

I.R. NO. 89-14

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF WEST NEW YORK

Petitioner,

-and-

Docket No. SN-89-46

WEST NEW YORK IAFF, LOCAL NO. 620,
AFL-CIO,

Respondent.

SYNOPSIS

A Commission designee restrains arbitration as to the exercise by the Fire Chief by the Town of his managerial prerogative to schedule vacations to meet minimum staffing requirements but permits arbitration to proceed as to compensation resulting from the denial by the Fire Chief of specific requests of firefighters to take vacations pursuant to the contractual provision which allows for taking vacations between June 1st and October 15th of any calendar year.

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Appearances:

For the Petitioner, Krieger & Ferrara, Esqs.
(Henry W. Heunemann, of counsel)

For the Respondent, Loccke & Correia, Esqs.
(Manuel A. Correia, of counsel)

INTERLOCUTORY DECISION AND ORDER

The Town of West New York ("Town") filed a Petition for Scope of Negotiations Determination on January 6, 1989, with the Public Employment Relations Commission ("Commission") seeking a determination as to whether or not Article VIII, Section 4 of the current collective negotiations agreement between the Town and West New York IAFF, Local No. 620, AFL-CIO ("Union") is mandatorily negotiable and, thus, within the scope of collective negotiations.

On January 26, 1989, the Town filed with the Commission an Order to Show Cause, seeking to restrain an arbitration proceeding (No. AR-89-118) on the ground that the subject matter of Article VIII, Section 4, supra, is non-negotiable and non-arbitrable. However, an Order to Show Cause was not executed until February 24,

1989, returnable March 3, 1989, at the Commission's office in Newark, New Jersey. This date was subsequently adjourned to March 14, 1989, when a show cause hearing was conducted by the undersigned, having been delegated the authority to act upon requests for interim relief by and on behalf of the full Commission. The parties had by that date submitted briefs and documents in support of their positions and each argued orally. Additionally, the Town deposed Chief Robert A. Aiello.

In determining whether or not the Town is entitled to a restraint of arbitration, the undersigned is guided by past standards developed by the Commission for evaluating interim relief requests involving restraints of arbitration, namely, that the moving party must demonstrate that it has a substantial likelihood of success as to the facts and the law. See also, Englewood Bd. of Ed. v. Englewood Teachers' Ass'n, et al, 135 N.J. Super. 120, 124 (App. Div. 1975).

The Union seeks to arbitrate the issue as to whether the Town violated the collective negotiations agreement, including but not limited to Article VIII, by requiring employees in the Fire Department to take their earned vacation leave outside of the specified contractual time period of June 1st to October 15th (C-5). The position of the Town is that Article VIII, Section 4 is unlawful and that adherence to its terms prevents the Town from staffing the Fire Department during the period of June 1st to October 15th at levels required to provide for public safety.

Further, the Town contends that the Union is attempting to arbitrate the Town's practice of requiring vacations to be taken in blocks of three days. [C-1].

The relevant facts on this application appear as follows:

1. Article VIII, Section 4 of the current collective negotiations agreement (C-2) provides that: "The employer shall assign vacations during the period of June 1st to October 15th and such assignment shall be rotated annually." [C-1, p. 13; emphasis supplied].

2. Although the Town did not offer in evidence the Chief's order of May 1988, which has given rise to the instant request for restraint of arbitration, it is apparent from a memorandum to the Chief from the Union dated May 12, 1988 (C-4), that the Chief unilaterally scheduled certain employees in the Fire Department for vacations outside of the June 1st to October 15th time period.

3. At the show cause hearing, counsel for the Union cited as also relevant a portion of Article VIII, Section 1, which provides in part as follows:

Earned vacation entitlement must be taken by December 30th of each calendar year; if because of personal disability or departmental procedure an employee is unable to take earned vacation within a calendar year, then the employer shall pay the employee cash for such unused vacation time in the first payroll period after December 31st, subject to cash availability and if no cash payment such earned vacation time may be accumulated and designated as such in the compensatory book..." (C-2, p. 13; emphasis supplied).

4. Chief Aiello testified without contradiction that, contrary to prior years since he became Chief in 1980, employees in the Fire Department requested "double slots" during the early part of 1988, resulting in an "expanded" vacation schedule such that one person was left in one fire station, which created a "manning problem." This triggered his memo of May 1988, scheduling employees outside of the June 1st to October 15th time period. The Union then sent Aiello the memorandum on May 12, 1988, supra, protesting the "outside" scheduling by the Chief (C-4).

5. An arbitrator has been selected and the matter is presently scheduled for hearing during the first week of April 1989.

* * * *

The Town views this matter as a "minimum manning" issue. On the other hand, the Union views the situation as one of requiring the Town's adherence to Article VIII, Sections 1 and 4, supra, wherein employees in the Fire Department may either take their vacation as requested between June 1st and October 15th or if, because of "departmental procedure" an employee is unable to take earned vacation within the calendar year, then he may receive payment in cash.

* * * *

The Town, in seeking restraint of arbitration, cites several Commission decisions, namely, Cty. of Cape May, P.E.R.C. No. 89-34, 14 NJPER 649 (¶19272 1988), where the employer imposed

restrictions on leave time during Christmas season. The Commission, in restraining arbitration, stated: "...The employer must have the ability to limit the number of employees on leave where staffing may fall below minimum levels..." (14 NJPER at 651)(emphasis supplied). The Town also cites Town of Harrison, P.E.R.C. No. 83-114, 9 NJPER 160 (¶14075 1983). In that case the Commission found a violation of §§5.4(a)(1) and (5) of the Act by the action of the Chief of the Fire Department in unilaterally limiting the amount of vacation time an employee could take during July and August. The Chief had failed to predicate his action upon concern over manning levels.

The Town in the instant case does concede that vacation schedules are a mandatorily negotiable subject and, also, that who takes vacation and when is clearly negotiable. But the Town then returns to its basic contention that the facts raised by the instant grievance (C-5) implicate manning levels and the ability of the Chief to staff adequately.

The Union dismisses as irrelevant the above-cited cases, claiming that its grievance does not seek to interfere with the employer's ability to meet its staffing requirements since if an employee in the Fire Department is denied approval of his request to take vacation at a given time, then under Article VIII, Section 1, supra, the employee may because of "departmental procedure" receive cash for unused vacation time or if no cash payment is made then the employee's earned vacation may be accumulated and designated as such in the "compensatory book." Because of this contractual

alternative, arbitrating the instant grievance cannot interfere with the staffing requirements of the Fire Department.

* * * *

The undersigned is persuaded that the Town's application can be decided upon the Commission's decision in Tp. of Middle, P.E.R.C. No. 88-22, 13 NJPER 724 (¶18272 1987) where the Chief of Police issued a directive which stated in part "...On each squad, only one man at a time will be allowed off for vacation, comp or holiday time..." When a patrolman submitted a written request to take a specific day off as a vacation day, the request was denied because "...one man [is] already approved off..." following which the PBA submitted a grievance for binding arbitration. In denying a request for a restraint of binding arbitration, the Commission found that the grievance over the directive was arbitrable because the facts were essentially similar to Tp. of Marlboro, P.E.R.C. No. 87-124, 13 NJPER 301 (¶18126 1987) where it was found that:

The public employer has a prerogative to decide the number of employees to be on duty at any one time. However, time off is mandatorily negotiable to the extent it does not cause staffing levels to fall below an employer's minimum requirements. City of Elizabeth, P.E.R.C. No. 82-100, 8 NJPER 303, 305 (¶13134 1982). [13 NJPER at 302].

In Middle the Commission went on to note that, as it had discussed in Marlboro, "...minimum staffing levels are not necessarily compromised by negotiations over when employees may take vacations," giving, as an example, that if two officers from the same shift wanted vacation at the same time, then a temporary reassignment from

another shift might be made to maintain shift staffing at the level desired by the employer. See also, City of Orange Tp., P.E.R.C. No. 89-64, 15 NJPER 26 (¶20011 1988) where the Commission refused to restrain arbitration because the Fire Chief in that case had not based a vacation scheduling directive upon minimum staffing needs. Significantly, the Commission stated in City of Orange Tp. that the Chief retained "...contractual authority to approve or disapprove a particular vacation request in the light of the employer's needs at that time...."

The undersigned designee cannot perceive any minimum manpower problem in the case at bar. The Chief retains the managerial prerogative to maintain his staffing requirements vis-a-vis requests of employees for vacation. City of Orange Tp. If an employee's request for vacation is denied and continues through the calendar year then that employee can be reimbursed in cash for his vacation entitlement or carry his vacation over into the following year in the "...compensatory book..." [Article VIII, Section 1; C-2, p. 13].

The undersigned designee, thus, finds that the Union's grievance, to the extent that it relates to mandatorily negotiable terms and conditions of employment rather than to a non-arbitrable managerial prerogative, may proceed to arbitration.^{1/}

^{1/} The Commission's designee declines to apply Englewood Bd. of Ed., supra, because this grievance does not appear to "...constitute a monumental waste of time and energy..." (135 N.J. Super. at 124).

ORDER

To the extent that the grievance seeks to compel the Town to assign all fire fighting personnel their vacations between June 1st and October 15th, it interferes with the exercise by the Fire Chief of his prerogative to maintain minimum staffing and is, therefore, non-arbitrable, and the request for a temporary restraint is granted.

To the extent that the grievance seeks compensation under the collective negotiations agreement for employees who were assigned and directed by the Fire Chief to take earned vacation leave outside of the above June 1st to October 15th contractual time period, the issue raised is arbitrable, the request for a temporary restraint is denied and arbitration may proceed.



Alan R. Howe
Commission Designee

Dated: March 27, 1989
Trenton, New Jersey