I.R. NO. 90-17

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 a matter brought by the City of Jersey City, a Commission Designee declines to restrain an arbitration on the basis that the Jersey City Police Officers Benevolent Association ("POBA") has made an illegal parity argument to the arbitrator. It was found that the POBA argued the granting of benefits to another organization did not flow from a collective negotiations contract provision rather, the granting of benefits came from the City's unilateral action.

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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 February 20, 1990, the City of Jersey City ("City") filed a Motion for Reconsideration of an interim relief decision (I.R. No. 90-15, 16 NJPER ___ (¶_____ 1990) which denied the City's application for interim relief against the Jersey City Police Officers Benevolent Association ("POBA"). The City alleged that the POBA violated subsection 5.4(b)(1) of the New Jersey Employer-Employee Relations Act,[1/] N.J.S.A. 34:13A-1 et seq. ("Act") by arguing in an arbitration proceeding that the collective

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."

negotiations agreement between the parties entitles POBA unit members to parity with the Jersey City Firefighters Association ("Firefighters").

The Firefighters and the POBA have the same contract language with the City as to holiday time off but the Firefighters members were granted more holiday time off than POBA members.

In denying the City's original application to restrain the arbitration, I stated:

> ...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 mandatorily negotiable. So are clauses permitting the reopening of negotiations in the event of increases in salaries or other benefits negotiated by other units.
> > Citations omitted.
>
> 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.

The City now argues there was an apparent misapprehension of the City's position.

On February 25, 1990, the Police Officer's Benevolent Association ("POBA") filed a response in opposition to this motion.

I hereby grant the City's motion for reconsideration.

The City theorizes that the POBA cannot refer to what happened to the Firefighers without making an illegal parity argument. It argues that since the City has a contract with the Firefighters, if it did grant a benefit to members of the Firefighters, and the Firefighters did not object, then the Firefighters' silence would constitute an "acceptance of an offer" and thereby, in effect, create a new contract provision. Since this benefit is contained in the Firefighter's contract, it is not a unilateral granted benefit. Accordingly, the POBA's reliance on the Firefighters' contract provision constitutes an illegal parity argument.

The City further argues that its decision not to seek recoupment of the holiday benefit paid to members of the Firefighters was made in the belief that this settlement would not have an impact on other City employee units. If the POBA prevailed, according to the City, the City must from now on consider how the settlement of a dispute with one unit would impact on other City units. This is the same type of impermissible pressure as the Commission found in illegal parity clauses. See City of Plainfield, P.E.R.C. No. 78-87, 4 NJPER 255 (¶4130 1978).

The burden is on the City to show it has a substantial likelihood of success in prevailing on the law. The City has not met its burden for its reasoning is not persuasive. The grant of benefits to the Firefighters here (as argued by the City) did not

flow from a collectively negotiated provision as in Plainfield. Rather, the grant of benefits came from the City's unilateral action. The fact that the benefits subsequently may have become adopted into the Firefighters' agreement is not controlling. This additional benefit was not achieved through collective negotiations.

Moreover, no irreparable harm will flow from allowing the arbitrator to issue his decision. Even though this matter is before the arbitrator, the unfair practice charge and the companion scope of negotiations petition are being processed and the Commission will ultimately rule on this matter. See Upper Pittsgrove Bd. of Ed., P.E.R.C. No. 90-78, 16 NJPER ___ (¶_____ 1990).

The City's application for interim relief is denied.

Edmund G. Gerber
Commission Designee

Dated: March 16, 1990
Trenton, New Jersey