

P.E.R.C. NO. 2000-81

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF IRVINGTON,

Respondent,

-and-

Docket No. CO-2000-182

NEW JERSEY STATE POLICEMEN'S BENEVOLENT
ASSOCIATION, LOCAL NO. 29,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies the request of the New Jersey State Policemen's Benevolent Association, Local 29 for reconsideration of I.R. No. 2000-10. In that decision, a Commission designee denied the PBA's application for interim relief on its unfair practice charge against the Township of Irvington. The charge alleges that the Township violated the New Jersey Employer-Employee Relations Act by repudiating the vacation provision of the parties' collective negotiations agreement, unilaterally modifying terms and conditions of employment, unilaterally changing existing terms and conditions of employment during interest arbitration, negotiating in bad faith, and retaliating against the PBA for participating in interest arbitration. The Commission concludes that interim relief was properly denied and there are no extraordinary circumstances warranting reconsideration.

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 M. Bernstein and Associates,
attorneys (Eric M. Bernstein, of counsel)

For the Charging Party, Courter, Kobert, Laufer & Cohen,
attorneys (Fredric M. Knapp, of counsel)

DECISION

On March 14, 2000, New Jersey State Policemen's Benevolent Association, Local No. 29 moved for reconsideration of I.R. No. 2000-10, 26 NJPER 167 (¶31065 2000). In that decision, a Commission designee denied the PBA's application for interim relief on its unfair practice charge against the Township of Irvington. The charge alleges that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1), (3) and (5),^{1/} by repudiating the vacation

^{1/} These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the

provision of the parties' collective negotiations agreement, unilaterally modifying terms and conditions of employment, unilaterally changing existing terms and conditions of employment during interest arbitration, negotiating in bad faith, and retaliating against the PBA for participating in interest arbitration. The employer opposes reconsideration.^{2/}

The designee found that the parties had conflicting views of the contract's meaning and that the charge appears to be essentially a contract dispute that should be resolved through the parties' negotiated grievance procedure under State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). He also found that a memorandum of agreement settling a prior unfair practice charge concerning changes in the vacation policy allows for employer discretion and was subject to interpretation. In addition, he found that it is not clear to what extent the parties have adhered to or modified the terms of the memorandum.

^{1/} Footnote Continued From Previous Page

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. (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/} We accept the PBA's reply brief.

The PBA argues that the designee erred by applying Human Services to the instant dispute and by not applying East Brunswick Tp., P.E.R.C. No. 97-122, 23 NJPER 229 (¶28109 1997). The employer responds that Human Services was properly applied; serious contractual issues are at stake; East Brunswick is distinguishable; and no extraordinary circumstances warrant reconsideration.

To obtain interim relief, a moving party must show both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982).

We agree with the employer that, in the course of the interim relief proceeding, a number of factual disputes arose over the nature and extent, if any, of the employer's changes to the vacation policy. Under those circumstances, the charging party cannot, at this early stage of this litigation, establish a likelihood of success of the merits. Accordingly, interim relief was properly denied and there are no extraordinary circumstances warranting reconsideration. N.J.A.C. 19:14-8.4. East Brunswick is distinguishable because it did not address whether interim relief should be granted; it addressed whether a Complaint should

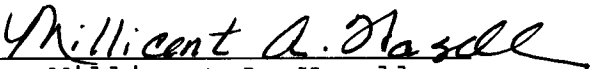
issue when a union charges that an employer unilaterally changed the way employees can use vacation time and the employer asserts a contractual defense.

The instant dispute is not over Complaint issuance, but over whether interim relief should have been granted. In denying that relief, the designee noted that the case will proceed through the normal unfair practice processing mechanism. The parties may later argue their respective positions on Complaint issuance should it become necessary.

ORDER

Reconsideration is denied.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. Commissioner Madonna abstained from consideration. None opposed.

DATED: April 27, 2000
Trenton, New Jersey
ISSUED: April 28, 2000