

I.R. NO. 98-21

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF DOVER,

Respondent,

-and-

Docket No. CO-98-291

DOVER TOWNSHIP POLICE
OFFICERS ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee denies an application for interim relief brought by the Dover Township Police Officers Association against the Township of Dover. It is alleged that the Township promulgated a rule which severely limits the amount of work police officers not on regular duty may do for outside vendors. The Township now requires vendors who wish to hire uniformed police officers not on regular duty to pay one months cost of such services in advance.

The management of off-duty work is not mandatorily negotiable. Accordingly, the Association did not demonstrate it has a substantial likelihood of success.

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Appearances:

For the Respondent,
Berry, Kagan, Sahradnik, Kotzas & Riordan, attorneys
(Seymour J. Kagan, of counsel)

For the Charging Party,
Loccke & Correia, attorneys
(Joseph Licata, of counsel)

INTERLOCUTORY DECISION

On February 6, 1998, the Dover Township Police Officers Association filed an unfair practice charge with the New Jersey Public Employment Relations Commission alleging that the Township of Dover committee an unfair practice within the meaning of N.J.S.A. 34:13A-5.4a(1), (2), (3), (5) and (7)^{1/} when, after the

^{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

Association and the Township entered into an agreement as to police employment for outside vendors while in uniform (e.g. security duty and traffic control), the Township promulgated a policy severely limiting the amount of work available to unit members.

Specifically, the Township now requires vendors who wish to hire officers not on regular duty to pay one months cost of such service in advance. It is alleged that this precondition has resulted in a significant decrease in the amount of work available to police officers.

The unfair practice charge was accompanied by an application for interim relief seeking to restrain the Township from requiring such advanced deposit.

An order was executed and a hearing was conducted on March 11, 1998 at which time both parties were given the opportunity to introduce evidence and argue orally.

It is not disputed that in January, 1998, the Township of Dover and the Dover Township Police Association entered into an agreement with respect to secondary employment. The Employer

1/ Footnote Continued From Previous Page

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."

agreed to manage secondary employment for police officers. The agreement states that during such employment periods the officer shall be considered in the employ of the Township. The agreement establishes an hourly fee which includes a \$5.00 per hour surcharge to defray the Township's cost of administrating the program and the use of police vehicles and insurance. All payment to employees is to be made not later than the next pay period following the performance of the work, provided the Township has received payment from the outside employer.^{2/}

After this agreement was signed, letters were sent to vendors stating the new rate structure as well as the condition that the first month's fee must be in advance. The evidence adduced at the hearing indicates there has been a drop-off in the number of vendors using the program.

The Association alleges that requiring a monetary payment in advance effectively repudiates the negotiations agreement. It has a significant impact on employees who would lose opportunities for employment where the outside businesses refused to prepay for this service.

It points out that the hourly rate of pay for police officers doing work in uniform for third parties is mandatorily negotiated. Twp. of Mine Hill, P.E.R.C. No. 87-93, 12 NJPER 125 (¶18256 1987); Twp. of Pennsauken, I.R. No. 87-16, 13 NJPER 164

^{2/} Disputes which arise under this agreement may not go to arbitration without mutual agreement.

(¶18073 1987); Twp. of Montclair, P.E.R.C. No. 91-13, 16 NJPER 449 (¶21194 1990); Bowman v. Pennsauken Twp., 709 F.Supp. 1329 (D.N.J. 1989).

The Township argues that the police officers who participated in this program are hired by third party private entities and are paid by those private entities for private work done outside of their normal scope of employment with the police department. It relies on a letter opinion from the U.S. Department of Labor which states since the U.S. Department of Labor views the vendor as separate employers since §7(p)(1), 29 U.S.C. 207 (p.) (1) of the FLSA provides that such work in uniform during off-duty hours is not combined with normal police duties for purposes of overtime compensation. The Township urges that P.E.R.C. must find the vendors are separate and private employers and accordingly, P.E.R.C. is without jurisdiction in this matter.

ANALYSIS


Where, as here, the employer sets the rate for outside work, the rate of compensation for such off-duty work is negotiable. Mine Hill. Significantly, the agreement between the Township and the Association states that participating officers are employees of the Township.

However, the management of off-duty work by an employer is non-negotiable. Orange Tp., P.E.R.C. No. 86-23, 11 NJPER 522 (¶16184 1985). Here, the employer's requirement that vendors pay

for a month's service in advance apparently negatively influenced the amount of work available. Nevertheless, it is not clear from the record before me if the requirement is a mandatorily negotiable term and condition of employment.^{3/}

I find the Association has not met its heavy burden. It has not shown it has a substantial likelihood of success before the Commission in demonstration the imposition of one month's advanced deposit is a mandatorily negotiable subject of negotiation.

The request for an interim order is denied.



Edmund G. Gerber
Commission Designee

DATED: March 19, 1998
Trenton, New Jersey

^{3/} As opposed to a permissive subject or managerial prerogative.