submitted briefs, affidavits and exhibits and argued orally on June 28, 2009. The following facts appear.

The SOA is the exclusive negotiations representative of the Township's superior ranking police officers holding titles of sergeant, lieutenant and captain. The Township and the SOA have been signatories to a series of collective agreements covering the superiors officers. The most recently expired collective agreement covered the period January 1, 2005 through December 31,

1/ (...continued)
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."

2008. The agreement addresses vacation leave for the superior officers, in Article XXV, which states in pertinent part:

D. Vacation leave, subject to the approval of the Chief of Police or his/her designee, may be taken at times if units of full working days from one (1) full day to twelve (12) consecutive full working days. Vacation time to excess of twelve (12) consecutive full working days may not be taken except if there is no conflict with other members of that officer's squad, and the other members of said squad agree that the officer may take more than twelve (12) consecutive full working days.

E. Subject to other provisions of this contract and depending on manpower or squad strength, two (2) officers shall be permitted off on each shift in order to go on vacation, and said two officer on each shift shall be permitted off during the same period of time.

According to the affidavit of Lieutenant Bruce Polkowitz, who is the president of the SOA, each year during the term of the parties' collective negotiations agreement, the Chief of Police issued a policy regarding vacation scheduling. Each of the policies were identical with respect to SOA members for the years 2005 through 2008. The policy stated that lieutenants will pick with lieutenants and sergeants will pick with sergeants in order of seniority, two supervisors could be permitted off on each shift, but no more than one supervisor of each rank at one time. The Township does not refute that such was the practice.

On January 14, 2009, Police Chief Thomas Bryan issued a new policy regarding vacation scheduling which provided that no more

than one (1) supervisor, i.e., one (1) lieutenant or one (1) sergeant to select vacation time at the same time on the same shift.

ANALYSIS

The SOA argues that the Township repudiated the collective bargaining agreement and past practice when it unilaterally altered terms and conditions of employment during negotiations. It maintains that the change made during negotiations chills the negotiations process and irreparably harms the Association and its members.

The Township maintains that the Township has legitimate non-negotiable managerial prerogative to preserve minimum supervisory staffing levels.

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 SOA argues that the Township repudiated the parties' collective bargaining agreement in violation of the Act. The Township does not deny that the police chief's January 14, 2009 policy changed the vacation leave policy from permitting two superior officers, one lieutenant and one sergeant to select vacation time at the same time on the same shift, to permitting only one supervisor, either a lieutenant or sergeant to select vacation at the same time on the same shift. Accordingly, I find that the Township unilaterally changed its vacation leave policy, thus repudiating the contract and past practice during negotiations.^{2/}

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 413 (¶20169 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

^{2/} Respondent argues that the parties were not engaged in formal negotiations as of January 2009 but had only had "preliminary discussions." The fact that the parties contract had expired and negotiations had formally commenced or were about to commence is of no moment.

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.

Here, the Township contends that negotiations over the vacation policy would interfere with its authority to preserve minimum supervisory staffing levels. The affidavit of Police Chief Bryan discussed a reduction in police officers of 215 in 2004 to 190 in 2008. The Chief further alleges that there has been a concurrent reduction in the number of supervisory staff. However, the affidavit of Chief Bryan provides no factual justification for the Township's claimed managerial need to change the vacation policy. Bryan states that the prior vacation policy would "seriously jeopardize the Department's ability to maintain minimum supervisory staffing levels, preserve operational efficiency, and hence ensure public safety." I find this conclusory statement to be an insufficient basis to find that the Township exercised a managerial prerogative to change the policy. While the Township argues that it changed the schedule to efficiently provide services, it takes more than just a label to demonstrate that the employer has an overriding governmental policy concern that would require taking the issue out of the negotiations arena. See East Orange and East Orange

Fire Offrs Assoc., 32 NJPER 354 (¶148 2006); Borough of Ramsey, I.R. No. 93-8, 19 NJPER 282 (¶24144 1992). Here, the Township has not articulated any specific rationale for its asserted need to have the change in vacation policy. The new policy change in vacation leave is not directed to any particular tour of duty but applied to the entire SOA. There are no facts shown as to the Township's minimum supervisory staffing or that under the status quo the minimum could not be maintained through overtime assignments, for example. The change is overly broad. See Kearny and FMBA Loc 18 - Cpts, 21 NJPER 187 (¶26120 1995); County of Essex and PBA Loc 157, 15 NJPER 459 (¶20188 1989).

Accordingly, I find that the Township has not shown that it had a managerial prerogative to revise the vacation leave policy. The SOA has established the requisite likelihood of success necessary for the grant of interim relief.

The SOA contends that it, as well as its members, will be irreparably harmed if interim relief is not granted. The parties are in the midst of collective negotiations for a successor agreement. An employer's unilateral change in a mandatorily negotiable term and condition of employment is the antithesis of good faith negotiations. Galloway Tp. Bd. Of Ed. V. Galloway Tp. Ed. Assn. 78 N.J. 25 (1978). A unilateral change in terms and conditions of employment during the negotiations process has a chilling effect on employee rights guaranteed under the Act,

undermines labor stability and constitutes irreparable harm.

Galloway. Moreover, supervisors' lost vacation days are disruptive to their personal lives and cannot be recouped at a later time. I find that the Township's unilateral change during the course of collective negotiations undermines the SOA's ability to represent its members and results in irreparable harm to employees.

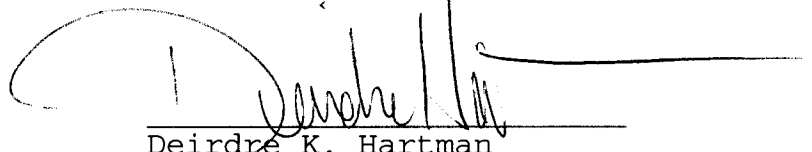
In considering the public interest and relative harm to the parties, I find that the public interest is furthered by requiring adherence to the tenets expressed in the Act which require parties to negotiate prior to implementing changes in terms and conditions of employment. Maintaining the collective negotiations process results in labor stability and thus promotes the public interest. Further, the Township has not articulated any harm that it would endure if the prior vacation policy were maintained.

Accordingly, I find that the SOA has met the burden to obtain interim relief. This order will remain in effect until the Commission orders, an arbitrator decides, or the parties agree otherwise. The charge will be processed in accordance with the Commission's normal unfair practice charge processing mechanism.

ORDER

The Township is hereby **ORDERED** to maintain the vacation leave policy that was in effect at the expiration of the collective negotiations agreement provided minimum staffing levels are maintained.

BY ORDER OF THE COMMISSION



Deirdre K. Hartman
Commission Designee

DATED: July 8, 2009
Trenton, New Jersey