

H.E. NO. 85-24

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF LACEY,

Respondent,

-and-

DOCKET NO. CO-84-289-38

LACEY TOWNSHIP P.B.A. 238,

Charging Party.

Synopsis

A Hearing Examiner of the Public Employment Relations Commission, acting pursuant to authority delegated by the Chairman of the Commission, denied a Motion for Summary Judgment filed by the Township of Lacey.

The Hearing Examiner concluded that the record is insufficient to determine whether not any material facts are in dispute and whether not the Township is entitled to relief as a matter of law.

The matter was remanded for further proceedings.

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Appearances:

For the Respondent
Gilmore & Monahan
(Terry F. Brady, of counsel)

For the Charging Party
Citta, Holzapfel & Citta
(James W. Holzapfel, of counsel)

MOTION FOR SUMMARY JUDGMENT

On April 19, 1984, the Lacey Township P.B.A. Local 238 ("Local 238") filed an Unfair Practice Charge against the Township of Lacey ("Township"). The charge alleges that the Township violated subsection 5.4(a)(5) ^{1/}* of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). Local 238 alleges specifically that the Township unilaterally changed negotiable terms and conditions of employment when on January 3, 1984, the Police Chief issued seven work orders ^{2/} concerning vacation time and personal leave days which contravened existing contractual rights, ^{3/} and police department rules. ^{4/}

*Footnotes appear at the conclusion of this decision.

On August 30, 1984, the Administrator of Unfair Practices issued a Complaint and Notice of Hearing pursuant to N.J.A.C. 19:14-2.1. The Township filed its answer on September 13, 1984, in which it admitted that the Township Police Chief issued seven orders dealing with vacation time and personal leave. However, it maintains that these orders concern non-negotiable management prerogatives and that therefore the Township has not violated the Act.

Subsequent to a prehearing conference held September 17, 1984, the Township filed its motion for summary judgment accompanied by supporting documentation and a brief on September 21, 1984. This documentation includes a copy of the seven orders.

On October 9, 1984, pursuant to N.J.A.C. 19:14-4.8(a) ^{5/} Commission Chairman Mastriani referred that motion to the undersigned Hearing Examiner for a decision.

On October 16, 1984, Local 238 filed its brief in opposition to the motion for summary judgment. In it, Local 238 asserts that the Township violated the Act when it changed the police officer's method for selection of vacation time and limited the use of personal leave in violation of the parties collective agreement.

N.J.A.C. 19:14-4.8(d) reads:

If it appears from the pleadings, together with the briefs, affidavits and other documents filed, that there exists no genuine issue of material and the movant or cross-movant is entitled to its requested relief as a matter of law, the motion or cross-motion for summary judgment may be granted and the requested relief may be ordered.

I have fully reviewed the parties' pleadings in this matter and find that the record is not fully developed with respect to all the charges.

The unfair practice charge complains of seven orders concerning vacation and personal days which were issued by Captain Chick of the Township Police Department. The Township moves for summary judgment concerning three of those seven orders, labeled 3, 4, and 5 on the basis that there are no material facts in dispute.

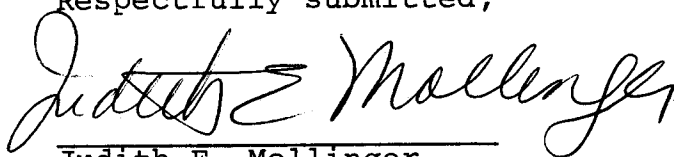
However, there is no record developed with respect to orders labeled 1, 2, 6, and 7. Therefore, the record is insufficient to determine whether or not any material facts are in dispute and whether or not the Township is entitled to relief as a matter of law.

Accordingly, I deny the Township's motion for summary judgment and refer the matter to a plenary hearing.

ORDER

The Township's Motion for Summary Judgment is denied.

Respectfully submitted,



Judith E. Mollinger
Hearing Examiner

DATED: January 4, 1985
Trenton, New Jersey

FOOTNOTES

- 1/ This subsection prohibits public employers, their representatives or agents from: "(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."
- 2/ "The purpose of this order is to insure that the Department has a proper amount of personnel available so that the normal functioning of the patrol division will not be jeopardized.
1. All requests for vacation will be submitted in writing no later than January 31, 1984. Failure to comply with this could result in assigned vacations.
 2. Vacation requests will be granted on a seniority basis.
 3. No more than one person will be off from a platoon at any time.
 4. No Personal Days will be granted on holidays during the months of May 28 thru September 5, 1984. Except in an emergency.
 5. No vacations will be granted while other personnel are on Military Leave, except when the float shift is working.
 6. Multi-day vacation requests will have preference over single day vacation requests.
 7. Personal Day requests will be on a first come, first served priority."
- 3/ ARTICLE XII - Vacations:
"Each member of the PBA who has had the length of continuous employment specified in the following table shall be entitled to vacation with pay at his regular rate of pay. Selection of vacation shall be based on seniority. Increments are defined in paragraph below:...
- ARTICLE VII - Personal Days:
"Section I. A. The employees shall be granted three (3) personal days off with pay during the course of any calendar year. If an Employee does not utilize all three personal days herein or any personal day earned under ARTICLE VI, Section 3, he shall have the right to receive payment for the same. Payment for the above-mentioned personal days will be made on the first (1st) payday in the month of November of each and every calendar year."

4/ "D. Vacation Scheduling: All requests for leave will be submitted in writing in duplicate, three (3) days prior to the date of the proposed leave, on a standard leave form supplied by the Department.

In the event of an emergency or unforeseen situation, it will be necessary to put the request in writing but the three (3) days advance notice will be omitted; all other requirements shall be fulfilled.

No leave will be considered approved until the employee has in his possession a copy of the request approved by the proper authority, without which the employee will be considered absent without leave.

Requests for leave will be channeled through the Chain of Command. Vacation schedules shall be arranged by Commanding Officers with regard to the requirements in the branches of service under their commands. Vacations shall be completed by December 31st."

5/ This subsection provides: "(a) Any motion in the nature of a motion for summary judgment may only be made subsequent to the issuance of the complaint and shall be filed with the chairman of the commission, who shall refer the motion to either the commission or the hearing examiner. The parties shall be notified in writing of such referral. Any request for a stay of proceedings must accompany the motion for summary judgment."