I.R. NO. 94-4

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF DOVER,

Respondent,

-and- Docket No. CO-94-108

TEAMSTERS LOCAL NO. 97 OF NEW JERSEY, IBT,

Charging Party.

SYNOPSIS

Teamsters Local 97 of New Jersey, IBT sought a temporary restraint of the Township of Dover when the Township unilaterally reduced the number of employees working on three garbage collection trucks from three to two. The parties are currently engaged in collective negotiations for a successor agreement. The employer alleged that the allegation concerned minimum manning which is a managerial prerogative and non-negotiable. The contract provides that the "garbage collection trucks would be manned by three (3) man crews." The employer asserts that the change was directly related to the light loads of garbage in the Township's retirement communities. The Application was denied. No employees hours of work or salary was altered and the Township's right to assign work is non-negotiable and non-arbitrable.

I.R. NO. 94-4

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF DOVER,

Respondent,

-and- Docket No. CO-94-108

TEAMSTERS LOCAL NO. 97 OF NEW JERSEY, IBT,

Charging Party.

Appearances:

For the Respondent
Murray, Murray & Corrigan, attorneys
(David F. Corrigan, of counsel)

For the Charging Party
Schneider, Goldberger, Cohen, Finn
Solomon, Leder, Montalbano, attorneys
(James Mets, of counsel)

INTERLOCUTORY DECISION

On October 6, 1993, Teamsters Local 97 of New Jersey, IBT filed an unfair practice charge against the Township of Dover alleging that the Township engaged in unfair practices within the meaning of N.J.S.A. 34:13A-5.1 et seq.; specifically, subsections 5.4(a)(1), (5) and (7)[1/] when on September 24, 1993, without any

---

1/ These subsections 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. (7) Violating any of the rules and regulations established by the commission."

discussion or negotiation, the Township unilaterally reduced the number of employees working on three garbage collection trucks from three to two. The unfair practice charge was accompanied by an Application for Interim Relief and Order to Show Cause. The Order was executed and made returnable for October 20, 1993 at which time a hearing was held. The parties argued orally, presented briefs and submitted evidence.

The parties are currently engaged in collective negotiations for a successor agreement. Their most recent agreement expired December 31, 1991.

The employer does not dispute that it reduced the crews on three garbage trucks to two. It claims, however, that this action concerns minimum manning which is a managerial prerogative and therefore non-negotiable.

Article 10, Section C of the parties expired contract provides "garbage collection trucks will be heretofore (sic) manned by three (3) man crews." The Association, by way of affidavits, claims that since 1973 garbage collection trucks were manned by three man crews consisting of one driver and two laborers. Since that time, drivers were not required to assist laborers in garbage collection. The affidavits supplied by the employer state that the drivers were required, and did on occassion assist the laborers in lifting and removing garbage. The manning levels were reduced on only three out of sixteen garbage trucks. The Township asserts the change was directly related to the light loads of garbage in the

Township's retirement communities. The routes of the three affected trucks run through these communities.

The union conceeds that minimum manning is non-negotiable and the contract provision is unefforceable. However, it maintains that the employer has violated an established term and condition of employment by requiring drivers to assist in lifting and removing garbage; when the employer changed the job duties of the drivers, it changed the terms and conditions of employment of unit members during negotiations and this impermissibly chilled the conduct of negotiations.

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when addressing similar applications. The moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegations in a final Commission decision and that irreparable harm will occur if the requested relief is not granted. Further, in evaluating such requests for relief, the relative hardship to the parties in granting or denying the relief must be considered.2/

Here, the union has not met its heavy burden. No employees hours of work or salary was altered. The union alleges that the

---

2/ Crowe v. DeGioia, 90 N.J. 126 (1982); Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975).

drivers have been given a new assignment: drivers now have to engage in lifting and removing garbage. However, this assertion is disputed by affidavits of the employer. Accordingly, I cannot say that the union has a substantial likelihood of proving that there was an alteration of an established term and condition of employment.

The Application is denied.

BY ORDER OF THE COMMISSION

Edmund G. Gerber
Commission Designee

DATED: October 22, 1993
Trenton, New Jersey