

I.R. NO. 89-15

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF MORRIS PLAINS,

Respondent,

-and-

Docket No. CO-89-164

MORRIS PLAINS PBA, LOCAL NO. 254,

Charging Party.

SYNOPSIS

A Commission Designee denies interim relief on a request by the PBA to restrain the Borough from altering the practice of giving patrolmen compensatory time in lieu of pay for overtime. The Designee found that the Borough acted pursuant to the terms of its collective agreement, thus concluded that the PBA did not establish a substantial likelihood of success on the merits.

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Appearances:

For the Respondent, Hansbury, Martin & Knapp, Esqs.  
(Fredric M. Knapp, of Counsel)

For the Charging Party, Loccke & Correia, P.A.  
(Leon Savetsky, of Counsel; Richard D. Loccke, on the  
brief)

INTERLOCUTORY DECISION

On December 14, 1988, Morris Plains PBA, Local 254 (PBA) filed an unfair practice charge with the Public Employment Relations Commission (Commission) against the Borough of Morris Plains (Borough), alleging that the Borough violated subsections 5.4(a)(1), (3), (4), (5) and (7) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act).<sup>1/</sup> The PBA alleged that the

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<sup>1/</sup> These subsections 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.

Borough violated the Act by unilaterally eliminating the policy of giving compensatory time off to patrolmen in lieu of money for overtime work.

On March 15, 1989 the PBA filed a request for interim relief, accompanied by an Order to Show Cause, together with a brief and supporting affidavit, seeking an order compelling the Borough to reinstate compensatory time for patrolmen. The Order was signed and made returnable for March 29, 1989. On March 28, 1989, the Borough filed its brief and affidavits in opposition to the request for interim relief. The Borough raised a contract defense.

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the courts when addressing similar applications. The moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegations in the final Commission decision and that irreparable harm will occur if the requested relief is not granted. Further, in evaluating such requests for

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1/ Footnote Continued From Previous Page

(4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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. (7) Violating any of the rules and regulations established by the commission."

relief, the relative hardship to the parties in granting or denying the relief must be considered.<sup>2/</sup>

The Borough and PBA were parties to a collective agreement effective January 1, 1987 through December 31, 1988. Article 4, Section 8 of that agreement provides as follows:

Notwithstanding the above Sections 3 through 7 inclusive, where an employee is required by the Fair Labor Standards Act, as amended, to be paid overtime for hours worked, he shall be provided overtime on the following basis:

(a) Patrolman - time and one half pay based on the officer's regular hourly rate of pay calculated as required by the F.L.S.A.

(b) Non-exempt Superior Officers - time and one half compensatory time as permitted by F.L.S.A.

Superior Officers exempt from F.L.S.A. requirements shall be given compensatory time off on an hour for hour basis for overtime hours worked.

The parties' predecessor collective agreement which was effective from January 1, 1985 through December 31, 1986, contained the same language in Article 4, Section 8. Despite the language in Article 4, Section 8, the Borough's practice for several years was to give patrolmen compensatory time in lieu of money for overtime.

In the fall of 1988 the parties began negotiations for a new collective agreement. On November 10, 1988 the Borough terminated the policy of allowing patrolmen to receive compensatory

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<sup>2/</sup> Township of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Township of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); and Crowe v. DeGioia, 90 N.J. 126 (1982).

time, and announced that patrolmen would receive money for overtime work. The Borough subsequently issued checks to patrolmen to reimburse them for the compensatory time they had accumulated.

The PBA argued that the longstanding practice by the Borough of giving patrolmen compensatory time rather than money for overtime during the existence of the parties collective agreements was a waiver of its (the Borough's) right to implement the language in the agreement. The PBA also argued that the implementation of the change during negotiations for a successor agreement had a chilling affect on the negotiations process.


The Borough explained that due to administrative errors it had inadvertently failed to implement Article 4, Section 8 for several years, but that now it sought only to comply with the wording in the collective agreement. The Borough argued that since Article 4, Section 8 was clear on its face and required pay rather than compensatory time for overtime work, and since its actions were consistent with the parties' agreement, it did not violate the Act.

The PBA failed to establish a substantial likelihood of success on the merits of this case. It is well settled that a past practice which is contrary to the clear terms of a collective agreement does not supersede, negate, or change the meaning of the agreement. New Brunswick Bd.Ed., P.E.R.C. No. 78-47, 4 NJPER 84 (¶4040 1978), motion for reconsideration denied, 4 NJPER 156 (¶4073 1978); Randolph Tp. School Bd., P.E.R.C. No. 81-73, 7 NJPER 23 (¶12009 1980); Sussex-Wantage Reg. Bd.Ed., P.E.R.C. No. 86-57, 11

NJPER 711 (¶16247 1985)(Sussex); N.J. Sports and Exposition Authority, P.E.R.C. No. 88-14, 13 NJPER 710 (¶18264 1987)(N.J. Sports and Expo Auth.) In this case the language in Article 4, Section 8 clearly stated that patrolmen receive pay for overtime, and pay was distinguished from compensatory time.

The Borough merely implemented the terms of the contract, and the Commission has consistently held that an employer has met its negotiations obligation when it acts pursuant to its collective agreement. Pascack Valley Bd.Ed., P.E.R.C. No. 81-61, 6 NJPER 554, 555 (¶11280 1980); Bound Brook Bd.Ed., P.E.R.C. No. 83-11, 8 NJPER 439 (¶13207 1982); Randolph Tp. Bd.Ed., P.E.R.C. No, 83-41, 8 NJPER 600 (¶13282 1982); Sussex; N.J. Sports & Expo Auth.

Accordingly, the request for interim relief is denied.

  
Arnold H. Zudick  
Commission Designee

Dated: April 4, 1989  
Trenton, New Jersey