

I.R. NO. 89-13

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF WHARTON,

Petitioner,

-and-

Docket No. SN-89-27

WHARTON BOROUGH F.O.P.,

Respondent.

SYNOPSIS

A Commission Designee grants in part and denies in part an application for a restraint of binding arbitration of grievances contesting the decision of the Chief of Police to require several detectives to utilize their holidays, beginning with Memorial Day 1988 because their services were not required. In the past, instead of working those days by choice, the detectives received an end-of-the year lump sum payment for the holidays worked. The Borough contended that the entire matter was a manning or staffing issue, as to which the Chief of Police exercised a non-arbitrable managerial prerogative in requiring that the holidays be taken. The FOP argued that there was a compensation component involved inasmuch as the detectives were deprived of the end-of-the year lump sum payment for holidays worked.

The Commission Designee found that the FOP could not arbitrate the decision of the Chief of Police to require the detectives to utilize their holidays inasmuch as this involved staffing level. However, the matter of whether or not additional compensation was due these detectives was arbitrable within the meaning of Paterson PBA v. Paterson, 87 N.J. 78 (1981) as a permissive subject.

I.R. NO.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF WHARTON,

Petitioner,

-and-

Docket No. SN-89-27

WHARTON BOROUGH F.O.P.,

Respondent.

Appearances:

For the Petitioner, Ruderman & Glickman, Esqs.
(Mark S. Ruderman, of counsel)

For the Respondent, Loccke & Correia, Esqs.
(Manuel A. Correia, of counsel)

INTERLOCUTORY DECISION AND ORDER

The Borough of Wharton ("Borough") filed a Petition for Scope of Negotiations Determination on November 21, 1988, with the Public Employment Relations Commission ("Commission") seeking a restraint of binding arbitration of certain grievances filed by the Wharton Borough FOP ("FOP") on the ground that the grievances involved an assignment of "bargaining unit personnel to certain shifts," which was a non-negotiable management right. Thereafter, on December 30, 1988, an Order to Show Cause was filed by the Borough, seeking to restrain an arbitration hearing scheduled for January 12, 1989. Without the execution of a formal Order to Show

Cause a hearing was held by agreement on January 9, 1989, before the undersigned. Prior to the hearing date, both parties filed written submissions in support of their positions and at the hearing the following facts were established:

1. Article VIII of the current collective negotiations agreement, effective January 1, 1985 through December 1, 1987, and as apparently continued thereafter, provides in Section A that each employee shall receive 12 holidays per year as set forth in a Schedule "B" and that the compensation for these holidays shall be provided in accordance with "the present practice." Further, this Article provides in Section B that if a holiday is not taken then the employee shall receive payment for the unused holiday at straight time pay in the last pay period in December of the year in which the holiday occurred.

2. The "practice" had been until Memorial Day, 1988, that unit employees could elect to work on a given holiday and receive payment for unused holiday at the end of December of each year.

3. Beginning with the Memorial Day holiday in 1988, and continuing through the New Year's holiday 1988-89, the Chief of Police required that the several detectives utilize their holiday (not work) due to his decision that he had no need for the services of the detectives on these holidays. As a result, the several detectives did not work on those holidays but were paid for five days during the holiday week in question. Thus, the affected detectives were unable to claim compensation at the end of December 1988 for the holidays.

4. An arbitration hearing, regarding the several grievances filed by the FOP on behalf of the detectives, is scheduled for January 12, 1989.

* * * *

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 a final Commission decision and that irreparable harm will occur if the requested relief is not granted. Further, in evaluating such requests for relief, the relative hardship to the parties in granting or denying the relief must be considered: Crowe v. DeGioia, 90 N.J. 126 (1982); Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975).

* * * *

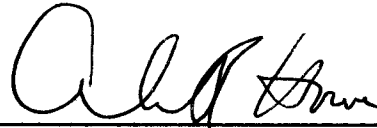
The Borough's Chief of Police had a managerial prerogative to determine which posts should be staffed on any of the holidays set forth in Schedule "B" of the collective negotiations agreement, supra. That is, the Chief had a right to determine whether the services of the detectives in the Police Department were required on the several holidays: see Tp. of Bound Brook, P.E.R.C. No. 88-30, 13 NJPER 760, 761 (18287 1987) [the alleged denial of an overtime assignment on Thanksgiving]; Tp. of Mt. Laurel, 215 N.J. Super. 108 (App. Div. 1987).

The Chief of Police having made his decision to require the affected detectives to utilize their holidays involuntarily, beginning Memorial Day 1988, the issue of alleged loss of compensation pursuant to past practice under Article VIII of the agreement is at least permissively negotiable, arbitrable since "...governmental powers remain essentially unfettered..." if arbitration is permitted to proceed on the alleged compensation issue: Paterson PBA No. 1 v. City of Paterson, 87 N.J. 78, 93 (1981) and Tp. of Mt. Laurel, supra.

ORDER

The Borough of Wharton's request for restraint of binding arbitration is GRANTED to the extent that the grievances of the FOP challenge the prerogative of the Chief of Police to determine the staffing levels for detectives on contractual holidays.

To the extent that the FOP's grievances seek compensation pursuant to past practice under Article VIII of the agreement in consequence of the exercise of the above prerogative by the Chief, the request for a restraint of binding arbitration is DENIED.



Alan R. Howe
Commission Designee

Dated: January 13, 1989
Trenton, New Jersey