I.R. NO. 97-15

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF PAULSBORO,

Respondent,

-and- Docket No. CO-97-270

PAULSBORO POLICE OFFICERS' ORGANIZATION (PBA LOCAL 122),

Charging Party.

SYNOPSIS

A Commission Designee enters an interim order requiring the Borough of Paulsboro to refrain from requiring unit employees to submit vacation requests in a "block of days" format and from establishing a new deadline for scheduling certain vacation earned during the previous calendar year.

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Appearances:

For the Respondent, Angelini, Viniar & Freedman, attorneys (Wendy M. Rosen, of counsel)

For the Charging Party, Barron & Gillespie, attorneys (Sharon A. Hendren, of counsel)

INTERLOCUTORY DECISION

On February 13, 1997, the Paulsboro Police Officers' Organization (Charging Party) filed an unfair practice charge[1/] with the Public Employment Relations Commission. It was alleged that the Borough of Paulsboro (Borough) committed an unfair practice within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4 et seq., specifically sections

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1/ The Unfair Practice Charge initially contained three counts. On February 20, 1997, as the result of discussions between the parties, the charging party withdrew count 1 of the charge.

5.4(a)(1), (2), and (7)[2/] when on or about December 17, 1996, the Borough unilaterally changed the method of vacation scheduling. The unfair practice charge was accompanied by an order to show cause which was executed on February 14, 1997. A hearing was held on the return date, February 24, 1997.

FINDINGS

On or about December 17, 1996, the Chief of Police issued a general order, G96-06, which directed unit employees to submit vacation requests in a "block of days" format. The "block" format required employees to schedule their vacation in two or three day segments. Although the Chief of Police reserved the right to grant single-day vacation requests, the general order indicated that single-day vacation requests were no longer acceptable. The general order also required employees who accumulated vacation time during the previous calendar year, and wished to use such accumulated time prior to March 11 of the following calendar year, to submit their requests for vacation time to the Chief no later than January 30.

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

The collective agreement runs from January 1, 1994 through December 31, 1996. Article 17, Section 5, Designation of Vacation Time, states the following:

> Any employee may designate, by a deadline of December 1, a maximum of forty (40) hours vacation toward the next year's vacation time or toward the next year's sick leave time. Only vacation time or sick leave time are eligible for such designation (an employee may not designate hours for future personal leave, etc.) and once an employee so designates future time, such designation must be adhered to under penalty of the loss of said forty (40) hours.

On December 16, 1996, Sgt. Francis Grogan filed an application to use one day of vacation on January 20, 1997. Grogan wished to charge such time against vacation earned during calendar year 1996. Grogan's application was denied on the grounds that (1) he did not request that his vacation time be carried forward into the next calendar year by December 1 and (2) his request was for a single day rather than a block of two or three days as required by general order G96-06. The charging party asserts that employees were not previously held to the December 1 filing deadline.

There have been occasions when the Chief has denied other police officers' requests for vacation leave, both single-day and block requests. The basis upon which the Chief denied vacation requests or cancelled previously scheduled vacation leave was to maintain minimum staffing levels. During his tenure, the Chief has never denied a single-day vacation request when the maintenance of the minimum staffing level was not at issue.

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. DeGioia, 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).

Section 5.3 of the Act states, in relevant part, the following:

> Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established.

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 NJPER Supp.2d 141 (¶125 App. Div. 1984); 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 1988); Town of Kearny, P.E.R.C. No. 82-12, 7 NJPER 457 (¶12201 1981); County of Essex, I.R. No. 90-2, 15 NJPER 459 (¶20188 1989). 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, the time when employees may select vacations and the amount of consecutive vacation time which may be taken--is mandatorily negotiable.

By definition, an established practice is a term and condition of employment which is not enunciated in the parties' agreement but arises from the mutual consent of the parties, implied from their conduct. Caldwell-W. Caldwell Bd. of Ed., P.E.R.C. No. 80-64, 5 NJPER 536 (¶10276 1979), aff'd. in pt., rev'd in pt., 180 N.J. Super. 440 (App. Div. 1981). In the instant matter, except when a requested vacation day might result in the failure to maintain the minimum staffing level, employees have always been allowed to request single-day vacations and the Chief has always approved such requests. Thus, general order G96-06 unilaterally modifies the established practice by directing employees to submit vacation requests in a "block of days" format and by indicating that the concept of single-day vacations will no longer be accepted. While the Chief's reasons for issuing the general order may be operationally based, effectuation of the general order appears to unilaterally modify terms and conditions of employment without

negotiations in violation of the Act. See Hammonton Bd. of Ed., P.E.R.C. No. 87-26, 12 NJPER 755 (¶17284 1986).

The Borough argues that the requirement to use "block" vacations enhances administrative continuity with regard to planning and scheduling of vacations. Problems arising from changing the schedule of an officer to cover a one day vacation may be avoided when block vacations are used. However, the record does not indicate that single-day vacations result in problems with maintaining minimum staffing levels to any greater degree than when block vacation requests are submitted, albeit, block vacations may reduce administrative inconvenience.

Thus, I find that the Employer unilaterally changed terms and conditions of employment--the amount of consecutive vacation time which an employee may take--when it issued general order G96-06. Single day vacation requests constituted the parties established practice and do not significantly interfere with the Employer's minimum staffing requirements or any other prerogatives.

The general order also required employees to submit requests to use vacation earned during the previous calendar year by January 30 of the calendar year subsequent to the year in which such time had been earned. As noted above, the procedures for vacation selection constitutes a mandatory subject of negotiations. By establishing the January 30 date, the employer appears to have unilaterally changed a term and condition of employment without prior negotiations in violation of the Act. Consequently, with

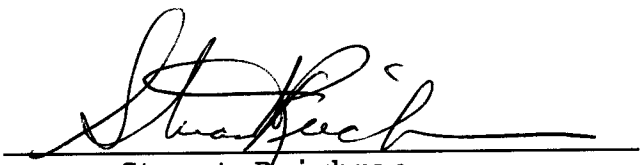
respect to both the "block" vacation requests and the establishment of the January 30 date, I find that the Charging Party has established a substantial likelihood of success on the merits of its charge.

I also find that the Charging Party has established that employees would be irreparably harmed if interim relief were not granted. Under the "block vacation format" employees would be forced to use earned time off contrary to their own preferences. The "block vacation format" limits employees' vacation opportunities. The denial of single-day vacations may impact on child care and other family matters. Essex Cty. Similarly, employees who have otherwise complied with the collective agreement but have not met the newly established January 30 application date may lose their ability to use vacation time earned and carried forward from the prior calendar year.

In weighing relative hardships, I find that a greater hardship would fall upon the employees if interim relief is not granted. The grant of interim relief is intended to return the parties to the status quo ante. While this may result in the Borough having to continue to grapple with certain administrative inconveniences, it does not limit it from exercising its prerogatives. On the contrary, if relief is not granted, the employees will suffer irreparable harm as discussed above. Maintenance of the status quo ante will not have an adverse affect upon the public interest. Moreover, I note that the parties'

collective agreement has recently expired and the parties are currently negotiating a successor agreement. It would be appropriate for the parties to address the issues raised in this matter at the negotiations table.

Accordingly, it is **ORDERED** that the Borough rescind the elements of general order G96-06 pertaining to the scheduling of vacations in a "block of days" format and the establishment of the January 30 deadline for scheduling vacation days earned during the previous calendar year. I do not, however, restrain the Borough from denying Grogan's January 20, 1997 vacation request, since Grogan may not have complied with the application requirements contained in the collective agreement. Sussex-Wantage Reg. Bd. of Ed., P.E.R.C. No. 86-57, 11 NJPER 711 (¶16247 1985). That issue should be resolved through the parties grievance procedure. This is an interim order only. This matter may now proceed to a full plenary hearing.



Stuart Reichman
Commission Designee

Dated: February 27, 1997
Trenton, New Jersey