

P.E.R.C. NO. 2008-12

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY JUDICIARY,

Respondent,

-and-

Docket No. CO-2007-065

PROBATION ASSOCIATION OF  
NEW JERSEY (CASE-RELATED  
PROFESSIONAL UNIT),

Charging Party.

SYNOPSIS

The Public Employment Relations Commission grants the State of New Jersey Judiciary's request for review and vacates a portion of an interim relief order in I.R. No. 2007-14. In that decision, a Commission Designee ordered the Judiciary to negotiate with the Probation Association of New Jersey (Case-Related Professional Unit) over "severable and mandatorily negotiable issues" associated with the implementation of an August 3, 2006 directive requiring adult and juvenile probation officers to carry out home inspections. The Commission vacates the Designee's order over issues relating to the establishment of a system or protocol for when probation officers will be provided with law enforcement assistance, providing pepper spray to probation officers who have been properly trained in its use, and providing Kevlar vests and other protective garments to probation officers. The Commission finds that the record does not show that PANJ demanded to negotiate over these issues or that the Judiciary refused to negotiate in response to such a demand. In light of this decision, the Commission finds no need to address the Judiciary's other grounds for vacating the order.

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.

P.E.R.C. NO. 2008-12

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY JUDICIARY,

Respondent,

-and-

Docket No. CO-2007-065

PROBATION ASSOCIATION OF  
NEW JERSEY (CASE-RELATED  
PROFESSIONAL UNIT),

Charging Party.

Appearances:

For the Respondent, Anne Milgram, Attorney General of  
New Jersey (Sally Ann Fields, Senior Deputy Attorney  
General, on the brief)

For the Charging Party, Fox and Fox LLP, attorneys  
(Benjamin Benson, of counsel and on the brief)

DECISION

The State of New Jersey Judiciary has moved for  
reconsideration of I.R. No. 2007-14, 33 NJPER 138 (¶49 2007). In  
that decision, a Commission Designee ordered the Judiciary to  
negotiate with the Probation Association of New Jersey (Case-  
Related Professional Unit) ("PANJ") over "severable and  
mandatorily negotiable issues" associated with the implementation  
of an August 3, 2006 directive requiring adult and juvenile  
probation officers to carry out home inspections. In particular,  
the Designee ordered negotiations over:

the establishment of a system or protocol to  
establish parameters under which adult and

juvenile probation officers will be provided with the assistance of law enforcement personnel at the start of, or during, a home inspection;

providing pepper spray to probation officers who have been properly trained in its use;

and providing Kevlar vests and other protective garments to probation officers.

We grant review and vacate the interim relief order because the record does not show that PANJ demanded to negotiate over these issues or that the Judiciary refused to negotiate in response to such a demand.

Only in cases of exceptional importance will we intrude into the regular interim relief process by granting a motion for reconsideration by the full Commission. City of Passaic, P.E.R.C. No. 2004-50, 30 NJPER 67 (¶21 2004); Borough of Closter, P.E.R.C. No. 2001-75, 27 NJPER 289 (¶32104 2001).

Given the separation of powers issues raised by the Judiciary, it is important to make sure that our interim relief authority was properly exercised in this case.

On August 3, 2006, the Administrative Office of the Courts issued a directive that had been approved by the New Jersey Supreme Court in June, and which requires, among other things, that probation officers conduct home inspections. A home inspection is a planned visit by at least two probation officers that gains access into the residence for the purpose of inspecting the probationer's sleeping area and other common areas

of the home. Its purpose is to detect non-compliance with the terms of the probation including the presence of gang graffiti, illegal substances or contraband.

The directive states that it is intended to increase the presence of probation officers in the field as they supervise offenders in the community and emphasizes that the safety of the probation officer is of paramount interest. The directive addresses situations that require the presence of law enforcement officers -- for example, searches, seizures and arrests. Probation officers are advised to notify police whenever they will be conducting field contacts and, in some situations, may request law enforcement to provide support and protection. The directive also states that pepper spray is available for defensive purposes to officers who complete a one-day training and that protective vests are available when needed.

On August 30, 2006, PANJ filed an unfair practice charge. The charge alleged that the directive changed negotiable terms and conditions of employment when home inspections were required for the first time and sought its rescission pending completion of negotiations over its implementation, applicability and enforcement. The charge also alleged that the directive was issued in retaliation for the protected activities of probation officers.

On April 27, 2007, PANJ filed an amended charge and a request for interim relief. The amendment alleges that after the original charge was filed, PANJ became aware of new information regarding the inherent dangers of home inspections and the irreparable harm that probation officers would allegedly suffer without an immediate halt to inspections. More specifically, the amended charge alleges that PANJ has repeatedly requested that the Judiciary make a Tactical Probation Officer program available to all field probation officers and that it suspend home inspections until all officers complete the program.

The amended charge references a February 16, 2007 letter from PANJ President George P. Christie to the Honorable Philip S. Carchman, J.A.D., Director of the Administrative Office of the Courts ("AOC"). Among other things, the letter requests that the AOC issue basic and general uniform guidelines to the administration of all 15 Vicinages which: (1) require Vicinage administration to contact local law enforcement to create, maintain and facilitate a partnership and system by which police could be called to accompany probation officers in the field, and (2) provide coherent guidelines and explanations on how and when local law enforcement is to be called to accompany probation officers in the field. In the letter, Christie indicates that he was looking forward to a meeting in March with hope of resolving these issues.

On June 1, 2007, the Commission Designee conducted a hearing on PANJ's interim relief application. At the end of the hearing, he signed an Order granting in part and denying in part the application. The Judiciary moved before the Appellate Division for leave to file an interlocutory appeal from the Designee's Order and for an emergent stay of that order. On June 11, 2007, the Designee issued a written decision describing the facts, the arguments, and his reasoning.

The Appellate Division denied the Judiciary's motion and directed it to apply in the first instance to this Commission for a stay and review of the Designee's Order. Upon the Judiciary's application, the Commission Chairman stayed the interim relief order and we continued the stay pending this decision. P.E.R.C. No. 2008-6, \_\_ NJPER \_\_ (¶\_\_ 2007).

The Judiciary argues that the Designee's Order violated the separation of powers doctrine; he did not properly apply the interim relief standards and misunderstood material facts; a material factual dispute exists as to whether probation officers had previously performed home inspections; PANJ did not demand negotiations over pepper spray or Kevlar vests; and the ordered negotiations are preempted by law, involve inherent managerial

prerogatives, and have already taken place. PANJ disagrees on all counts.<sup>1/</sup>

We have granted reconsideration because the Judiciary has raised questions about the agency's authority to order negotiations over an issue that has been the subject of a directive approved by the Supreme Court. However, now that we have this matter before us, we decide it on narrower grounds. American Trucking Assn's, Inc v. State, 164 N.J. 183 (2000) (courts avoid constitutional issues when possible).

Interim relief is an extraordinary remedy to be invoked only in those limited circumstances in which it is appropriate and necessary. State of New Jersey, P.E.R.C. No. 76-6, 1 NJPER 41 (1975). Among other things, a grant of interim relief requires a finding that the charging party has a substantial likelihood of succeeding on the merits of its claim that the respondent violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. Franklin Tp., P.E.R.C. No. 2006-103, 32 NJPER 135 (¶62 2006) (reciting interim relief standards).

The Designee found that PANJ had not established a substantial likelihood of succeeding on the portion of its charge alleging that the Judiciary did not negotiate over training

---

<sup>1/</sup> The Judiciary also asks that we dismiss the charge. The decision whether or not to issue a Complaint is made by the Director of Unfair Practices in the first instance. N.J.A.C. 19:14-2.1; 19:14-2.3.

issues before issuing the Directive. He found not mandatorily negotiable PANJ's February 16, 2007 request that all adult and juvenile probation officers required to conduct home inspections be afforded Tactical Probation Officer training.

However, the Designee also found that PANJ's February 16 letter requested a meeting between PANJ and the Judiciary to address "uniform guidelines, rules or regulations as to how Field Probation Officers are to create, facilitate and maintain a partnership with local law enforcement/police" concerning home inspections. He concluded that a procedure or protocol governing circumstances when a probation officer assigned to a home inspection needs a law enforcement escort is a mandatorily negotiable safety issue and that negotiations over such a protocol would not interfere with the Judiciary's right to order home inspections. He also concluded that the absence of safety protocols poses substantial and potential dangers and constitutes irreparable harm under the Commission's standards for issuing interim relief. Finally, he concluded that such negotiations should also address equipping probation officers with Kevlar vests and self-defense equipment such as pepper spray for those officers who have been properly trained.

We do not believe that PANJ alleged or established that the Judiciary refused to negotiate over these issues. PANJ's February 16, 2007 letter begins by asking that all probation



officers be given Tactical Probation Officer program training.

We quote the remainder of the letter because it illuminates what PANJ did and did not ask for:

The second issue that I wish to address is the fact that the new safety standards do not provide any coherent and uniform guidelines, rules or regulations as to how Field Probation Officers are to create, facilitate and maintain a partnership with local law enforcement/police with regard to such things as field visits, home inspections, arrests of probationers, as well as searches. As it stands now, the Directive and Standards leaves the Field Probation Officer to his or her own devices as to initiating contact with local law enforcement to facilitate police presence during field visits, home inspections, and arrests and searches, as well as generally creating and maintaining a partnership with local law enforcement, without any guidance from the AOC, or at the very least, uniform rules and guidelines as to how to do these things. Moreover, each Vicinage has their own different, and at times haphazard, methods and procedures.

For these reasons, I respectfully request that the AOC, at the very least, issue basic and general uniform guidelines to the administration (TCA, VCPO) in all 15 Vicinages which: 1) requires Vicinage administration to contact local law enforcement to create, maintain and facilitate a partnership and system by which Police could be called to accompany Probation Officers in the Field; and 2) provides coherent guidelines and explanations on how and when local law enforcement is to be called to accompany Probation Officers in the field.

Based on the importance of both of these issues, I look forward to our meeting in March with hope of resolving these issues.

Thank you for your time and attention.

The letter does not ask for negotiations over how local police are to be contacted. Instead, it asks the Judiciary to issue uniform guidelines and looks forward to a meeting to discuss that issue.

PANJ submitted a certification from its First Vice-President, Peter Tortoreto, in support of its interim relief application. On this issue, Tortoreto stated that PANJ has repeatedly requested that the Judiciary/AOC make the Tactical Officer Program available to all Field Probation Officers and that it suspend all home inspections until all Field Probation Officers complete the program. He continued that the most recent request was made in the February 16, 2007 letter and that PANJ reiterated these requests in a March 2007 meeting with Judge Carchman to discuss these issues. He asserted that the Judiciary/AOC repeatedly refused to require all Field Probation Officers to take the Tactical Probation Officer course and to suspend home inspections. Tortoreto's certification does not mention a request to negotiate a protocol for when police should be called, nor a request to negotiate over pepper spray or Kevlar vests.

PANJ did not specifically seek an order requiring the Judiciary to negotiate over these three issues, nor did it establish a substantial likelihood of proving that the Judiciary

refused to negotiate over these issues. A broad request to negotiate over the exercise of a managerial prerogative does not constitute a specific demand to negotiate over severable negotiable issues. See Union City, P.E.R.C. No. 2006-077, 32 NJPER 116 (¶55 2006). The February 16 letter does not demand negotiations over these specific topics and Tortoreto's certification does not recite any other demand. If the Judiciary refused a demand to negotiate over these issues at the March 2007 meeting, the record does not so indicate.

Under these circumstances, we vacate the portions of the interim relief order requiring the Judiciary to negotiate over the three issues. In light of this decision, we need not address the Judiciary's other grounds for vacating the order, including its separation of powers claim.

ORDER

The portion of the interim relief Order in I.R. No. 2007-14 requiring the Judiciary to negotiate over the three specified issues is vacated.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller and Watkins voted in favor of this decision. None opposed.

ISSUED: September 27, 2007

Trenton, New Jersey