

I.R. No. 2008-3

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF UNION CITY,

Respondent,

-and-

Docket No. CO-2008-158

UNION CITY PBA LOCAL NO. 8,

Charging Party.

**SYNOPSIS**

A Commission Designee denies an application for interim relief on an unfair practice charge alleging that the City of Union City unilaterally changed a vacation leave policy for police officers established by practice and set forth in the collective negotiations agreement with Union City PBA Local No. 8, the majority representative. The charge alleges that the City had "blacked-out" vacation leave requests for most of December. The application was accompanied by a request for a temporary restraint prohibiting the City from changing the parties' practice of permitting 3 officers per shift to use vacation leave benefits.

The Designee issued an Order to Show Cause that included a temporary restraint upon the City. The restraint was lifted after two days, pursuant to a telephone conference call among the parties and Designee. The parties argued before the Designee on the specified return date. The Designee found that the PBA had not demonstrated a substantial likelihood of success on the factual and legal merits noting that the circumstances varied from those set forth in Borough of Lodi, I.R. No. 2006-14, 32 NJPER 65 (¶33 2006).

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Appearances:

For the Respondent, Scarinci & Hollenbeck, LLC,  
attorneys (Matthew J. Giacobbe, of counsel)

For the Charging Party, Loccke, Correia, Schlager,  
Limsky & Bukosky, attorneys (Gregory Watts, of counsel)

**INTERLOCUTORY DECISION**

On December 11, 2007, Union City PBA Local No. 8 filed an unfair practice charge against the City of Union City. The charge alleges that the City unilaterally changed the vacation leave policy set forth in the parties' collective agreement and established by long-standing practice. It more specifically alleged that the City will not ". . . allow any officers to use their vacation benefit during the entire month of December, particularly the dates of December 8 through December 24 and December 31, 2007, thus creating a 'black-out'." The employer's conduct allegedly violates 5.4a(1), (2), (3), (4), (5), (6) and

(7)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A.  
34:13A-1 et seq.

The charge was accompanied by an application for interim relief, together with a request that the Commission temporarily restrain the City from "eliminating, modifying or repudiating" the method and manner by which unit personnel select vacation time off and the number of officers allowed vacation time off at any one time.

On December 11, I issued an Order to Show Cause, together with a temporary restraint prohibiting the City from ". . . refusing to allow officers to take vacation leave during the month of December absent an emergency or a circumstance of manpower deficiency." The Order directed the parties to

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1/ These provisions 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. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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."

participate in a telephone conference call on December 13, 2007. Briefs, accompanying certifications, and replies were ordered to be filed by noon on December 17, 2007, preceding counsel in-person argument scheduled for 2:30 p.m. on that date. On December 13, during the conference call, the Commission Designee Arnold H. Zudick rescinded the temporary restraint, leaving intact the scheduled return date. The parties argued their cases before me at the scheduled time and place. The following facts appear.

The City and the PBA signed a collective negotiations agreement extending from January 1, 2004 through December 31, 2007. Article XIX, "Vacations," provides that "the vacation period shall commence January 1<sup>st</sup> and continue until December 31<sup>st</sup> of each year." Paragraph "E" provides: "Employees shall be eligible for vacations from January 1<sup>st</sup> to December 31<sup>st</sup>. The Chief shall have the reasonably exercised right to approve such vacation requests considering the manpower needs of the Department." Article III, "Management Rights," reserves to the City the right to make changes regarding terms and conditions of employment ". . . not reserved . . ." which it deems desirable and necessary for the efficient and effective operation of the department.

On December 7, 2007, PBA counsel wrote a letter to the City's counsel advising that the PBA learned that ". . . the

police department will not allow any officers to use their vacation leave during the month of December." Counsel also wrote that the PBA demands negotiations over the subject. The PBA president certified that the Chief of Police directed that ". . . no officers, unless previously approved, may utilize their vacation benefit during the month of December during the particular dates of December 8 through 24 and December 26 through 30, 2007." He also certified:

The Department has informed the Association that it will be blocking out virtually all of the month of December [2007] and restricting vacations. The long-standing benefit of allowing officers to take vacation on any given day has been unilaterally altered and eliminated. [certif. Of C. Scardino]

Finally, the certification provides that the "long-standing past practice" among the parties is that ". . . three officers per shift are afforded vacation contemporaneously at any one time."

On December 17, the PBA president submitted a supplemental certification attesting that enough officers are available on "call-back" or "overtime" to respond to any situation requiring additional officers. He also certified that on September 11, 2007, a named detective requested a vacation day on December 31, 2007 - available on the calendar in the squad office - and was denied; that on November 29, another named detective requested a vacation day on December 15, 2007 - and was denied; and on

December 12, 2007, a named officer requested a vacation day for December 19, 2007 - and was denied.

Also on December 17, the City filed a reply, together with a supporting certification and document. Chief Charles Everett filed a certification denying that he imposed a "blanket prohibition" on the use of vacation days for the month of December, 2007. He certified that he "granted over 290 vacation days for December . . ." and attached a spreadsheet documenting the vacation requests granted for that month. (About 130 employees are included in the PBA unit).

The attachment shows that unit employees have been granted vacation time-off each day of the month. More specifically, the attachment shows that 19 employees were granted a vacation day on December 31, 2007; 6 were granted a vacation day on December 15; and 3 were granted a vacation day on December 19.

The City argues that it has granted vacation requests for the month of December in the same manner from 2003 to the present time. It argues that each December the City is faced with an increased demand for police presence from increased shopping on the City's main thoroughfare; from school vacations increasing pedestrian traffic; from crime increases in the month; and from a heightened risk of terrorist threats during the holidays owing to the City's close proximity to New York City. Finally, the City argues that it carefully reviews each vacation request to ensure

that staffing needs for the month of December are met, which is its prerogative and contractual right set forth in Article XIX of the agreement. It acknowledges that the department's policy is that "no more than three officers can be out per shift."

### ANALYSIS

A charging party may obtain interim relief in certain cases. To obtain 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).

I deny the application because the PBA has not demonstrated a substantial likelihood of success on the merits of the case. The parties' filings reveal disputed material facts. The PBA alleges that the City "blacked out", or ". . . will not allow any officers to use their vacation benefit . . ." for most of the month of December; the City has denied a black-out and represents that more than 290 vacation requests from unit personnel for the

month were granted, and that unit personnel have been granted vacation time-off on every day of December. On one of the three December dates (31<sup>st</sup>) for which the PBA has alleged an unlawful denial of the benefit, the City has certified that 19 unit employees were granted vacation time-off. On the remaining two dates on which the Employer allegedly violated the parties' practice, the City certified that six and three officers, respectively, were granted vacation time-off. Assuming that the City did not adhere to the purported established practice on those two dates, I am not persuaded that the City's conduct approximates a "black-out."

The PBA has also not demonstrated a substantial likelihood of success on its legal allegations. The PBA relies upon Borough of Lodi, I.R. No. 2006-14, 32 NJPER 65 (¶33 2006). In Lodi, the PBA had alleged that the Borough unlawfully implemented a policy limiting the number of officers simultaneously permitted to take vacation leave to one officer per shift per day and imposing "black-out" dates when no vacations were permitted. The Borough admitted implementing the policy and the parties stipulated that the department had previously permitted two officers per squad to simultaneously take vacation leave. The Commission designee wrote that "the scheduling of vacation leave is mandatorily negotiable, provided that the employer can meet its staffing requirements." Pennsauken Tp., P.E.R.C. No. 92-39, 17 NJPER 478



(¶22232 1991)[other citations omitted]. The employer's payment of overtime costs does not mitigate its negotiations obligation.

In this matter, the City has denied any change in the parties' practice and no evidence suggests that it has imposed black-out dates. Considering the PBA's proofs, I cannot conclude that the City has acted in violation of either contractual rights (Article XIX) or its managerial prerogatives, particularly those arising each December for the past several years.

I find that the Commission's interim relief standards have not been met and deny the application. The charge shall be forwarded to the Director for processing.

**ORDER**

The application for interim relief is denied.

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Jonathan Roth  
Commission Designee

DATED: December 19, 2007  
Trenton, New Jersey