

I.R. NO. 98-3

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF FRANKLIN, SOMERSET COUNTY,

Respondent,

-and-

Docket No. CO-98-44

FRANKLIN TOWNSHIP PBA LOCAL 154,

Charging Party.

SYNOPSIS

A Commission Designee declines to enter an interim restraint against the Township of Franklin. The Township had transferred a patrol officer, who was the subject of a complaint, to day shift pending the outcome of an investigation by the County Prosecutor. PBA Local 154 brought this action alleging the officer is losing overtime because of the transfer. The Designee held there is a factual dispute as to whether the transferred officer is being denied overtime. Moreover, should it be determined that the officer was improperly denied overtime, such a financial loss is quantifiable and not irreparable.

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Appearances:

For the Respondent,  
Brian M. Cige, attorney

For the Charging Party,  
Klatsky & Klatsky, attorneys  
(David J. DeFillippo, of counsel)

INTERLOCUTORY DECISION

On August 6, 1997, Franklin Township PBA Local 154 filed an unfair practice charge with the Public Employment Relations Commission alleging that Franklin Township, Somerset County engaged in unfair practices within the meaning of N.J.S.A. 34:13A-5.4(a)(1) and (5)<sup>1/</sup> when it transferred Patrolman Albani from the evening shift to the day shift, prohibited Patrolman Albani from responding

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<sup>1/</sup> 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."

to future domestic violence calls or self-initiated investigations without a supervising police officer being present, and prohibited Patrolman Albani from working any overtime assignments indefinitely.

The unfair practice charge was accompanied by an order to show cause which was executed and made returnable for August 27, 1997. The PBA alleges that Patrolman Albani's loss of overtime constitutes irreparable harm. A hearing was conducted on that date.

The Township maintains that a complaint was filed against Patrolman Albani in the handling of a domestic violence call. This complaint was referred to the Somerset County Prosecutor's Office for investigation and Albani was transferred from the afternoon shift to the day shift. The Township states that the County Prosecutor has directed them not to pursue even disciplinary actions which would otherwise interfere with the Prosecutor's responsibilities unless and until that review is completed and a determination has been made whether or not criminal charges will be brought.

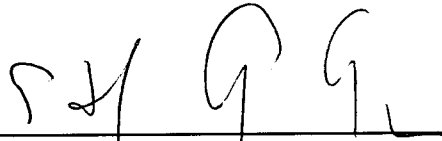
The Township maintains it acted pursuant to N.J.S.A. 40A:14-147 which provides in part:

As a general rule, when a member (of a police department) is charged with a violation of a departmental rule or regulation, said member shall continue to perform the assigned duties of his position until such time as the judicial determination duly rendered pursuant to a department hearing necessitates a discontinuance of same....

The Township disputes that Albani would be prohibited to work overtime if he is otherwise eligible on the basis of seniority during the day shift.

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 PBA has not met its heavy burden here. There is a factual dispute as to whether Albani is being denied overtime. Moreover, should it be found that he was improperly denied overtime, such loss of overtime is quantifiable and can be ascertained from the departments records. Such quantifiable damages are not appropriate for interim relief.



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Edmund G. Gerber  
Commission Designee

DATED: September 5, 1997  
Trenton, New Jersey