

I.R. NO. 2000-10

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF IRVINGTON,

Respondent,

-and-

Docket No. CO-2000-182

NJ STATE POLICEMEN'S BENEVOLENT
ASSOCIATION, LOCAL NO. 29,

Charging Party.

SYNOPSIS

On or about January 6, 2000, the Township issued a vacation policy for calendar year 2000. The PBA alleges that the policy modifies the previous vacation selection procedure, in violation of Article XIII, Vacations, of the collective agreement. The Township contends that Article XIII authorizes it to issue the new vacation policy. The Commission Designee finds that the alleged violation is dependent upon an underlying contractual dispute. Applying State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984), the Designee finds that the PBA has not establish a likelihood of success, one of the requisite elements for interim relief.

I.R. NO. 2000-10

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF IRVINGTON,

Respondent,

-and-

Docket No. CO-2000-182

NJ STATE POLICEMEN'S BENEVOLENT
ASSOCIATION, LOCAL NO. 29,

Charging Party.

Appearances:

For the Respondent,
Eric M. Bernstein and Associates, attorneys
(Eric M. Bernstein, of counsel)

For the Charging Party,
Courter, Kobert, Laufer & Cohen, attorneys
(Fredric M. Knapp, of counsel)

INTERLOCUTORY DECISION

On January 10, 2000, the New Jersey State Policemen's Benevolent Association Local No. 29 (PBA) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the Township of Irvington (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) by violating N.J.S.A. 34:13A-5.4a(1), (3) and (5).^{1/} The unfair practice charge was

^{1/} These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with,

Footnote Continued on Next Page

accompanied by an application for interim relief. On January 12, 2000, an order to show cause was executed and a return date was initially set for February 8, 2000 and, subsequently, rescheduled to February 18, 2000. On February 17, 2000, the PBA submitted a reply to the Township's February 14, 2000 response brief. Since the PBA's reply was not received by the Township prior to oral argument and since the Order to Show Cause did not provide for the filing of a reply by the PBA, at oral argument I granted the Township's request to respond and set February 23 as the response date. On February 23, 2000, the Township filed its response and on February 24, 2000, the PBA filed a further reply. The procedure established during oral argument did not provide for a further response by the PBA to the Township's February 23 submission. Therefore, I did not consider that response. The parties argued orally on the return date. The following facts appear.

The PBA represents all Township police officers below the rank of sergeant. The Township and the PBA are parties to a collective negotiations agreement covering January 1, 1996 through

1/ Footnote Continued From Previous Page

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 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."

December 31, 1998. The parties are currently engaging in successor negotiations and are in the midst of interest arbitration (Docket No. IA-99-25).

On or about January 6, 2000, the Township issued an annual vacation policy. This policy describes the method by which unit employees will use their annual vacation entitlements and make their vacation selections for calendar year 2000.

The PBA contends that the vacation policy completely revises the selection procedure that had previously been in effect and constitutes a repudiation of Article XIII, Vacations, Section 3, contained in the recently expired collective negotiations agreement. The PBA claims, and the Township does not dispute, that no negotiations concerning the provisions of the policy took place between the parties.

The PBA asserts that the policy changes the existing practices regarding vacation selection in four ways. Officers were previously allowed to make four "picks" per year so that an officer could divide the total annual vacation entitlement into as many as four separate vacations. According to the PBA, under the calendar year 2000 vacation policy, an officer is allowed only one pick so that the officer must use the entire annual vacation allotment in a single vacation. Only with permission, may an officer be allowed a single "split vacation".

The PBA claims that officers previously selected all of their vacation picks at one time, by seniority. Thus, the most

senior officer met with department officials and selected all of his/her picks during that brief meeting. The PBA asserts that under the calendar year 2000 vacation policy officers who were granted permission for a second vacation pick will not be permitted to exercise their second selection until all other officers have made their first pick.

The PBA claims that previously there were three recognized vacation periods: winter (January through April), summer (May through Labor Day), and fall (the day after Labor Day through December). Officers were permitted to select vacations among all three vacation periods, subject to the sole limitation that there could be only one vacation pick per officer during the summer period for a maximum duration of ten days. Under the calendar year 2000 vacation policy, the PBA claims that each "department component" (presumably meaning various bureaus and other departmental subdivisions) will have the right to establish its own vacation periods and, within those periods, any limitations on vacation selection.

The PBA argues that previously officers were surveyed regarding their vacation selections beginning in late October. Under the calendar year 2000 vacation policy, officers will make their vacation selections in December.

The Township contends that the calendar year 2000 vacation policy does not represent a significant departure from the prior vacation policy. The Township asserts that under the newly issued

policy, officers may still divide their vacations by merely requesting a vacation split. The Township argues that requiring officers to request a vacation split constitutes only a de minimus alteration from the previous procedure.

The Township does not dispute that officers, on the basis of seniority, were asked to attend a vacation selection meeting at which time all vacation picks were exercised. The Township asserts that this procedure was not expressly set forth in the collective agreement and the Township is not required under the express language of the contract to maintain this procedure.

The Township also does not contest the PBA's assertion that officers were permitted to select vacations among the three vacation periods. It argues that the collective agreement does not expressly provide for such procedure. Similarly, concerning the PBA's allegation that vacation selections were conducted in late October, the Township contends that the newly issued policy does not call for selections to be made in December, as the PBA asserts, but rather requires all department components to complete vacation scheduling by December 31.

As the result of a prior unfair practice charge (Docket No. CO-94-199), the parties entered into a settlement agreement. In relevant part, the agreement states the following:

1. PBA Local 29 unit employees, in keeping with past practice and subject to seniority and minimum staffing requirements, shall be provided the opportunity each October to select desired vacation periods. Unit employees shall be allowed to select a maximum of ten days in the

'summer period', May 1 - Labor Day, inclusive, for their partial allotment of vacation time. Other selections for vacation periods in the remainder of the year shall be in keeping with past practice.

2. The Township agrees that vacation periods shall not be 'blocked out' so as to eliminate the possibility of unit employees taking vacation time in any particular block of time. The PBA recognizes that the Township may, subject to good faith, minimum staffing requirements and seniority provisions in the collective agreement, deny a unit employee(s) request for vacation time in a particular requested period. Furthermore, the Township agrees to negotiate in good faith prior to any unilateral change in the vacation selection, subject to the provisions of the collective agreement and past practice.

The PBA contends that the memorandum of agreement specifically incorporates the practices which the PBA claims to currently be in effect. The Township asserts that the agreement is not dispositive of the issues since it has only been followed in certain respects. For example, notwithstanding the language of the memorandum, vacation policies from 1996, 1997, 1998 and 1999 do not provide for vacation selection to occur in October of the prior calendar year in which vacation is selected.

Article XIII, Vacations, Section 3, contained in the recently expired collective agreement states:

Vacations shall be scheduled by the Chief on the same basis as heretofore, in his discretion, giving preference to employee choice according to seniority where practicable and where consistent with continued orderly and efficient operation of the Department.

The PBA contends that it is impossible to reconcile the express requirement in Article XIII, Section 3 that vacations be

scheduled "... on the same basis as heretofore..." with the Township's contention that it has somehow retained the contract right to repeal and amend practices regarding vacation selections unilaterally. The Township, relying on the same contract language, contends that pursuant to the collective agreement, it is authorized to promulgate the calendar year 2000 vacation policy at issue here. Additionally, the Township contends that it has an inherent managerial prerogative to promulgate the policy as issued.

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 scheduling of vacations and other time off is mandatorily negotiable so long as an agreed-upon system does not prevent an employer from fulfilling its staffing requirements. Borough of Rutherford, P.E.R.C. No. 97-12, 22 NJPER 322 (¶27163 1996). See also Town of West New York, P.E.R.C. No. 89-131, 15 NJPER 413 (¶20169 1989). However, once the parties have engaged in

negotiations on an issue and reflected the negotiated agreement in their contract the terms of the collective agreement set the conditions of employment for the life of the contract and both parties' obligation to engage in any further negotiations with respect to such matter is satisfied. See Middlesex Bd. of Ed., P.E.R.C. No. 94-31, 19 NJPER 544 (¶24257 1993). Here, the parties have negotiated with respect to the issue of vacation scheduling and have incorporated their agreement on that issue into the contract at Article XIII, Section 3. Both parties rely upon the contract article in support of their respective arguments. The PBA contends that the phrase "...on the basis as heretofore..." prevents the Township from making changes in the vacation selection procedure from prior years. The Township contends that language such as "vacation shall be scheduled by the chief...in his discretion..." and "...where consistent with continued orderly and efficient operation of the department" allows it to promulgate the vacation selection policy for calendar year 2000 as it has done.

The Commission has refused to issue a complaint on unfair practice charges where the alleged violation is dependent upon the underlying contractual dispute. State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). Here, the PBA's unfair practice charge appears to be essentially a contract dispute which is properly resolved through the parties' negotiated grievance procedure included in the recently expired collective agreement and not through the unfair practice mechanism.

Even with respect to the memorandum of agreement, it is not clear to what extent the parties have adhered to or modified the terms of the memorandum. Moreover, language in the memorandum allows for the exercise of discretion by the Township and is subject to interpretation. The Commission normally does not engage in interpreting the parties' private agreements. State of New Jersey (Department of Human Services). Consequently, I find that the PBA has not demonstrated a likelihood of prevailing in its unfair practice charge. Accordingly, the PBA has not established the requisite elements for a grant of interim relief. Consequently, this case will proceed through the normal unfair practice processing mechanism.

ORDER

The PBA's application for interim relief is denied.


Stuart Reichman
Commission Designee

DATED: February 28, 2000
Trenton, New Jersey