

I.R. NO. 87-19

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

JOSEPH C. SPICUZZO, SHERIFF OF  
MIDDLESEX COUNTY, AND THE COUNTY  
OF MIDDLESEX,

Respondent,

-and-

Docket No. CO-87-230

POLICEMEN'S BENEVOLENT ASSOCIATION  
LOCALS NO. 165 AND 165A,

Charging Parties.

SYNOPSIS

In a matter brought by P.B.A. Locals 165 and 165A against Joseph Spicuzzo, Sheriff of Middlesex County and County of Middlesex, a Commission Designee restrains the County from altering the procedures for assignment of overtime in non-emergent situations. The parties were engaged in interest arbitration and the Commission has held that unilateral changes in the terms and conditions of employment during the interest arbitration process creates irreparable harm in that process and this matter is appropriate for such an interim order.

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Appearances:

For the Respondent  
Dominic J. Cerminaro, Esq.

For the Charging Party  
Sherman, Kuhn, Justin & Wilson  
(David S. DeBerry, of counsel)

INTERLOCUTORY DECISION

On February 18, 1987, the Policemen's Benevolent Association Locals No. 165 and 165A (P.B.A.) filed an unfair practice charge with the Public Employment Relations Commission (Commission) against the County of Middlesex (County) and the Middlesex County Sheriff (Sheriff) alleging that that the Sheriff unilaterally altered terms and conditions of employment by altering overtime assignments to employees of the Sheriff's Department by abandoning the use of the negotiated procedures for the selection of officers to serve overtime. Said actions were taken while there was

no collective negotiations agreement between the P.B.A. and the County and while the parties were engaged in interest arbitration for a successor agreement. Said actions were alleged to have constituted violations of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.3 et seq.

The charge was accompanied by an Order to Show Cause. The Order was signed and made returnable for February 26, 1987, at which time both parties were given an opportunity to submit briefs, present affidavits and argue orally.

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when confronted with similar applications. The moving party must show it has a substantial likelihood of success on the legal and factual allegations in the final Commission decision and it must show it will be irreparably harmed if the requested relief is not granted. Both of these standards must be satisfied before the requested relief will be granted. Furthermore, the relative hardship to the parties must be evaluated before interim relief may be granted.

The expired contract between the parties provides for the assignment of overtime. The employer keeps a list of employees for assignment purposes and picks the next name on the list. That employee has the right to refuse the first request and the employer must go to the next name on the list. Each employee in turn has the right of first refusal. However, if the employer goes through the

entire list one time and no employee elects to serve overtime duty, the employer may then select the next person on the list and order him or her to take overtime duty. The contract further provides that in the event of an emergency, the employer may order its employees to serve overtime duty without resort to the list.

However, on or about February 5, 1987, the County announced that all overtime would be mandatory for all officers of the Sheriff's Department. Individual officers were assigned for overtime hospital duty for the following day without using the negotiated overtime procedure. In addition, certain officers were called at their homes and ordered to take overtime at midnight or later.

In Paterson P.B.A., the Supreme Court created a test to determine whether matters are appropriate for negotiations.

First, it must be determined whether the particular item in dispute is controlled by a specific statute or regulation. If it is, the parties may not include any inconsistent term in their agreement. [State v. State Supervisory Employees Ass'n, 78 N.J. 54, 81 (1978).] If an item is not mandated by statute or regulation but is within the general discretionary powers of a public employer, the next step is to determine whether it is a term or condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and firefighters, like any other public employees, and on which negotiated agreement would not significantly interfere with the exercise of inherent or express management prerogatives is mandatorily negotiable. In a case involving police and firefighters, if an item is not mandatorily negotiable, one last determination must be made. If it places substantial limitations on government's

policymaking powers, the item must always remain within managerial prerogatives and cannot be bargained away. However, if these governmental powers remain essentially unfettered by agreement on that item, then it is permissively negotiable. [Id. at 92-93; citations omitted]

Pursuant to Paterson PBA, the Commission found that procedures for the assignment of overtime in non-emergent situations are negotiable provided,

If time limits prevent the employer from complying with the negotiated system, it may exercise its reserved non-arbitrable right under the circumstance to make the necessary assignment despite the negotiated system. Borough of Maywood, P.E.R.C. 83-107, 9 NJPER 144 (¶14067 1983) aff'd App. Div. Dkt No. A-3071-82T2, 10 NJPER 79 (¶15045 1983).

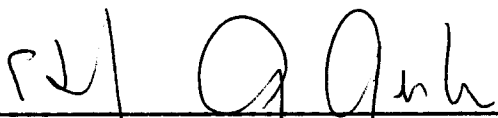
In the instant case it is evident that the Sheriff was not obligated to go through the seniority list when there was an emergent need for an officer to bring a prisoner to the jail from the hospital in the early hours of the morning. However, there was no emergent need when officers were assigned to overtime duty on the following day. The Sheriff under such circumstances is obligated to use the negotiated overtime procedures. Here, the contract was violated.

In City of Vineland and P.B.A. Local 266, I.R. 81-1, 7 NJPER 324 (¶12142 1981) appeal for enforcement granted 7/15/81, mot. No. M-3982-80, the Commission held that a unilateral alteration of a term and condition of employment during the course of interest arbitration unlawfully interferes with the relative positions of the parties during that process and such interference is irreparable.

In balancing the relative harm to the parties, no significant harm will come to the County or its citizens by using the negotiated overtime provision for non-emergent situations.

Accordingly, the County of Middlesex is hereby restrained from mandatorily assigning overtime without complying with the contract provisions in non-emergent situations without first negotiating such alteration of procedures for the assignment of overtime with the P.B.A.

This is an interim order only and is subject to a final decision by the Commission.

  
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Edmund G. Gerber  
Commission Designee

DATED: March 6, 1987  
Trenton, New Jersey