

I.R. NO. 91-7

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ELIZABETH,

Respondent,

-and-

Docket No. CO-91-23

ELIZABETH PBA LOCAL NO. 4,

Charging Party.

SYNOPSIS

A Commission designee denies a request for interim relief because the subject matter of the Unfair Practice Charge was identical to that contained in a grievance previously filed, i.e., it requested rescission of an order of the Police Director, which modified a prior practice of granting personal time off. The designee ordered that the charge be deferred to final and binding arbitration under the parties' agreement. Brookdale Community College, P.E.R.C. No. 83-131, 9 NJPER 266, 268 (114122 1983)

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Appearances:

For the Respondent, Murray, Murray and Corrigan,
Attorneys (David F. Corrigan, of counsel)

For the Charging Party, Jerome J. LaPenna, Esq.

INTERLOCUTORY DECISION

This matter having been opened to the Public Employment Relations Commission ("Commission") by the attorney for the Charging Party ("PBA") and the attorneys for the Respondent ("City") having appeared at a hearing on September 12, 1990, in Newark, New Jersey, in opposition before Alan R. Howe, the Commission's designee, where the PBA requested the restraint of a March 16, 1990 Order by the City's Police Director, which unilaterally eliminated the prior practice of granting personal time off in blocks of less than four hours without prior negotiations with the PBA; and

It appearing that there are provisions in the current collective negotiations agreement between the parties, which pertain to the instant dispute, namely: Article VIII, Holidays, \$5, which has been used in the past for charging hours used for personal time

off in blocks of less than four hours; Article XVIII, Rules and Regulations, which, according to the City, grants the Police Director the authority to establish binding rules and regulations for the operation of the Police Department such as the instant Order of March 16, 1990; and Article XXII, Management Responsibility, under which the Police Director retains, inter alia, the right to determine the amount of overtime to be worked, the amount of supervision necessary, and methods and schedules, all of which pertain to the subject matter of the Police Director's Order of March 16, 1990, and which arguably govern the instant dispute; and

It appearing further that the parties' agreement provides in Article V for final and binding arbitration; and

It appearing that the PBA filed a grievance covering the same subject matter as the instant Unfair Practice Charge on April 17, 1990, requesting the immediate termination of the Police Director's Order of March 16, 1990, and a make whole remedy at time and one-half, the monetary claim being consistent with the prior past practice of officers taking personal time off in blocks of less than four hours for the purpose of engaging in outside employment; and

It appearing, finally, that the City stipulated upon the record at the hearing on September 12, 1990, that it would, without qualification, agree to waive all procedural defenses to arbitration of the April 17th grievance, including by implication that it would not file a Petition for Scope of Negotiations Determination with the

Commission and that the said grievance should be deferred to arbitration.

NOW, THEREFORE, it is on this 14th day of September, 1990,

ORDERED

1. That the subject matter of the instant Unfair Practice Charge, regarding the City's unilateral elimination of the prior practice of granting personal time off in blocks of less than four hours by the Order of the Police Director on March 16, 1990, be deferred to the parties' Grievance Procedure under Article V of the current collective negotiations agreement, which provides, inter alia, for final and binding arbitration, subject, however, to the Commission's retaining jurisdiction to review, upon application, any arbitration award rendered under the standards, inter alia, of Spielberg Mfg. Co., 112 NLRB 1080 (1955), cited with approval by the Commission in Brookdale Community College, P.E.R.C. No. 83-131, 9 NJPER 266, 268 (¶14122 1983). See, also, Tp. of Pennsauken, P.E.R.C. No. 88-53, 14 NJPER 61, 63 (n. 5)[¶19020 1987] and Stafford Tp. Bd. of Ed., P.E.R.C. No. 90-17, 15 NJPER 527 (¶20217 1989).

2. That no temporary restraints are granted, pending arbitration of the grievance of April 17, 1990, supra.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



Alan R. Howe
Commission Designee

Dated: September 14, 1990
Trenton, New Jersey