ORIGINAL

STATE OF NEW YORK
SUPREME COURT

ALBANY COUNTY

In the Matter of the Application of

ROCKLAND COUNTY PATROLMEN'S
BENEVOLENT ASSOCIATION, INC.,

Petitioner,

For Injunctive Relief Pursuant to
Civil Service Law § 209-a (4)

DECISION, ORDER & JUDGMENT

–against–

TOWN OF ORANGETOWN,

Respondent,

NEW YORK STATE PUBLIC
EMPLOYMENT RELATIONS BOARD,

Necessary Party.

Index No. 847-13
(Judge Richard M. Platkin, Presiding)

APPEARANCES:

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Hon. Richard M. Platkin, A.J.S.C.

Petitioner Rockland County Patrolmen's Benevolent Association, Inc. ("PBA") brings this special proceeding pursuant to Civil Service Law ("CSL") § 209-a (4), seeking interim injunctive relief pending determination of an improper practice charge by the New York State Public Employment Relations Board ("PERB"). Respondent Town of Orangetown ("the Town") opposes the petition through an answer, and PERB submits a memorandum in support of the requested relief.

BACKGROUND

On January 24, 2013, the PBA filed a charge with PERB alleging that the Town has failed to negotiate in good faith, in violation of CSL § 209-a (1) (d). The charge alleges that the Town unilaterally altered the method by which PBA members were permitted to select their vacation schedules. According to the charge, officers previously picked vacation slots in order of their seniority within their assigned squads, but the Town unilaterally imposed a new system whereby employees pick their vacation slots in order of seniority among all employees. The PBA claims that employees with high seniority in their assigned squads now find themselves with low seniority on the combined list of employees.

The PBA then applied to PERB pursuant to CSL § 209-a (4) (a) for authorization to pursue interim injunctive relief. Such relief may be granted "upon a showing that: (i) there is reasonable cause to believe an improper practice has occurred, and (ii) where it appears that immediate and irreparable injury, loss or damage will result thereby rendering a resulting judgment on the merits ineffectual necessitating the maintenance of, or return to, the status quo to provide meaningful relief." On February 6, 2013, PERB issued an order authorizing the PBA

to commence the instant proceeding (*see id.* [4] [b]). In its order, PERB found reasonable cause to believe that the method by which employees picked their vacation slots was a mandatorily negotiable term and condition of employment and, therefore, the Town's unilateral change constituted an improper practice. PERB further found that the issuance of a remedial order following determination of the charge would not provide employees who were denied their preferred vacation and leave slots with meaningful relief.

The Town has filed an answer alleging that the PBA's charge is, in actuality, a challenge to the restructuring and realignment of the police department's patrol squad – a staffing issue that is a non-negotiable management prerogative. The Town further argues that the manner in which vacations are selected is consistent with the collective bargaining agreement ("CBA") and past practice. Finally, the Town asserts that the PBA has failed to demonstrate irreparable harm or loss sufficient to warrant the grant of interim injunctive relief.

PERB has filed a brief in support of the application. In addition to reiterating the points made in its order authorizing the commencement of this proceeding, PERB argues that its findings should be given deference by the Court.

ANALYSIS

Pursuant to CSL § 209-a (4), a court may grant interim injunctive relief upon a finding that "there is reasonable cause to believe an improper practice has occurred and that it appears that immediate and irreparable injury, loss or damage will result . . . . " Such provisional relief shall expire following PERB's determination of the improper practice charge (*id.*).

The first prong of CSL § 209-a (4) requires the Court to consider whether there is reasonable cause to believe that an improper labor practice has occurred. In making this

determination, PERB's administrative determination of reasonable cause is entitled to some deference (*PERB v County of Monroe,* 42 PERB 7007 [2009]; *New York State Public Employment Relations Bd. v Town of Islip*, 41 PERB 7005 [2008]; *New York State Public Employment Relations Bd. v City of Buffalo*, 28 PERB 7008 [1995]). The Town argues principally that any change to the vacation and leave selection process is merely incidental to, and inextricably intertwined with, its management prerogative to realign the police department's patrol squads so as to allow for reduced staffing, which is not an issue subject to mandatory negotiation. This contention does not appear to have been considered by PERB in its reasonable-cause order.

The Court need not delve too deeply into the merits of the improper practice charge, however, because it finds that the second prong of CSL § 209-a (4), proof of immediate and irreparable harm, has not been sufficiently established on the present record. Even accepting the position of PERB and the PBA that the deprivation of an employee's preferred vacation or leave time may rise to the level of irreparable harm under CSL § 209-a (4), the PBA's moving submissions rest largely upon speculation and conjecture as to how the realignment might work to deny senior officers their preferences. No proof is submitted establishing that any specific officer has been deprived of his or her preferred vacation time as a result of any change in relative seniority. Moreover, the Town submits proof establishing that the vacation selection process for 2013 already is complete, with 36 of the 37 officers having picked their vacations and five summer weeks still available from which the remaining officer may choose.

In light of the foregoing, the Court finds that the PBA has failed to demonstrate that any loss, injury or damage resulting from the challenged labor practice is more than just a mere

possibility. Moreover, given that the vacation selection process for 2013 is virtually complete and officers presumably have begun to make plans in reliance thereupon, the Court is not persuaded that ordering the Town to return to the prior system of vacation selection on a provisional basis would represent a sound exercise of its discretion to issue equitable relief in appropriate cases.

CONCLUSION

Accordingly,[1] it is

ORDERED that the petition is denied.

This Decision & Order is being transmitted to the Town's counsel. All other papers are being transmitted to the Albany County Clerk for filing. The signing of this Decision & Order shall not constitute entry or filing under CPLR § 2220. Counsel are not relieved from the applicable provisions of that section respecting filing, entry and notice of entry.

Dated: Albany, New York
March 19, 2013

RICHARD M. PLATKIN
A.J.S.C.

[1] The Court has considered the parties' remaining arguments and contentions, but finds them unavailing or unnecessary to consider.

Papers Considered:

Order to Show Cause, dated February 13, 2013;
Verified Petition, sworn to February 12, 2013, with attached exhibits A-B;
Verified Answer, sworn to February 21, 2013;
Affirmation of Teresa M. Kenny, Esq,. dated February 22, 2013;
Respondent's Memorandum of Law, dated February 22, 2013;
Affidavit of Donald Butterworth, sworn to February 22, 2013, with attached exhibit A;
Memorandum of Law on behalf of PERB, dated February 22, 2013;
Reply Affidavit of James Acheson, sworn to February 27, 2013, with attached exhibits A-B;
Affidavit of Joseph P. Baumgartner, Esq., sworn to February 28, 2013, with attached exhibit A.