

I.R. NO. 97-12

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of  
BOROUGH OF BELMAR,

Respondent,

-and-

Docket No. CO-97-188

BELMAR POLICE BENEVOLENT ASSOCIATION, LOCAL No. 50,

Charging Party.

SYNOPSIS

A Commission Designee restrains the Borough of Belmar from denying leave time to certain personnel of the Belmar Police Department. The Chief of Police announced that because overtime funds were exhausted for the calendar year, any request for time off resulting in a monetary expense was to be denied. The Designee ordered the Borough to honor the contract. The refusal to comply with the contract provision for purely economic reasons constituted a contract repudiation. The Borough was ordered to grant contractually permitted requests for time off so long as the Borough can otherwise meet its operational needs, such as minimum manning. The Designee denied the application for interim relief as to the assignment of two officers whose assignments were based on their qualifications.

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Appearances:

For the Respondent,  
Ruderman & Glickman, attorneys  
(Joel G. Scharff, of counsel)

For the Charging Party,  
Joseph N. Dempsey, attorney

INTERLOCUTORY DECISION

On December 13, 1996, the Belmar Police Benevolent Association, Local No. 50 filed an unfair practice charge against the Borough of Belmar alleging that it engaged in unfair practices within the meaning of N.J.S.A. 34:13A-5.4(a)(1), (2), (3), (4), (5) and (7)<sup>1/</sup> when it refused to grant time off pursuant to the contract during the holiday season.

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<sup>1/</sup> 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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the

The unfair practice charge was accompanied by an application for interim relief. The application was executed and made returnable for December 17, 1996. A hearing was held on that date and the parties presented testimony, submitted evidence and argued orally.

The Borough and Local 50 are parties to a collective negotiations agreement which, by its terms, expires December 31, 1995. The parties do not dispute that the terms and conditions of employment contained in this agreement remain in effect. The contract provides at Article XXV - Personal Days, "Each member of the bargaining unit shall be granted three personal days per year." It is not disputed that personal leave time must be taken in the year it is earned.

The PBA, by way of affidavit, states that in years past patrolmen were routinely allowed to use personal days to take off over the holiday period between Christmas and New Year. However, this year, some 18 requests for the use of personal days off were denied. At the time of the hearing approximately eight denials of

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1/ Footnote Continued From Previous Page

exercise of the rights guaranteed to them by this act. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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. (7) Violating any of the rules and regulations established by the commission."

leave time are in dispute. In at least one case, the personal day applied for was to be used in conjunction with a scheduled vacation and the employee is scheduled to fly home from vacation on the requested personal leave day.

The Borough does not dispute all requests for personal leave were denied. Rather, it states by way of affidavit that in years past, the request for personal days was always discretionary with the department. This year, the Chief of Police, Richard T. Lynch, announced that because the department's overtime budgeted funds were exhausted for 1996 any request for time off which results in a monetary expense was to be denied.<sup>2/</sup> Two officers who applied for personal leave on December 31, 1996 are scheduled for DWI assignment on that day. Lynch states that these are two of his best officers and their aggressiveness as police officers was needed for this particular assignment. The Borough argues that it has a managerial prerogative to make such an assignment and deny leave time under these circumstances.

#### ANALYSIS

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

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<sup>2/</sup> In an effort to resolve this matter, the Borough has agreed to allow patrolmen who were denied requests for personal leave in December to take such leave in early January.

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).

Although the issue of budget and economic restraints is an important issue, financial constraints do not render an issue non-negotiable. That is, financial constraints do not create a managerial prerogative. New Jersey Sports & Exposition Authority, P.E.R.C. No. 87-143, 13 NJPER 492 (¶18181 1987); Town of West New York and PBA Loc. 88, P.E.R.C. No. 91-52, 17 NJPER 5 (¶22003 1990), aff'd NJPER Supp.2d 262 (¶217 App. Div. 1991) [App. Div. Dkt. No. A-2259-90T1F (11/15/91)]; Town of West New York and IAFF Loc. 1861, P.E.R.C. No. 92-38, 17 NJPER 476 (¶22231 1991), aff'd NJPER Supp.2d 321 (¶243 App. Div. 1993) [NJPER Supp.2d 1 (¶1 App. Div. 1970), App. Div. Dkt. No. A-1434-91T2 (2/5/93)].

Accordingly, the Borough's refusal to honor the provision of the contract for purely economic reasons is a repudiation of the contract. The affected patrolmen were seeking to use this leave time during the holiday season. One cannot readily be made whole for such a loss. Given there is a substantial likelihood that the Commission will find the Borough's action constitutes an unfair

practice, I will order the Borough to grant the requested personal days so long as the Borough can otherwise meet its operational needs, such as minimum staffing and otherwise insure proper police coverage.

As to the denial of leave time for the two officers assigned to DWI duty on December 31, 1996, the determination of the ultimate criteria for the selection of employees to perform particular duties on a temporary basis and the right to select individuals for specific assignments is within the scope of managerial authority and not subject to mandatory negotiations. See for example, Cinnaminson Township (Police Association), P.E.R.C. No. 79-5, 4 NJPER 310 (4156 1978); Borough of Roselle, P.E.R.C. No. 76-29, 2 NJPER 142 (1976); Board of Education of the Twp. of North Bergen v. North Bergen Federation of Teachers, 141 N.J. Super. 97 (App. Div. 1976) and Byram Twp. Board of Education and Byram Twp. Education Assn., P.E.R.C. No. 76-27, 2 NJPER 143 (1976), affmd 152 N.J. Super. 12 (App. Div. 1977). The Commission, in these decisions, has however determined that provisions relating to the assignment of individuals to perform certain responsibilities are permissively negotiable.

Given that the Commission will likely determine that these assignments are not mandatorily negotiable, it will likely determine the Borough did not repudiate the contract in denying leave time to the two patrolmen scheduled for DWI patrol on New Year's Eve. Accordingly, the application of PBA Local 50 as to these two individuals is denied.

Accordingly, it is ORDERED that all denials of use of personal days before the end of the calendar year be rescinded except where an assignment was made based upon specific qualifications or would otherwise interfere with the operational needs of the police force.

This is an interim order only. This matter will go forward to a full plenary hearing.

  
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Edmund G. Gerber  
Commission Designee

DATED: December 19, 1996  
Trenton, New Jersey