

I.R. NO. 2000-11

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF ROSELAND,

Respondent,

-and-

Docket No. CO-2000-202

ROSELAND PBA LOCAL NO. 293,

Charging Party.

**SYNOPSIS**

The Borough issued a memorandum to police officers during the course of interest arbitration which indicated that the Borough would make cash payments at the end of the calendar year for all accrued compensatory time earned. The Borough contended that its actions were authorized by the Fair Labor Standard Act (FLSA). The PBA claimed that the compensatory time was earned as the result of working daily overtime (overtime earned after working more than 8 hours per day) pursuant to the collective agreement, and, therefore, not covered by the FLSA. The Commission Designee found that compensatory time is, in general, a mandatorily negotiable subject and that any such change during negotiations and interest arbitration was likely to violate the Act. The Commission Designee restrained the Borough from implementing the terms of the memorandum.

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF ROSELAND,

Respondent,

-and-

Docket No. CO-2000-202

ROSELAND PBA LOCAL NO. 293,

Charging Party.

Appearances:

For the Respondent,  
Apruzzese, McDermott, Mastro & Murphy, attorneys  
(Robert J. Merryman, of counsel)

For the Charging Party,  
Loccke & Correia, attorneys  
(Joseph Licata, of counsel)

INTERLOCUTORY DECISION

On January 26, 2000, Roseland PBA Local No. 293 (PBA) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the Borough of Roseland (Borough) committed unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act) by violating N.J.S.A. 34:13A-5.4a(1), (3) and (5).<sup>1/</sup> The

---

<sup>1/</sup> 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. (3) Discriminating in regard to hire or tenure of employment or any term or

unfair practice charge was accompanied by an application for interim relief. On January 28, 2000, an order to show cause was executed and a return date was set for February 23, 2000. The parties submitted briefs, affidavits and exhibits in accordance with the Commission rules and argued orally on the return date. The following facts appear.

The PBA represents all Borough police officers below the rank of sergeant. The PBA and the Borough have been parties to a series of collective negotiations agreements, the most recent of which concluded on December 31, 1998. The parties are engaged in successor negotiations and have reached the interest arbitration phase of the process (Docket No. IA-99-117).

On January 21, 2000, the Borough's police chief issued a memorandum concerning overtime. The memorandum states in relevant part the following:

Effective immediately Borough Officials/Mayor & Council have instituted a POLICY CHANGE that will require payment of overtime at the end of the year that it was earned.

You will receive payment for full amount of overtime that the Borough determines you are entitled to payment.

---

1/ Footnote Continued From Previous Page

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."

The PBA contends that the effect of the memorandum results in a unilateral ban of all future accumulation of compensatory time and requires that the present accumulation previously earned by each police officer be paid by the Borough in cash at the end of the calendar year. Apparently, under the new policy, the employer has issued checks to all officers in payment for accumulated compensatory time. Under the prior practice, at the officer's request, he/she was entitled to use accumulated compensatory time to either take time off or convert accumulated compensatory time to cash payments at any time, including at the conclusion of his/her employment.

Article VII, Section B., Overtime, provides that:

1. In the event that an officer included in the negotiating unit is directed or reasonably required by circumstances to continue working after the completion of the eighth consecutive hour of his regularly scheduled tour of duty, any such work shall be compensated for at the premium rate of time and one-half (1-1/2) his regular rate of pay.

Article VII, Section C, states:

Officers entitled to overtime pay under this Article may be compensated in either payroll payments or 'compensatory time off', at the request of the officer. The provision for compensatory time is subject to the reasonable scheduling demands of the Chief.

Generally, the Borough does not dispute the PBA's allegations. The Borough points out that it has not taken any action that would ban future compensatory time accumulations. For

purposes of this decision, I assume that officers may continue to accumulate compensatory time balances when overtime is worked. Nothing in the Chief's memorandum indicates that officers cannot continue to accumulate compensatory time.

The Borough contends that the collective agreement relates to the accumulation of compensatory time and not when or how payments for accrued compensatory time are made. Further, Article VII is silent on the issue of whether an officer can continue to accrue compensatory time year after year without limit. Additionally, the Borough contends that its actions do not constitute a change in terms and conditions of employment since the issue of compensatory time off accrual is preempted by the Fair Labor Standards Act (FLSA).<sup>2/</sup>

The PBA asserts that the compensatory time at issue here is non-FLSA compensatory time which is controlled by the parties' collective agreement and past practice, and not the FLSA. The PBA contends that the FLSA addresses compensatory time accruals only after April 15, 1986. There is no indication that the payments made by the Borough were limited to compensatory time accrued after April 15, 1986, and that some of the payments could relate to compensatory time earned prior to April 15, 1986. Additionally, the PBA claims that overtime earned as the result of working beyond the eight hour work day constitutes non-FLSA or "other" compensatory time to which the FLSA does not apply. See 29 CFR §553.28.

---

<sup>2/</sup> See 29 U.S.C. §207(o) (3) (A); 29 C.F.R. §553.27(a).

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).

Section 5.3 of the Act states, in relevant part:

Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established.

Compensatory time off is, in general, a mandatorily negotiable subject. Bergen County Prosecutor, P.E.R.C. No. 96-81, 22 NJPER 237 (¶27123 1996). See also State of New Jersey and Local 195, P.E.R.C. No. 84-77, 10 NJPER 42 (¶15024 1983), aff'd 11 NJPER 333 (¶16119 App. Div. 1985); Essex County, P.E.R.C. No. 88-123, 14 NJPER 403 (¶19159 1988). Therefore, regardless of whether the Borough's actions constitute a repudiation of the collective agreement as alleged by the PBA<sup>3/</sup>, it appears that

---

<sup>3/</sup> I make no finding regarding whether the collective agreement was repudiated.

the Borough has unilaterally changed a term and condition of employment by now requiring officers to take cash at the end of the calendar year for accrued compensatory time.

N.J.S.A. 34:13A-21 states:

During the pendency of proceedings before the arbitrator, existing wages, hours and other conditions of employment shall not be changed by action of either party without the consent of the other, any change in or of the public employer or employee representative notwithstanding; but a party may so consent without prejudice to his rights or position under this supplementary act.

The Act expressly prohibits any change in terms and conditions of employment while parties are engaging in the interest arbitration process. Accordingly, for the reasons expressed above, I find that the PBA has demonstrated a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations.

The PBA has also established that it will be irreparably harmed by the Borough's action. A unilateral change in terms and conditions of employment during any stage of the negotiations process has a chilling effect on employee rights guaranteed under the Act and undermines labor stability. Galloway Tp. Bd. of Ed. v. Galloway Tp. EA, 78 N.J. 25 (1978). Moreover, the parties are currently engaging in interest arbitration and the Act, as noted above, specifically prohibits unilateral changes in conditions of employment.

In weighing the relative hardships to the parties resulting from the grant or denial of interim relief, I find in

favor of the PBA. As a result of the unilateral change in a term and condition of employment during the course of collective negotiations and while in the midst of interest arbitration, the PBA will suffer irreparable harm. The Borough suffers little harm by being required to allow employees to continue to accrue compensatory time during the processing of this case. If the Borough is ultimately found to be correct, it is then free to pay employees for all accrued compensatory time, as appropriate. Further, the public interest is fostered by requiring the Borough to adhere to the tenants of the Act.

The above-captioned matter will proceed through the normal unfair practice processing mechanism.

**ORDER**

It is **ORDERED** that the Borough is restrained from effectuating the terms of the January 21, 2000 memorandum. This interim order will remain in effect pending a final Commission order in this matter.

  
Stuart Reichman  
Commission Designee

DATED: March 17, 2000  
Trenton, New Jersey