

I.R. NO. 90-15

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,

Charging Party,

-and-

Docket No. CE-90-10

JERSEY CITY POLICE OFFICERS BENEVOLENT ASSOCIATION,

Respondent.

SYNOPSIS

In an action brought by the City of Jersey City ("City"), a Commission Designee declines to restrain an arbitration already commenced between the City and the Jersey City Police Officers Benevolent Association ("POBA"). The City claimed that the POBA was making an illegal parity argument before the arbitrator. The contract provided that "Should the City declare an additional holiday for any other City employees, the members herein shall receive full amount of additional time off." However, the POBA argued to the arbitrator that the holidays named in the firefighters contract are identical to those in the POBA's own contract, yet certain firefighters received a greater number of holidays. The Commission Designee does not believe that this constitutes an illegal parity argument.

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Appearances:

For the Charging Party
Schneider, Cohen, Solomon, Leder & Montalbano, Esqs.
(David Solomon, of counsel)

For the Respondent
Martin R. Pachman, of counsel

INTERLOCUTORY DECISION

On January 5, 1990, the City of Jersey City ("City") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") alleging that the Jersey City Police Officers Benevolent Association ("POBA") violated subsection 5.4(b)(1) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act")^{1/} by arguing in an arbitration proceeding that Article 16 of the Agreement between the parties entitles POBA unit members to parity. The Charge was filed with a Scope of Negotiations Petition and a Request for Interim Relief.

^{1/} This subsection prohibits employee organizations, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act."

A Show Cause Order was signed and made returnable for January 17, 1990. A hearing was held on that date. Both parties submitted briefs and argued orally.

The POBA represents police officers employed by the City. The contract between the City and the POBA, which expired December 31, 1987, provided at Article 16:

A. 1. All employees shall receive fourteen (14) holidays, ten (10) of which shall be given as compensatory days off and four (4) of which shall be paid in cash at straight time rates during the month of December. All compensatory days shall be credited to employees on January 1st of each year.

2. Should the City declare an additional holiday for any other City employees, the members herein shall receive full amount of additional time off. For the purpose of this agreement, the word "holidays" shall be deemed to mean any day when the usual business offices of the City are closed to the general public.

The contract also provided that unresolved grievances may be moved to binding arbitration.

During calendar year 1988, the City and POBA could not reach an agreement in negotiations and went to interest arbitration for a successor agreement for the period of January 1, 1988 to December 31, 1990. An interest arbitration award was issued in January 1989.

In the fall of 1988, new contracts were already in place for the City's firefighters and fire supervisors units. Their expired contracts included the same Article 16 which appeared in the

expired POBA contract.^{2/} Article 16 in the firefighters' new contracts was expanded to read:

All staff personnel shall, in addition to the number of holidays set forth in Section A above, receive the following days as holidays and be entitled to the day off with no loss of pay, and if not scheduled to work on that day, receive another day off:

New Years Day
Good Friday
Memorial Day
July 4th
Labor Day
Thanksgiving Day
Christmas Day

According to the City, this provision modifies the past practice to the extent that 7 of the 14 days off granted to staff personnel at fire headquarters, in addition to holiday pay, were eliminated.

In interest arbitration, the City proposed that Article 16 of the POBA contract be modified to track the new language in the new firefighters' contracts granting staff personnel seven holidays as days off. The POBA submission to the interest arbitrator in December 1988 accepted the proposal, which applies to staff at police headquarters.

In early December, it came to the City's attention that fire headquarters closed on Election Day, Veteran's Day and the day after Thanksgiving. These days are not listed as holidays in

^{2/} The two contracts vary on the number of cash days compared to the number of holidays.

Article 16 of the new firefighters' contracts. The City issued a memorandum to the Director of Fire of the new contract provision and directing his compliance with the new provision and proscribing him from granting holidays on days not covered by the agreement. According to the City, the Firefighter Union objected to the memo and argued that the new Article 16 paragraph was not to become effective until January 1, 1989. The City did not seek to recapture the days off and the issue died. On November 29, 1988, the POBA filed a grievance.

The POBA unit includes staff/special assignment personnel who do not function as patrol officers. These employees generally worked shorter hours and fewer tours than the vast majority of police officers. On Christmas Day 1988 and New Year's Day 1989, both police staff personnel and fire department staff were given the days off. The City claims that the days off complied with the new holidays for staff personnel provision of both the police and fire agreements effective January 1, 1988. The action also complied with prior practice, since the new Agreements merely continued the two days off as two of the seven holidays to which such personnel would be entitled. On January 3, 1989, the POBA filed a second grievance claiming all other POBA members are entitled to these days under Article 16.

Both grievances went to arbitration concerning the application of Article 16 and the parties have had two days of hearings before the arbitrator.

No one on the police force received any "civilian holidays" as days off from April to November 1988. The new police director eliminated civilian holidays during this period. When staff personnel were granted Christmas 1988 and New Years Day 1989 as holidays, the POBA claimed these were declared holidays pursuant to paragraph B of Article 16. The POBA claimed at the arbitration hearing that since both the staff personnel within their own department and the firefighters received those days off, the balance of the POBA negotiations unit should receive them as well pursuant to Article 16.

The City concedes that if Article 16 is interpreted to mean that when a holiday is unilaterally declared by the City, POBA members will also receive that same holiday, Article 16 is a legal clause. However, the City argues that the POBA claims that since the firefighters received extra days off it is entitled under Article 16 to "parity". This it contends is an illegal parity argument.

The City maintains that the firefighters received the time off either due "to a legitimate past practice contractual benefit incorporated through a delayed implementation of the holiday provision of the Agreement, or through the City's contractual misapplication" and not because of an intended unilateral declaration of an additional benefit.

The POBA argues here that the disputed days off were not given as holidays pursuant to negotiated contracts, but rather, were

unilaterally declared to be such by the City. Therefore, pursuant to Article 16, these days are holidays and its members should be compensated for them. If, according to the POBA, the arbitrator finds that these days were given as holidays as a result of a collective negotiations agreement then the POBA members would not be entitled to holiday pay.

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 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.^{3/}

City of Plainfield, P.E.R.C. No. 78-87, 4 NJPER 255 (¶4130 1978) is the lead case on parity clauses. There the employer agreed with several employee organizations that if in future negotiations it granted an increase in salary or benefits to another negotiations unit, that increase would be automatically passed on to the employees they represented. The P.B.A. filed an unfair practice

^{3/} 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).

charge alleging that these "parity clauses" inhibited its ability to negotiate freely. The Commission agreed:

The parity clause has a natural and unavoidable coercive effect. When considering economic proposals of one employee organization, the public employer must inevitably reconcile such a proposal with the ultimate result of providing similar economic proposals to any other employee organization which has the protection of a parity clause in its collective negotiations agreement. This result interferes with the right to negotiate in good faith.... The mere existence of the clause is sufficient to chill the free exchange between a public employer and an employee organization by permitting a third employee organization, not a party to the negotiations, to have [an] impact on those negotiations. Parity clauses must be and shall henceforth be illegal subjects for negotiations for this reason. [Id. at 256]

Illegal parity clauses are those which automatically bestow benefits to a unit of employees based upon future or as yet uncompleted negotiations between the same employer and other employee units.^{4/}

Here, the POBA is not arguing that it is entitled to what was given to the firefighters in their contract - for the firefighter contract is identical to the POBA's contract. Rather, the POBA argues that the two groups have the same contract language but the firefighters received a unilateral grant of benefits.

[C]lauses extending to unit employees benefits unilaterally conferred upon other employees are

^{4/} A majority representative's demand that its unit employees receive what another employee unit has already negotiated is not an illegal parity demand. See Westwood Reg. Bd. of Ed., P.E.R.C. No. 90-31, 15 NJPER 609 (120253 1989).

mandatorily negotiable. So are clauses permitting the reopening of negotiations in the event of increases in salaries or other benefits negotiated by other units. See Rutherford Bor., P.E.R.C. No. 89-31, 14 NJPER 642 (¶19268 1988); Woodbridge Tp., P.E.R.C. No. 88-88, 14 NJPER 250 (¶19093 1988); Wanaque Bor., P.E.R.C. No. 82-42, 7 NJPER 613 (¶12273 1981); Weehawken Tp., P.E.R.C. No. 81-104, 7 NJPER 146 (¶12065 1981); Watchung Bor., P.E.R.C. No. 81-88, 7 NJPER 94 (¶12038 1981).

Township of Montclair and FMBA, Local 20, P.E.R.C. No. 90-9, 15 NJPER 499, 500 (¶20206 1989)

The City has stated that the firefighters received the days off as either the result of a mistake or an unwritten past practice. But it cannot use its own defense as an argument that the POBA is making an illegal parity argument. Whether there was a mistake or an unwritten past practice is a fact to be determined by an arbitrator.

Having found that the City has not met its burden on either the law or the facts, it is not necessary to decide the question of the timeliness of the City's charge and petition.

Accordingly, the City's application for interim relief is hereby denied.


Edmund G. Gerber
Commission Designee

Dated: February 2, 1990
Trenton, New Jersey