

I.R. NO. 99-14

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF PEMBERTON,

Respondent,

-and-

Docket No. CO-99-232

PEMBERTON TOWNSHIP PBA LOCAL No. 260,

Charging Party.

SYNOPSIS

Pemberton Township PBA Local No. 260 alleged that Pemberton Township violated the New Jersey Employer-Employee Relations Act when it changed the shifts of certain unit members in retaliation for their participation in protected activity. The Township asserts that it changed the employees' shifts "for the good order and discipline of the Department." In light of the timing of the shift change announcements and in consideration of the Township's managerial right to unilaterally change employees' shifts in certain circumstances, the commission designee found that the PBA had not established the requisite likelihood of success on the merits and denied the application for interim relief.

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Appearances:

For the Respondent,  
Barron & Gillespie, attorneys  
(Melissa Vance Kirsch, of counsel)

For the Charging Party,  
Loccke and Correia, attorneys  
(Charles E. Schlager, Jr., of counsel)

INTERLOCUTORY DECISION

On January 20, 1999, Pemberton Township PBA Local No. 260 (PBA) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that Pemberton Township (Township) committed unfair practices 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) and (5).<sup>1/</sup> The unfair practice charge was

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<sup>1/</sup> These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with,

accompanied by an application for interim relief. On January 22, 1999, an order to show cause was executed and a return date was initially scheduled for February 18, 1999, and, subsequently, rescheduled at the PBA's request to March 22, 1999. The parties submitted briefs, affidavits and exhibits in accordance with Commission rules and argued orally on a return date.

It appears that the parties commenced negotiations for a successor agreement on September 29, 1998. Apparently, on or about September 21, 1998, prior to the onset of the successor negotiations, Lt. Robert Lewandowski held a meeting among the police department's sergeants to discuss performance problems. The PBA alleges that Lewandowski described these performance problems in general terms yet specifically indicated that (1) the sergeants needed to supervise their officers better, (2) the Township's businesses needed to be more closely patrolled and (3) there needed to be an increase in the issuance of motor vehicle summons. Apparently, Lewandowski announced during the meeting that shift changes might occur, however, not before January 1999. The PBA contends that Lewandowski indicated that if the sergeants performance improved, they would remain on the shifts they selected.

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1/ Footnote Continued From Previous Page

restraining or coercing 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."

Upon the conclusion of the parties' initial negotiations session conducted on September 29, 1998, the parties agreed to additional sessions on November 23, and December 23, 1998. Apparently, on or about November 16, 1998, the Township advised the PBA that it would not be able to attend the November 23 meeting in light of a scheduling conflict in the Township's labor council's schedule. Consequently, the PBA filed an unfair practice charge<sup>2/</sup> with the Commission alleging that the Township was not negotiating in good faith and complying with the negotiations guidelines contained in the Act. Subsequently, the Township apparently advised the PBA that it was prepared to proceed with negotiations on November 23. I take administrative notice of the fact that the PBA withdrew its charge on January 13, 1999.

There appears to be no dispute that the parties conducted another negotiations session on December 23, 1998. The PBA contends that it informally, orally, notified the Township during the December 23 session that it believed the parties had reached impasse. However, it appears that on January 8, 1999, the Township sent a letter to the PBA asking if the PBA wished to meet for another negotiations session. Apparently, on January 14, 1999, the PBA sent a letter in response to the Township's January 8 correspondence taking the position that the parties were at impasse and, as a courtesy, notified the Township that it would be filing

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<sup>2/</sup> Docket No. CO-99-165.

for interest arbitration and that the Township would receive its copy of that petition shortly. It appears that on or about February 1, 1999, the PBA filed papers with the Commission seeking to initiate the interest arbitration process. The Township asserts that it received actual notice of the PBA's interest arbitration filing on February 4, 1999.

On or about December 21, 1998, it appears that all four of the Department's sergeants and about six patrol officers were notified that they were being reassigned to a different squad which would change the shift of some of the affected employees. Allegedly, the change was effective on or about January 6, 1999. The PBA asserts that the reasons given for changing the shifts of patrol officers David and Michael Geibel and Sgt. James Lucker were because the PBA and these three transferred officers, in particular, filed grievances, complained about departmental policy and the officers had a low productivity in issuing motor vehicle summonses.<sup>3/</sup> However, during oral argument, the PBA conceded that neither David Geibel nor James Lucker were officers of the Association, members of the PBA's negotiations teams or otherwise directly involved in the negotiations process. Further, it appears that David Geibel has never filed a grievance while employed as a police officer with the Township.

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<sup>3/</sup> As of the return date herein Michael Geibel had been returned to his previous shift assignment and is no longer the subject of this application for interim relief.

The PBA argues that the Township changed Lucker's and Geibel's shifts in retaliation against the PBA because it filed the unfair practice charge in CO-99-165 concerning the Township's intention to cancel the November 23, 1998 negotiations session, and because on December 23 the PBA advised the Township that it was declaring impasse and seeking interest arbitration.

The Township denies those allegations. It contends that the sergeants' squads were changed "...for the good order and discipline of the Department." Respondents brief at page 6. The Township argues that concerns about sergeants' work performance had been raised prior to the initiation of negotiations for a successor agreement. Finally, the Township asserts that David Geibel was transferred to improve his performance. It noted that he needed the guidance of other senior officers.

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 Commission has held that where negotiations over work/shift schedules interfere with established managerial prerogative, negotiations are not required. Irvington PBA Local 29 v. Tp. of Irvington, 171 N.J. Super. 539 (App. Div. 1979); Bor. of Atlantic Highlands and Atlantic Highlands PBA Local 242, P.E.R.C. No. 83-75, 9 NJPER 46 (¶14021 1982), recon. den. P.E.R.C. No. 83-104, 9 NJPER 137 (¶14065 1983), rev'd 192 N.J. Super. 71 (App. Div. 1983), certif. den. 96 N.J. 293 (1984). See also Mt. Laurel Tp. and Mt. Laurel Police Officers Ass'n, P.E.R.C. No. 86-72, 12 NJPER 23 (¶17008 1985), aff'd 215 N.J. Super. 108 (App. Div. 1987). In Borough of Princeton, I.R. No. 94-3, 19 NJPER 516 (¶24238 1993), the charging party sought interim relief on the basis of its allegations that the Borough unilaterally changed the work schedule for all unit employees during negotiations for a successor collective agreement. The commission designee denied the charging party's application for interim relief on the grounds that:

...the Borough has set forth reasons for its implementation of the shift schedule change which implicate 'diminished departmental efficiency, disciplinary problems and questions as to the continuity and consistency of supervision by superior officers....' Mt. Laurel at 114. These are managerial prerogative issues. The Courts and the Commission have held that under circumstances where such managerial prerogative issues are implicated, a shift schedule change is not mandatorily negotiable.  
[Borough of Princeton 19 NJPER at 519.]

The commission designee in Borough of Princeton concluded that the charging party failed to establish a substantial likelihood of success on the merits of its unfair practice charge. I reach the same conclusion.

The issue regarding the sergeant's performance and the possibility of a shift change was raised prior to the initiation of negotiations for a successor agreement. Further, the affected employees were advised of the shift change on December 21, several days prior to the December 23 negotiations session at which the PBA claims to have notified the Township that it was declaring impasse. Nonetheless, the employer retains the managerial prerogative to unilaterally change shifts where departmental efficiency, disciplinary problems and questions as to the continuity and consistency of supervision by superior officers is implicated. Such issues appear to be implicated in this case. Thus, a shift change may constitute an exercise of the Township's managerial prerogative and may be implemented regardless of the status of the parties participation in negotiations for a successor agreement. Further, no rationale was offered by the PBA as to why the Township would single out Lucker and Geibel in retaliation for the PBA having filed an unfair practice related to the adjournment of a negotiations session and the assertion of a negotiations impasse where neither employee is directly involved in the negotiations process.

Consequently, on the basis of the information asserted in this case, I find that the PBA has not demonstrated that it has a substantial likelihood of prevailing in a final Commission decision, one of the requisite elements to obtain interim relief.



ORDER

The PBA's application for interim relief is denied. This case will proceed through normal unfair practice processing.

A handwritten signature in black ink, appearing to read "Stuart Reichman", written over a horizontal line.

Stuart Reichman  
Commission Designee

DATED: March 25, 1999  
Trenton, New Jersey