

I.R. NO. 96-23

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,

Petitioner,

-and-

Docket No. SN-96-106

POLICE OFFICERS BENEVOLENT ASSOCIATION
OF JERSEY CITY,

Respondent.

SYNOPSIS

The City of Jersey City sought to restrain arbitration on a grievance brought by the Police Officers Benevolent Association of Jersey City. The grievance contests the City's failure to assign a designee of the POBA president to special duty, i.e., administering the provisions of the collective negotiations agreement. The City sought to restrain the arbitration claiming that it is in financial difficulty.

Leave time for union business is a mandatory subject of negotiations. Moreover, the City failed to provide any evidence in support of its position that the City is in financial difficulty. The application for restraint of arbitration was denied.

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Appearances:

For the Petitioner,
Sean M. Connelly, Corporation Counsel
(JoAnn Katzban, Assistant Corporation Counsel)

For the Respondent,
Szaferman, Lakind, Blumstein, Watter & Blader, attorneys
(David B. Beckett, of counsel)

INTERLOCUTORY DECISION

On April 2, 1996, the City of Jersey City filed a Scope of Negotiations Petition seeking a finding that a provision of the collective negotiations agreement between it and the Police Officers Benevolent Association of Jersey City, concerns a subject that is a managerial prerogative, and therefore not arbitrable. It further seeks restraint of an arbitration arising out of that contract provision. The City also submitted an order to show cause seeking an interim restraint of the arbitration pending a final Commission decision. The show cause order was executed and made returnable for April 30, 1996.

The contract provision states:

B. The President of the Association and his designees (not to exceed two (2) shall be assigned to special duty, day tour and, except in emergencies, shall be entitled to administer the provisions of this Agreement.

The President and his designees will report their location by telephone to the Office of Chief.

C. In the absence of the President, the First Vice-President of the Association shall be assigned to special duty so that he may assume the duties of the President.

The POBA seeks to arbitrate a grievance alleging that the City has failed to assign the President's second designee to the POBA office. The POBA argues that leave time is mandatorily negotiable and arbitrable and opposes the order to show cause.

At the hearing, the City argued that the City is in financial difficulties; therefore, the Commission should find the subject matter of this arbitration a managerial prerogative. However, the City has not filed an affidavit or certification or submitted any evidence in support of its argument.

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. 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).

The Commission has consistently held that leave time for union business is a mandatory subject of negotiations. City of Newark, P.E.R.C. No. 90-122, 60 NJPER 394, 396 (¶21164 1990) and Township of Mine Hill, P.E.R.C. No. 87-93, 13 NJPER 126, 127 (¶18056 1987). Although there is no certification or other evidence in support of its position that the City is in financial difficulty, the Commission had previously considered and rejected such arguments as a determination to unilaterally altering a term and condition of employment. County of Bergen, I.R. No. 91-20, 17 NJPER 275 (¶22124 1991); Rutgers, the State Univ. and Rutgers Univ. College Teachers Ass'n, P.E.R.C. No. 80-66, 5 NJPER 539 (¶10278 1979), aff'd and modified App. Div. Dkt No. A-1572-79 (4/1/81); Hudson Cty Bd. of Chosen Freeholders v. Hudson Cty. PBA Local No. 51, App. Div. Dkt No. A-2444-77 (4/9/79) aff'g P.E.R.C. No. 78-48, 4 NJPER 87 (¶4041 1978); County of Sussex, I.R. No. 91-15, 17 NJPER 234 (¶22101 1991).

The City has failed to meet its heavy burden. It has failed to show there is a substantial likelihood that the Commission will reverse long standing precedent and find this matter a managerial prerogative and therefore non-arbitrable.

The Application for Interim Relief is denied. This matter will go forward to the Commission for a plenary hearing.

BY ORDER OF THE COMMISSION



Edmund G. Gerber
Commission Designee

DATED: May 6, 1996
Trenton, New Jersey