

I.R. No. 2007-9

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ORANGE TOWNSHIP,

Respondent,

-and-

Docket No. CO-2007-257

ORANGE POLICE DEPARTMENT SOA AND  
ORANGE PBA LOCAL 89,

Charging Parties.

SYNOPSIS

A Commission Designee restrains the City of Orange Township from discontinuing a practice allowing employees in the PBA unit to accrue negative sick leave balances and from attempting to recoup such balances from those employees. While the City was not restrained from discontinuing the practice regarding employees in the SOA unit, it was restrained from attempting to unilaterally recoup such balances without first negotiating with the SOA over procedures and mechanisms to determine when and how much money to recoup from employee paychecks.

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Appearances:

For the Respondent, Carmagnola & Ritardi, LLC  
(Francesco Taddeo, of counsel)

For the Charging Parties, Fox and Fox, LLP (David I.  
Fox, of counsel, Lynsey A. Johson, on the brief)

INTERLOCUTORY DECISION

On March 6, 2007, the Orange Police Department Superior Officers Association (SOA) and the Orange Police Benevolent Association, Local No. 89 (PBA) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the City of Orange Township (City) violated 5.4a(1), (3) and (5)<sup>1/</sup> of the New Jersey Employer-Employee

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<sup>1/</sup> These provisions 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 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 (continued...)"

Relations Act, N.J.S.A. 34:13A-1 et seq. (Act). The Charging Parties alleged that by a memorandum of February 14, 2007, the City unilaterally changed the practice of allowing police employees to carry a negative sick leave balance until the employee was able to offset the balance which was not required until the end of the employee's career.

The unfair practice charge was accompanied by an application for interim relief. An Order to Show Cause was executed on March 7, 2007, scheduling a telephone conference call return date for April 4, 2007. The parties submitted briefs, affidavits and exhibits in support of their respective positions and argued orally on the return date.

The Charging Parties seek to restrain the City from changing a practice allowing employees to carry negative sick leave balances until they are able to offset the balance sometime prior to the end of their career, and restrain the City from unilaterally deciding the amount to recoup for time owed.

The following pertinent facts appear:

Since approximately 1981, the City has permitted police/superior officers to carry negative sick leave balances.

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1/ (...continued)  
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."

On April 7, 2000, the SOA filed a charge against the City (Docket No. CO-2000-311) with a request for interim relief alleging that the City was unilaterally attempting to eliminate an officer's ability to accrue negative sick leave balances. On June 14, 2000, a Commission Designee restrained the City from attempting to unilaterally eliminate the practice and from attempting to unilaterally recoup the time. City of Orange Township, I.R. No. 2000-16, 26 NJPER 326 (¶31131 2000). The Commission denied reconsideration of that decision on September 29, 2000, City of Orange Township, P.E.R.C. No. 2001-17, 26 NJPER 433 (¶31170 2000), and on February 23, 2001, it granted the SOA's motion for summary judgment finding the City's attempt to unilaterally eliminate the negative sick leave balance practice violated the Act. City of Orange Township, P.E.R.C. No. 2001-46, 27 NJPER 124 (¶32046 2001).

During the time period between the Commission decisions, the SOA and City engaged in interest arbitration and an award issued in May 2001 addressing the negative sick leave balance practice. The arbitrator's award held in pertinent part:

Unearned sick leave has been granted in the past. The issue has become whether the City can mandate such leave be repaid or may the employee involved delay indefinitely such repayment. After consideration I am of the persuasion that the possibility of such grants should not be precluded. However the Employer should have the absolute discretion to grant requests, to impose specific limits on the amount granted and to establish the

manner and time of replenishment. Such is so awarded.

Between May 2001 and February 2007, the City apparently took no action in accordance with the award to change the negative sick leave balance practice for employees in either the SOA or PBA units. On February 14, 2007, the Police Director issued a memorandum to a captain providing:

Personnel that exhaust all sick time including accumulated and contractually provided per calendar year shall be considered sick without pay. Make the appropriate payroll deductions when this occurs and advise in your weekly report.

That directive had the effect of eliminating the negative sick leave balance practice. This charge and interim relief application followed.

On the return date, the parties added facts showing that about twenty employees in the PBA unit and one employee in the SOA unit would be affected by the Police Director's memorandum, and that the City has been recouping time from the employee in the SOA unit by deducting money from her regular paycheck.

#### 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 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).

No factual or legal basis has been presented to justify denying the application with respect to the PBA's unit. The City has not offered legitimate business considerations or facts to warrant a unilateral change in the practice with the PBA. In fact, I can discern no change in facts or law between the original restraint granted to the SOA and by implication applied to the PBA since 2000, and the current record. Consequently, based upon the analysis presented in City of Orange, 26 NJPER 326, and the finding there that the standards for interim relief had been met, I restrain the City from changing the negative sick leave practice covering employees in the PBA's unit, or attempting to recoup money from employees in that unit to cover such balances without negotiations.

With respect to the SOA unit, however, the 2001 interest arbitration award may give the City the right to discontinue the practice. Since "absolute discretion" to decide the continuance of that practice was given to the City concerning the SOA unit, I cannot conclude that a substantial likelihood of success exists

regarding the practice for that unit. Consequently, the application for restraint is denied regarding the continuance of the practice for employees in the SOA unit. Issues regarding the meaning, interpretation, and impact of the award language and on how that language may have been affected by events since 2001, may be raised through the parties' grievance procedure and/or in a subsequent interest arbitration.

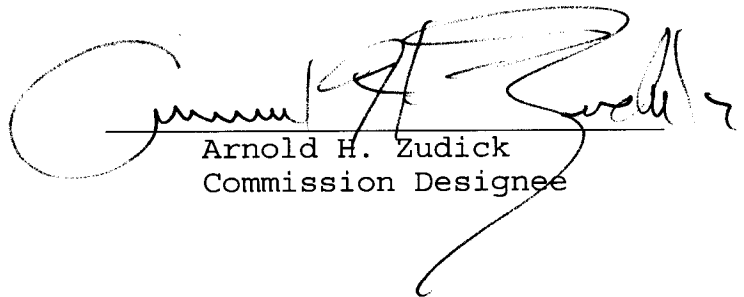
Although I have not restrained the City from discontinuing the practice with respect to employees in the SOA unit, it would be unconscionable to allow the City to unilaterally deduct all or most of an employee's pay check to recoup sick time without establishing, through negotiations, procedures and mechanisms to make certain employees can still manage their essential expenses during recoupment. Consequently, the City is restrained and Ordered to Cease and Desist from unilaterally recouping sick time from employees in the SOA unit through salary deduction without negotiations.

The City shall engage in good faith negotiations with the SOA upon their demand during the sixty day period following the demand over procedures and mechanisms to determine the time and amount of salary deduction for sick leave recoupment affecting employees in the SOA unit. Disputes arising thereafter over recoupment amounts or in application of such procedures and

mechanisms should be resolved in accordance with the SOA grievance procedure.

ORDER

The City is restrained from unilaterally eliminating the practice of allowing employees in the PBA unit from accruing negative sick leave balances and restrained from attempting to recoup such balances in a manner inconsistent with the current practice. The City is also restrained from recouping negative sick leave balances from employees in the SOA unit without first negotiating with the SOA over the next sixty days over procedures and mechanisms to determine the time and amount of salary deduction recoupment. Subsequent disputes over that issue must be resolved through the parties' grievance procedure. This interim order shall remain in effect pending a final Commission order in this matter.



Arnold H. Zudick  
Commission Designee

DATED: April 10, 2007  
Trenton, New Jersey