

I.R. NO. 95-23

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF LOGAN,

Respondent,

-and-

Docket No. CO-95-375

LOGAN TOWNSHIP POLICE ASSOCIATION,

Charging Party.

Appearances:

For the Respondent,
Hoffman, DiMuzio & Hoffman
(Kenneth A. DiMuzio, of counsel)

For the Charging Party,
Ferg, Barron & Gillespie, attorneys
(Thomas M. Barron, of counsel)

INTERLOCUTORY DECISION

On May 3, 1995, the Logan Township Police Association filed an unfair practice charge with the Public Employment Relations Commission alleging that the Township of Logan engaged in unfair practices within the meaning of the Act, N.J.S.A. 34:13A-5.4(a)(1) and (5).^{1/} The Association is a managerial representative of

^{1/} 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. (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."

police officers of the Township of Logan. The parties are subject to a collective negotiations agreement which provides that "no more than two employees may take vacation at any given time." The provision also states "all vacation time may be delayed to another time based on operational needs of the Department as identified by the Chief of Police." The charge alleges that on March 17, 1995, the Police Chief issued a policy notice that "No more than one man per shift will be off on vacation or personal days. This is effective immediately. This does not interfere with the contract provision allowing two men off at a time. This is being instituted to control overtime." It is alleged that this action constitutes an unfair practice.

The unfair practice charge was accompanied by an order to show cause which was executed and was heard on May 17, 1995. The application for interim relief was denied on the record. At the hearing, the Township did not dispute the facts as alleged by the Association. It argued that the actions of the Township did not violate the terms of the collective negotiations agreement. The contract allows the chief to delay the taking of overtime depending upon the operational needs of the department. It stated that although the chief's directive limited the number of employees on vacation on any one shift, the police force is divided into two 12-hour shifts. Accordingly, two officers can still be on vacation at any one time if they are from different shifts. Deputy Chief Dutka testified that one-half of the shifts are two-officer shifts

and the other half are three-officer shifts. Accordingly, if both members of a two person shift are on vacation at one time, there would be no one on duty and covering these shifts with officers on overtime is expensive and is taxing the resources of the Department.

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when addressing similar applications. The moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegations in a final Commission decision and that irreparable harm will occur if the requested relief is not granted. Further, in evaluating such requests for relief, the relative hardship to the parties in granting or denying the relief must be considered.^{2/}

Vacation leave time is mandatorily negotiable, subject to the employer's minimum staffing requirements. However, an employer cannot unilaterally implement a blanket vacation policy without demonstrating that its minimum staffing requirement would be otherwise jeopardized. Tp. of Pennsauken, P.E.R.C. No. 92-39, 17 NJPER 478 (¶22232 1991). Town of Kearny, I.R. No. 95-19, 21 NJPER ____ (¶_____ 1995).

^{2/} Crowe v. DeGioia, 90 N.J. 126 (1982); Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975).

Here, although the dominant reason for the shift change is the reduction of overtime and is therefore negotiable, the application for interim relief was denied. The alleged unfair practice concerns a repudiation of the contractual agreement for vacation time. The employer maintains that it did not violate the contract. Such a dispute over contract language is more appropriately resolved in grievance arbitration. Accordingly, it was ruled that this matter would be more appropriately deferred to arbitration. State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). Given that the maximum contractual number of officers may still take vacation at any one time, any harm is minimal. The application for interim relief was denied.

BY ORDER OF THE COMMISSION

Edmund G. Gerber
Commission Designee

DATED: May 24, 1995
Trenton, New Jersey