

I.R. NO. 99-11

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WOODBRIDGE,

Respondent,

-and-

Docket No. CO-99-195

WOODBRIDGE PBA LOCAL NO. 38,

Charging Party.

SYNOPSIS

Woodbridge PBA Local No. 38 applied for interim relief seeking to restrain Woodbridge Township from implementing changes in the work schedule that affected unit employees' vacation time selection. The Commission Designee found that the charging party did not demonstrate that it had a substantial likelihood of prevailing in a final Commission decision, a requisite element to obtain interim relief, consequently, denied the charging party's application.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WOODBRIDGE,

Respondent,

-and-

Docket No. CO-99-195

WOODBRIDGE PBA LOCAL NO. 38,

Charging Party.

Appearances:

For the Respondent,
Genova, Burns & Vernoia, attorneys
(Robert C. Gifford, of counsel)

For the Charging Party,
Loccke & Correia, attorneys
(Leon B. Savetsky, of counsel)

INTERLOCUTORY DECISION

On December 21, 1998, Woodbridge PBA Local No. 38 (PBA) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that Woodbridge Township (Township) committed an unfair practice within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act). The PBA alleges that the Township violated N.J.S.A. 34:13A-5.4a(1), (2), (5) and (7).^{1/} The unfair practice charge was accompanied by

^{1/} These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with,

an application for interim relief. The PBA sought to restrain the Township from implementing changes that affected employees vacation time selection.

On December 23, 1998, an order to show cause was executed and a return date was initially scheduled for January 14, 1999, and, subsequently, rescheduled to January 15 and, finally to January 21, 1999. The parties submitted briefs, affidavits and exhibits in accordance with Commission rules and argued orally.

The parties agree that the PBA and the Township are parties to a collective negotiations agreement that expired on December 31, 1998. They jointly assert that negotiations for a successor agreement commenced on October 5, 1998, and additional sessions were conducted during November 1998. The Township contends that on or about January 6, 1999, the PBA filed a petition to initiate compulsory interest arbitration.

The PBA contends that the Township has unilaterally changed the existing procedures for picking vacation time and changed the number of patrol officers permitted to be on vacation at the same

1/ Footnote Continued From Previous Page

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. (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. (7) Violating any of the rules and regulations established by the commission."

time.^{2/} The record shows that members of the patrol division work a schedule consisting of 4 days on and 4 days off. Patrol officers are assigned to one of six shifts; 6 a.m. to 4:15 p.m.; 7 a.m. to 5:15 p.m., etc. Each shift consists of two squads. The two squads are referred to as "even" and "odd." During the four days that the even squad is off, the odd squad is scheduled to work. When the even squad is working, the odd squad is off.

The PBA claims that officers on a particular squad and shift have always exercised their vacation picks according to seniority. It asserts that this has been the established procedure for more than 20 years.

The PBA asserts that on November 25, 1998, a directive was issued by officials of the Township's police department which transferred five officers from the odd squad to the even squad within their respective shifts. The officers were to commence working as members of the even squad on January 9, 1999. The PBA contends that on November 30, 1998, an additional directive was issued by representatives of the police department which transferred six officers from the even squad to the odd squad within their respective shifts, with their work to commence on January 7, 1999.

^{2/} Initially, the PBA also alleged that the Township changed the manner in which the PBA's local president selected vacation. The PBA claimed that for the first time the local president was required to bid for vacation against other patrol officers. The Township asserted that it made no change affecting the manner in which the local president selected vacation time and that the president is not required to bid against other officers. During oral argument, the PBA withdrew its claim pertaining to the local president.

The PBA argues that the squad reassignments resulted in material changes in the order in which affected employees are entitled to exercise their vacation picks. Thus, the PBA argues that some of the officers who were involuntarily reassigned between squads will end up with lower vacation picks than they previously enjoyed because such officers have less relative seniority in the newly assigned squad than the previous squad. Further, based on an officer's relative seniority, some of the officers who remained in a particular squad may have their vacation pick adversely affected or improved as the result of officers being newly reassigned to the that squad.

The PBA asserts that K-9 officers, as members of a "specialized unit", were never previously required to bid for vacation time. The PBA contends that the Township has now assigned the one remaining K-9 officer to a patrol squad which, for the first time, requires that officer to bid for vacation against other members of the squad.

The PBA argues that members of the bicycle squad, another "specialized unit", have never been limited to only one member being permitted to take vacation time during any single tour of duty. However, the PBA now asserts that pursuant to a directive issued by a police department representative dated November 27, 1998, only one officer in the bicycle squad is permitted to take vacation during a single tour of duty.

The Township contends that while patrol officers in the patrol division are permitted to list their shift preferences, the Township retains the ultimate right to assign patrol officers to each squad. The Township contends that it has never guaranteed officers that they would remain in their preferred squad. The Township further argues that it has unilaterally changed squad assignments in the past, claiming that patrol officers have been moved between squads in 1994, 1995, 1996, 1997 and 1998. The Township further argues that in November 1998, Chief Trener reviewed the shift and squad selections for 1999 and noticed an imbalance in the number of senior officers assigned to a particular squad. The Township claims that the Chief determined that the shifts needed to be balanced in accordance with the police departments manpower and experience needs.^{3/} In order to correct the problem, the Chief moved patrol officers between squads but did not change their shifts. The Township argues that it has always been its policy and practice to permit an officer to choose a shift based on seniority, but not to guarantee that the officer will remain in his/her preferred squad.

There is no dispute that the K-9 unit was considered a "specialized unit" of the patrol division. The Township asserts

^{3/} The PBA asserted during oral argument that the Township's reassignments between squads were really motivated by its desire to equalize the amount of vacation time officers in each squad could take. This factual dispute is appropriately resolved in a plenary hearing.

that it had maintained a K-9 unit consisting of three officers and three police dogs. Apparently, the Township concedes that it did not require the K-9 officers in the specialized unit to bid for vacation time picks against patrol officers in the regular patrol division. The Township asserts that two of three police dogs have died. Consequently, the Township contends that in mid to late November 1998, the Chief reviewed the manpower needs of the regular patrol division and decided that the remaining K-9 officer would be reassigned to the regular patrol division. Effective January 1999, the Chief assigned the remaining K-9 officer to the squad in the patrol division most in need of an additional officer and disbanded the specialized K-9 unit. The Township contends that since the K-9 officer is now assigned to a regular squad in the patrol division and out of the "specialized unit", the officer is now required, as any other officer, to bid against other squad members for vacation picks.

The Township appears to concede that the bicycle unit is considered a "specialized unit" of the patrol division. The Township asserts that beginning in November and December 1998, the Chief encountered staffing problems within the bicycle unit. Specifically, the Township claims that on December 24, 25, 26 and 27, 1998, only two patrol officers assigned to the bicycle unit were available for work when the sergeant and two out of the four patrol officers were on vacation. Similarly, on December 31, 1998, the Township claims that only two patrol officers assigned to the

bicycle unit were available for work when two out of the four patrol officers were on vacation. The Township asserted that the lack of staffing during the Christmas shopping season was particularly troublesome since it is one of the busiest times for the bicycle unit which is assigned to patrol mall parking lots. The Township argues that unlike the regular unit of the patrol division which consists of approximately 100 patrol officers, only 8 specially trained and equipped officers are available to work in the bicycle unit. Consequently, the Township asserts that on November 27, 1998, representatives of the police department advised those officers assigned to the bicycle unit that in 1999 only one officer would be permitted to schedule vacation time "in their respective squads during any one tour of duty."

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 Township argues that for many years it has unilaterally moved officers between squads. Nothing in the record disputes this claim. It appears that after squad changes had been effected, officers continued to employ the existing procedure to select vacation times. Consequently, with respect to patrol officers, while their "place in line" to pick vacation may have changed after they were reassigned to different squads, the practice employed over the years providing for seniority to determine an officers standing to select vacation appears to have remained unchanged. Thus, it does not appear that the PBA has demonstrated that a unilateral change in the terms and conditions of employment has occurred. Accordingly, I find that the charging party has not established that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations concerning this element of the charge.

In City of Long Branch, P.E.R.C. No. 92-53, 17 NJPER 506, 507 (¶22248 1991), the Commission stated that:

Management has a prerogative to transfer or reassign an employee to meet the governmental policy goal of matching the best qualified employee to a particular job. Local 195, IFPTE v. State, 88 N.J. 393 (1982); Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Ass'n, 78 N.J. 144 (1978); Essex Cty., P.E.R.C. No. 90-74, 16 NJPER 143 (¶21057 1990); City of E. Orange, P.E.R.C. No. 86-70, 12 NJPER 19 (¶17006 1985); Town of Kearny, P.E.R.C. No. 83-42, 8 NJPER 601 (¶13283 1982). This is usually so even if a reassigned employee loses a shift differential or premium pay. City of Atlantic City, P.E.R.C. No. 87-161, 13 NJPER 586 (¶18218 1987); Oakland Bor., P.E.R.C. No. 86-58, 11 NJPER 713 (¶16248 1985); Warren Cty. Freeholder Bd., P.E.R.C. No. 85-83,

11 NJPER 99 (¶16042 1985). We have therefore restrained arbitration over reassignments, like this one, from the detective division to another division. Oakland; City of Millville, P.E.R.C. No. 90-117, 16 NJPER 391 (¶21161 1990); City of Garfield, P.E.R.C. No. 90-106, 16 NJPER 318 (¶21131 1990).

Additionally, an employer has the managerial right to reorganize its operation. Passaic County, P.E.R.C. No. 87-40, 12 NJPER 803 (¶17306 1986). In this case, it appears that the Township went from a specialized K-9 unit consisting of three officers and dogs to a single officer and dog. The Township apparently opted to eliminate the specialized K-9 unit and move the remaining K-9 officer into the patrol division. That reorganization appears to have resulted in the remaining K-9 officer being treated as other officers in the patrol division, and required that officer to bid for a vacation pick against the other patrol officers. The change appears to be the result of the Township's exercise of its managerial right to reorganize its operation. Consequently, with regard to the K-9 officer, I find that the Charging Party has not established a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations.

The scheduling of vacations and other time off is mandatorily negotiable so long as an agreed-upon system does not prevent an employer from filling its staffing requirements. Borough of Rutherford, P.E.R.C. No. 97-12, 22 NJPER 322, 323 (¶27163 1996); Town of West New York, P.E.R.C. No. 89-131, 15 NJPER 413 (¶20169 1989); Borough of Bradley Beach, P.E.R.C. No. 89-116, 15 NJPER 284

(¶20125 1989); City of Orange Tp., P.E.R.C. No. 89-64, 15 NJPER 26 (¶20011 1988). In this case, the Township argues that only certain officers are qualified to serve in the bicycle unit. The Township contends that the prior vacation program resulted in an insufficient number of officers available to staff the bicycle unit. Consequently, the Township argued that a change in the vacation scheduling program for officers in the bicycle unit was necessary in order to fulfill its staffing requirements. The Township concludes that it has the managerial right to modify the vacation scheduling program for officers in the bicycle unit to maintain its staffing requirements. Thus, while there is no dispute that a change in the vacation program for officers in the bicycle unit has occurred, I find that the Charging Party has not demonstrated that it has a substantial likelihood of prevailing in a final Commission decision on the legal and factual allegations pertaining to officers in the bicycle unit.

I have found that the Charging Party has not demonstrated one of the requisite elements to obtain interim relief, consequently, relief can not be granted. Accordingly, this case will continue to proceed through the normal unfair practice processing mechanism.

ORDER

The Association's application for interim relief is denied.


Stuart Reichman
Commission Designee

DATED: January 27, 1999
Trenton, New Jersey