

I.R. NO. 97-7

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF NORTH BERGEN,

Respondent,

-and-

Docket No. CO-97-73

NORTH BERGEN POLICEMAN'S BENEVOLENT ASSOCIATION  
LOCAL No. 18,

Charging Party.

SYNOPSIS

A Commission Designee declines to issue an order compelling the Township of North Bergen to pay accrued vacation pay to employees upon their retirement. It was found that this matter was preempted by N.J.A.C. 4A:6-1.2(f).

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Appearances:

For the Respondent,  
Ruderman and Glickman, attorneys  
(Joel G. Scharff, of counsel)

For the Charging Party,  
Klatsky & Klatsky, attorneys  
(Michael A. Bukosky, of counsel)

INTERLOCUTORY DECISION

On September 6, 1996, the North Bergen Policeman's Benevolent Association Local 18 filed an unfair practice charge with the Public Employment Relations Commission alleging that the Township of North Bergen committed an unfair practice within the meaning of N.J.S.A. 34:13A-5.4(a)(3), (5), (6) and (7)<sup>1/</sup> when it

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<sup>1/</sup> These subsections prohibit public employers, their representatives or agents from: "(3) Discriminating in regard 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

unilaterally and without negotiations altered the long standing practice of allowing police officers to utilize certain unused vacation time as terminal leave at the time of their retirement.

It was alleged that employees formerly could receive payment for their accrued vacation time either as a lump sum cash payment or in the form of terminal leave immediately prior to the effective date of their retirement. However, the Township purposely chose this time to eliminate this long-standing past practice and custom in an effort to create dissension among the PBA and to place unfair pressure on the PBA to settle the outstanding negotiations.

The PBA also sought an order to show cause seeking an interim order compelling the Township to continue to pay for accrued vacation pending a final Commission decision. The order to show cause was executed and a hearing was conducted on October 3, 1996. Both parties introduced evidence and argued orally.

The Township alleges that an express Civil Service rule prevents employees in local government service from accruing vacation leave beyond the year succeeding the year of entitlement.

N.J.A.C. 4A:6-1.2(f) provides:

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1/ Footnote Continued From Previous Page

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. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (7) Violating any of the rules and regulations established by the commission."

Appointing authorities may establish procedures for the scheduling of vacation leave. Vacation leave not used in a calendar year because of business necessity shall be used during the next succeeding year only and shall be scheduled to avoid loss of leave.

It therefore argues that cashing in of unused vacation days as sought by the PBA is prohibited by this rule.

In New Jersey Department of Health, P.E.R.C. No. 96-47, 22 NJPER 37, 38 (¶27018 1995), the Commission found that:

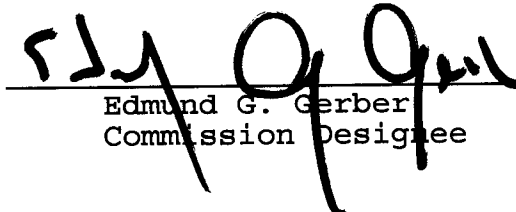
A statute or regulation will not preempt negotiations unless it expressly, specifically, and comprehensively fixes a term and condition of employment, thereby eliminating the employer's discretion to vary it. Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38, 44 (1982); State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80 (1978). We agree with the employer that N.J.S.A. 11A:6-2(f) and N.J.A.C. 4A:6-1.2 (and their counterparts under the prior Civil Service System) preempt negotiations over any proposal routinely permitting employees to be paid for vacation days not used during either the year they were earned or the next succeeding year. N.J.S.A. 11A:6-2(f) recognizes that business demands may prevent vacation days from being used in the year they are earned, but states that such days shall accumulate and be granted during the next succeeding year only -- the unmistakable implication is that any accumulated vacation days will be lost if not used within the succeeding year. N.J.A.C. 4A:6-1.2 expressly clarifies this point by stating that vacation days "shall be scheduled [during the next succeeding year only] to avoid loss of leave." We therefore restrain arbitration to the extent that CWA claims that the employer contractually agreed to pay employees for any vacation days they were permitted to use but did not use in the year earned or the next succeeding year.

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).

Here, in light of the Commission's determination in New Jersey Department of Health the employer has a raised a substantial question as to the charging party's likelihood of success on the law. Accordingly, the application for interim relief is denied.

BY ORDER OF THE COMMISSION

  
Edmund G. Gerber  
Commission Designee

DATED: October 10, 1996  
Trenton, New Jersey