

P.E.R.C. NO. 2003-85

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF IRVINGTON,

Respondent,

-and-

Docket Nos. CO-2003-240
CO-2003-241

PBA LOCAL 29 and
IRVINGTON POLICE SUPERIOR
OFFICERS ASSOCIATION,

Charging Parties.

SYNOPSIS

The Public Employment Relations Commission grants PBA Local 29 and the Irvington Police Superior Officers Association's motion reconsideration of I.R. No. 2003-12. In that decision, a Commission designee denied the charging parties' applications for interim relief based on unfair practice charges filed against the Township of Irvington. The charges allege that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it announced that effective April 3, 2003, all police work schedules would be changed and that all "vacation selection appoints" were cancelled. The Commission returns the matter to the designee to consider recent case law addressing whether an employer can restore work schedules at the end of a trial period.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Respondent, Eric Bernstein & Associates,
attorneys (Eric Bernstein, of counsel)

For Charging Party PBA Local 29, Laufer, Knapp,
Torzewski & Delena, attorneys (Frederic Knapp, of
counsel)

For Charging Party Irvington Police SOA, Uffelman,
Rodgers, Kleinle & Mets, attorneys (James M. Mets, of
counsel)

DECISION

On April 18, 2003, PBA Local 29 and the Irvington Police Superior Officers Association moved for reconsideration of I.R. No. 2003-12, 29 NJPER ____ (¶____ 2003). In that decision, a Commission designee denied the charging parties' application for interim relief based on unfair practice charges filed against the Township of Irvington. The charges allege that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it announced that effective April 3, 2003,

all police work schedules would be changed and that all "vacation selection appoints" were cancelled.

Their contracts having expired on December 31, 2002, the parties engaged in interest arbitration. The expired PBA contract provides that a 4/3 and 4/4 work schedule shall be implemented on a trial basis through December 31, 2002 and that "absent the parties' agreement or the subsequent award of the schedule anew [in] interest arbitration, the old schedule will be returned. After this trial period, the parties can argue based on experience whether it has produced the promised benefits." The SOA contract provides that a 4/3 and 4/4 schedule shall be implemented on a trial basis through December 31, 2002 and that "absent the parties' agreement in writing on continuing the 4/3 and 4/4 schedule or a new schedule being awarded, the parties shall return to the schedule set forth in the 1996-1998 collective bargaining agreement."

The designee found that the contracts guarantee continuation of the experimental work schedule only until December 31, 2002. She further found that the City's argument that the contracts explicitly give it the right to revert to the prior schedule is a reasonable interpretation of the contract language. Accordingly, the designee concluded that the charging parties had not demonstrated a substantial likelihood of prevailing in a final

Commission decision on its legal and factual allegations, a requisite element to obtain interim relief.^{1/}

The charging parties assert that there are extraordinary circumstances warranting reconsideration because the designee's conclusion cannot be reconciled with her findings and the case law. They argue that an employer may change an employment condition only if a contract clearly and unequivocally authorizes such change. They further argue that the designee's finding that the employer's interpretation of the contract "appears to constitute a reasonable interpretation of the clause" establishes that the contract language is not clear and unambiguous, but rather open to interpretation. As such, there was no clear and unequivocal authorization in the contracts to change the work schedule.

The employer responds that the charging parties failed to specify the extraordinary circumstances warranting reconsideration. It argues that the contract language clearly, unambiguously and unequivocally authorizes it to change the work schedule and that therefore the charging parties did not meet their burden of establishing a substantial likelihood of success of prevailing in a final Commission decision.

^{1/} The designee's ruling on the vacation issue was not addressed in the motion for reconsideration.

On May 1, 2003, we asked the parties to file additional submissions addressing any possible application of the principles articulated in two prior Commission cases to this dispute -- Teaneck Tp., P.E.R.C. No. 2000-33, 25 NJPER 450 (¶30199 1999), aff'd in pt., rev'd in pt. and rem'd, 353 N.J. Super. 289 (App. Div. 2002), certif. granted 175 N.J. 76 (2002) and City of Clifton, P.E.R.C. No. 2002-56, 28 NJPER 201 (¶33071 2002).

The employer responded that the cases do not have any application because they involved interest arbitration decisions, because they involved firefighters and not police, and because they involved different work schedules.

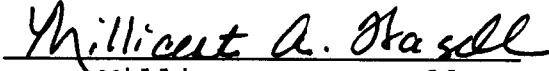
The unions responded that those cases correctly held that allowing an employer to unilaterally re-institute an old work schedule while the parties are negotiating whether to retain a new schedule is inherently destructive to the negotiations process.

Reconsideration will be granted only in extraordinary circumstances. N.J.A.C. 19:14-8.4. None of the parties cited or addressed Clifton or Teaneck Tp. before the designee. Because those cases may be relevant to this matter, we grant reconsideration and return this matter to the designee to reconsider the application for interim relief, taking into consideration this case law and the parties' submissions on the case law.

ORDER

This matter is returned to Commission designee for further action consistent with this decision.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, DiNardo, Ricci and Sandman voted in favor of this decision. Commissioner Mastriani abstained from consideration. Commissioner Katz was not present.

DATED: May 29, 2003
Trenton, New Jersey
ISSUED: May 30, 2003