P.E.R.C. NO. 2005-57

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF PATERSON,

Respondent,

-and- Docket No. CO-2003-269

PATERSON POLICE PBA LOCAL 1,

Charging Party.

CITY OF PATERSON,

Respondent,

-and- Docket No. CO-2003-270

PATERSON POLICE PBA LOCAL 1,
SUPERIOR OFFICERS ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission grants the City of Paterson's motion for summary judgment and dismisses consolidated complaints based on unfair practice charges filed by Paterson Police PBA Local 1 and Paterson Police PBA Local 1, Superior Officers Association. The charges allege that the City violated the New Jersey Employer-Employee Relations Act when the mayor unilaterally instituted a new policy prohibiting employees from accumulating more than 60 hours of compensatory time in a calendar year and requiring that all compensatory time must be taken by December 31 of the year in which the time was accumulated. The unions also jointly filed a grievance alleging a breach of contract arising out of the same facts as alleged in the unfair practice charges. An arbitrator ruled for the unions. The arbitrator's award was subsequently vacated and the Order was upheld by the Appellate Division. The Commission holds that where an appellate court has determined that the employer had a contractual right to act unilaterally, deferral and summary judgment are appropriate. The Commission holds that the courts have determined that not only did the employer not violate the contract, but that the contract authorized the employer's unilateral action.

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, Dorf & Dorf, attorneys (Gerald L. Dorf, on the brief)

For the Charging Parties, Mark C. Rushfield, attorney

DECISION

On January 31, 2004, the City of Paterson moved for summary judgment seeking dismissal of unfair practice charges filed by Paterson Police PBA Local 1 and Paterson Police PBA Local 1, Superior Officers Association. On February 14, the unions filed a response. The charges were filed on March 18, 2003 and allege that the employer violated the New Jersey Employer-Employee

Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1) and (5),[1/] when the mayor unilaterally instituted a new policy prohibiting employees from accumulating more than 60 hours of compensatory time in a calendar year and requiring that all compensatory time must be taken by December 31 of the year in which the time was accumulated.[2/] On March 28, 2003, the unions jointly filed a grievance alleging a breach of contract arising out of the same facts as alleged in the unfair practice charges.

On November 26, 2003, a grievance arbitrator ruled for the unions. He found a long-established practice of employees' choosing either compensatory time or overtime pay without a restriction on when the time had to be taken and without limit on the amount of compensatory time that could be accumulated. He found that the mayor's memorandum announcing a change in that practice violated contract section 7.4, which requires that all major changes in working conditions be discussed with the union

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1/ These provisions 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. (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."

2/ On August 3, 2004, Complaints based on the unfair practice charges issued and the two cases were consolidated. On March 29, 2005, the motion for summary judgment was referred to the full Commission. See N.J.A.C. 19:14-4.8.

before being put into effect, and section 10.1, which preserves all employee rights, privileges and benefits enjoyed prior to the effective date of the contract, except as those rights, privileges and benefits are specifically abridged or modified by the contract. The arbitrator rejected the employer's defense based on section 27.6 of the contract, which provides that "[t]he employee may request compensatory time in lieu of money." The arbitrator ruled that the provision grants employees a right they already had and that the City's attempt to take this "superfluous innocuous sentence and convert it into a bar against making an argument on past practice is an unconvincing stretch of logic and sense." He ordered the immediate re-institution of the past practice of allowing police officers to choose compensatory time or overtime pay at their discretion and to accumulate and carry over compensatory time from year to year, limited only by the Fair Labor Standards Act cap of 480 hours. The relief was prospective only.

The unions sought an order in the Superior Court confirming the arbitration award. On March 25, 2004, Judge George E. Sabbath denied that relief and vacated the award. He found that the contract language granting employees the right to request compensatory time is not ambiguous and did not entitle employees to have their request granted. The Judge concluded that the

award was therefore procured by undue means in violation of N.J.S.A. 2A:24-8(a).

On December 22, 2004, the Appellate Division affirmed Judge Sabbath's order. It found that the arbitrator's interpretation of the agreement was not "reasonably debatable."

> The relevant provision of the contracts merely affords employees the right to "request" compensatory time instead of overtime pay. In construing a contract, we are required to read the terms of the agreement in accordance with their plain and ordinary meaning. The word "request" ordinarily means "to express a wish for." As the motion judge correctly found, the plain language of the contracts does not require the City to grant any employee's "request" for compensatory time, nor does the contract language preclude the City from imposing limitations upon the use or accumulation of compensatory time of the sort set forth in the March 2003 memos. [citations omitted]

The Court further found that any right the employees may have enjoyed before the effective date of the agreement in respect of the use and accumulation of compensatory time was "specifically abridged and modified" by section 27.6. Consequently the mayor's memoranda announcing the policy change did not contravene the contract and did not effect a major change in the employees' working conditions that would require discussion with the unions. The Court found that N.J.S.A. 2A:24-8(d) provided another basis to vacate the award; the arbitrator exceeded his authority by ignoring the plain language of section 27.6 and relying instead

on evidence of past practice to alter or vary the terms of the agreements.

The City argues that we should defer to the grievance arbitration process and that the accrual and accumulation of compensatory time has already been litigated before an arbitrator, the Superior Court and the Appellate Division. The City further argues that absent an allegation of unfairness in those proceedings, we should grant summary judgment and dismiss the Complaint.

The unions respond that the unfair practice charges do not allege contract violations and that the arbitration award concerning contract issues between the parties has been vacated; consequently there is no arbitral process or award to which we may defer. The unions argue that the courts' disposition of the issues cannot be reconciled with our exclusive mandate to prevent unfair practices since it is undisputed that the City did in fact alter preexisting mandatorily negotiable terms and conditions of employment.

Summary judgment will be granted if there are no material facts in dispute and the movant is entitled to relief as a matter of law. N.J.A.C. 19:14-4.8(d); Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995); Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 73-75 (1954).

We grant summary judgment. The courts have interpreted the parties' contract and determined that section 27.6 grants the employer the right to change a past practice and that the mayor's memoranda did not contravene section 10.1 of the contracts and did not effect a "major change" in the employees' working conditions that would require discussion with the unions under section 7.4. Under these circumstances, where an appellate court has determined that the employer had a contractual right to act unilaterally, deferral and summary judgment are appropriate. See Hamilton Tp., P.E.R.C. No. 86-106, 12 NJPER 338 (¶17129 1986), aff'd NJPER Supp.2d 172 (¶152 App. Div. 1987), certif. den. 108 N.J. 198 (1987) (contract can afford a complete defense to an unfair practice charge alleging that employer violated statutory duty to negotiate). We contrast a case like Armour & Co., 280 NLRB 824 (1986), where the National Labor Relations Board found that deferral to an arbitration award was not appropriate because the arbitrator had merely determined that "nothing in the contract" prohibited the employer from taking unilateral action. The Board noted that an employer can violate its statutory obligation to bargain without also violating its collective bargaining agreement. Here, the courts have determined that not only did the employer not violate the contract, but that the contract authorized the employer's unilateral action. There is nothing left for us to decide.

ORDER

Summary judgment for the City of Paterson is granted. The Complaints are dismissed.

BY ORDER OF THE COMMISSION

Lawrence Henderson
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller and Watkins voted in favor of this decision. Commissioner Mastriani abstained from consideration. Commissioner Katz was not present. None opposed.

DATED: March 31, 2005
Trenton, New Jersey
ISSUED: March 31, 2005