

I.R. NO. 87-18

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ATLANTIC CITY,

Respondent,

-and-

Docket No. CO-87-231

POLICEMEN'S BENEVOLENT ASSOCIATION,  
LOCAL NO. 24,

Charging Party.

SYNOPSIS

In a matter brought by P.B.A. Local 24 against the City of Atlantic City before the Public Employment Relations Commission, a Commission Designee declines to restrain the City of Atlantic City from rescinding its paternity benefits program. The City acknowledges that its employees would be able to use their available vacation and sick leave (in lieu of paternity leave) and these employees would suffer no immediate loss.

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Appearances:

For the Respondent  
Patino-Treat and Rosen, Esquires  
(Louis C. Rosen, of counsel)

For the Charging Party  
Howard J. Casper, Esquire

INTERLOCUTORY DECISION

On February 19, 1987, Policemen's Benevolent Association, Local No. 24 (P.B.A.) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the City of Atlantic City (City) committed unfair practices when, without negotiations, it unilaterally rescinded its maternity and paternity benefit practices as set forth in General Order No. 26 dated August 29 1983. It was alleged that this action constitutes a

violation of N.J.S.A. 34:13A-5.4(a) (Act) and specifically, subsections (1), (2), (3) and (5).<sup>1/</sup>

The charge was accompanied by an Application for Interim Relief and Order to Show Cause. The Order was signed and made returnable for February 25, 1987. A hearing was held on that date and the parties were given an opportunity to submit briefs, affidavits and argue orally. The City submitted a brief and affidavits in opposition to the Order.

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when confronted with similar applications. The moving party must show it has a substantial likelihood of success on the legal and factual allegations in the final Commission decision and it must show it will be irreparably harmed if the requested relief is not granted. Both of these standards must be satisfied before the requested relief will be granted. Furthermore, the relative

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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; (2) Dominating or interfering with the formation, existence or administration of any employee organization; (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."

hardship to the parties must be evaluated before interim relief may be granted.

Here, the P.B.A. has demonstrated that it has a substantial likelihood of success in prevailing at a full plenary hearing by demonstrating that a term and condition of employment was violated by the City when it unilaterally rescinded General Order #26. Said Order, if not a negotiated term of the contract, apparently gave rise to a binding past practice between the parties. New Brunswick Bd. of Ed., P.E.R.C. 78-47, 4 NJPER 84 (¶4040 1978).

However, the P.B.A. has failed to demonstrate that there will be irreparable harm if relief is not granted. The City stated on the record that the employees who would suffer harm by virtue of the denial of paternity leave would be entitled to use their available vacation and sick leave. Therefore, they would suffer no immediate loss. If the P.B.A. prevails at a full hearing, then the individuals affected would be entitled to have any leave time so used given back to them and thus be made whole.

Accordingly, the application for Interim Relief is denied.

  
Edmund G. Gerber  
Commission Designee

DATED: March 5, 1987  
Trenton, New Jersey