

I.R. NO. 90-16

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF JACKSON,

Respondent,

-and-

Docket No. CO-90-220

JACKSON TOWNSHIP PBA LOCAL 168,

Charging Party.

SYNOPSIS

A Commission Designee declines to grant interim relief in a matter brought by Jackson Township PBA Local 168 against the Township of Jackson.

The PBA sought to restrain the Township from using the Director of Public Safety on its negotiating team for the contract between the parties provides that the Director of Public Safety shall not be used as a bargaining agent for the Township. A contract provision which restricts the composition of negotiating teams is an illegal subject for negotiations and is not enforceable. Therefore, the Township conduct was not a violation of the Act.

The PBA also argued the Township illegally altered its policy of compensatory time off. However, the Township did not alter compensatory time specifically permitted under the collective negotiations agreement. The order did not constitute an alteration of a term and condition of employment and was therefore not violative of the Act.

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Appearances:

For the Respondent
Russo, Foster, Secare & Ford, Esqs.
(Joseph L. Foster, of counsel)

For the Charging Party
Mark J. Blunda, Esq.

INTERLOCUTORY DECISION

On February 7, 1990, Jackson Township P.B.A., Local 168, ("PBA") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") against Jackson Township ("Township"). The charge alleges that the Township violated subsection (a)(1), (3) and (5) of the New Jersey Employer-Employee Relations Act,^{1/} 34:13A-1 et seq. ("Act") when the Township

1/ These subsections 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

unilaterally changed the terms and conditions of employment during negotiations by prohibiting the use of compensatory time and earned vacation time and instead insisted that police officers take pay for accumulated overtime, holidays and vacation. It was further alleged that the Township repudiated a provision of the parties negotiated agreement. The provision states that the Director of Public Safety not be permitted to sit at the negotiating table. The Township, however, insisted on his presence in negotiations.

The unfair practice charge was accompanied by an Application for Interim Relief and request for an Order to Show Cause. I executed the Order to Show Cause and made it returnable for February 26, 1990. At that time, the parties were given an opportunity to present briefs, argue orally and submit evidence.

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when addressing similar applications. The moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegations in a final Commission decision and that irreparable harm will occur if the requested

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."

relief is not granted. Further, in evaluating such requests for relief, the relative hardship to the parties in granting or denying the relief must be considered.^{2/}

The contract between the parties which expired by its terms on December 31, 1989 provides at Article 3, Section 1(a):

It is agreed that the bargaining agent for the Township shall consist of, the Governing Body of the Employer or their designee, excluding Director of Public Safety, Chief of Police and all Superior Officers within the Jackson Township Police Department.

In Matawan Regional Board of Education, P.E.R.C. No. 80-153, 6 NJPER 325 (¶11161 1980), the Commission held that contract provisions which place certain restrictions on the composition of negotiating teams are illegal subjects for negotiation.

N.J.S.A. 34:13A-5.4(b)(2) states that it is an unfair practice for an employee organization to interfere with, restrain or coerce "a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances." Inferentially this statutory provision establishes the principle that negotiations between employers and employee organizations cannot take place respecting the composition of the negotiating terms of either participant in the negotiations process. The Commission in [In re North Brunswick Twp. Board of Education, P.E.R.C. No. 80-122, 6 NJPER 193 (¶11095 1980).] concluded that a board of education violated N.J.S.A. 34:13A-5.4(a)(1) and (a)(5) when it refused to negotiate with a negotiating team selected by the majority

^{2/} Crowe v. DeGioia, 90 N.J. 126 (1982); Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975).

representative. The board in that case had contended in apposite part that it need not negotiate with a negotiating team that included members of the association which represented other units of the board's employees. The Commission concluded that the education association had not engaged in improper coalition negotiations and that the board could not under the circumstances of that case place restrictions on the composition or parameters of the association's negotiations team.

Matawan, 6 NJPER at 326.

Article 3, Section 1(a) is an illegal subject of negotiations and therefore unenforceable here.

The PBA also argued that the Township illegally altered existing terms and conditions of employment when it limited compensatory time and vacation time. The Municipal Administrator issued an order on November 13, 1989 which in pertinent part states:

Effective immediately, no Department Head, without written approval from this office, shall authorize any compensatory time unless specifically permitted under a collective bargaining agreement. All overtime compensation, out of class pay, etc. shall be in the form of pay at the rate authorized by contract for said work.

Nothing in the parties recently expired contract requires the Township to grant compensatory time. Rather, several sections of the contract simply recognize officers may have accumulated compensatory time. More importantly, the order does not contravene the contract. Rather, it limits the granting of compensatory time to that which is "specifically permitted under a collective bargaining agreement". To the extent that the Township's actions here do not contravene the specific provisions of the contract, there

is no alteration of the terms and conditions of employment. See New Jersey Sports & Exposition Authority, P.E.R.C. No. 88-14, 13 NJPER 710 (¶18264 1987).

Accordingly, the PBA has failed to establish it has a substantial likelihood of success in prevailing before the Commission on either of its claims. Its Application for Interim Relief is denied.



Edmund G. Gerber
Commission Designee

Dated: March 1, 1990
Trenton, New Jersey