

D.U.P. NO. 97-22

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

TOWNSHIP OF NORTH BERGEN,

Respondent,

-and-

Docket No. CO-97-73

NORTH BERGEN PBA LOCAL NO. 18,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge brought by the North Bergen PBA Local 18, against the Township of North Bergen. The PBA alleges that the Township unilaterally discontinued a past practice of allowing terminal leave or terminal leave pay to retiring officers with unused, accrued vacation days.

As determined in New Jersey Department of Health, P.E.R.C. No. 96-47, 22 NJPER 37 (127108 1995), N.J.A.C. 4A:6-1.2(f) preempts negotiations on this matter.

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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)

REFUSAL TO ISSUE COMPLAINT

On September 6, 1996, the North Bergen PBA Local No. 18, filed an unfair practice charge alleging that the Township of North Bergen violated New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., subsections 5.4(a)(3), (5), (6), and (7)^{1/} when

^{1/} 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 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."

it unilaterally changed its practice of paying for accrued vacation without negotiations, thereby placing undue pressure on the PBA in the parties' negotiations for a successor agreement.

On October 3, 1996, the PBA filed for interim relief with the Commission seeking an order compelling the Township to continue its practice. On October 10, 1996, the Commission Designee issued a decision denying the application. Tp. of North Bergen, I.R. No. 97-7, __ NJPER __ (1____ 1996).

The PBA alleges that the Township had a long standing policy of allowing police officers to "bank" their unused vacation days until retirement. The PBA asserts that retiring police officers could then elect to receive payment for the unused, accrued vacation either as a lump sum cash payment (terminal leave pay) or to utilize such days as a paid leave (terminal leave) to be taken immediately before the date of their retirement.^{2/} It alleges that on June 26, 1996, the Township discontinued the practice of allowing terminal leave or terminal leave pay.^{3/}

^{2/} The PBA alleges that the policy included payment for other leave time, such as personal days and compensation days. However, the PBA has not alleged any specific facts pertaining to the Township's refusal to pay for other leave time.

^{3/} The PBA alleges that on February 2, 1996, the Township revised the rate used to calculate the terminal leave payment, effective retroactively to July 1, 1995, thereby affecting the terminal leave payment to those officers who retired after July 1, 1995, the effective date of the new policy. These allegations are not considered here. They are the subject of an unfair practice charge, CO-96-259, and grievances filed by the PBA.

The Township denies that there was a past practice granting a terminal leave or a terminal leave payment to retiring police officers. It asserts that the Township is a civil service municipality and, therefore, is subject to and bound by the statutes and regulations promulgated by State Department of Personnel, which prohibits the accrual of vacation time beyond one year after the year of entitlement. Finally, the Township denies that its actions have affected the parties' negotiations' efforts, asserting that no proposal on terminal leave has been made by the PBA.

I find that the PBA's allegations fail to meet the Commission's complaint issuance standards and I refuse to issue a complaint for the reasons stated below.

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

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.

The issues raised by PBA's allegations here are essentially the same issues raised by CWA in New Jersey Department of Health, P.E.R.C. No. 96-47, 22 NJPER 37, 38 (¶27018 1995). In that case, the Commission reviewed N.J.A.C. 4A:6-1.2, as authorized by N.J.S.A. 11A:6-2(f). The Commission found that the statute and the regulation, read together, preempted negotiations over permitting

employees to be paid for vacation days not used during either the year they were earned or the next succeeding year.^{4/}

I find New Jersey Department of Health is dispositive of the issues raised by this charge. Therefore, since the subject is outside the scope of negotiations, the past practice is unenforceable. Accordingly, I dismiss the charge.^{5/} N.J.A.C. 19:14-2.3.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: November 7, 1996
Trenton, New Jersey

^{4/} The Commission concluded that N.J.S.A. 11A:6-2(f) provides that any vacation days accumulated from the preceding year will be lost if not used within the succeeding year. The Commission found that N.J.A.C. 4A:6-1.2 expressly clarified this point by stating that vacation days "shall be scheduled [during the next succeeding year only] to avoid loss of leave."

^{5/} The PBA urges that the Township be estopped from discontinuing its practice on terminal leave and terminal leave pay. Such a remedy is beyond the scope of the Commission's jurisdiction. This decision disposes of the single issue of whether the practice is preempted by civil service statute and regulation.