I.R. NO. 96-13

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,
(DEPARTMENT OF HUMAN SERVICES AND
DEPARTMENT OF MILITARY AND VETERANS
AFFAIRS),

Respondent,

-and- Docket No. CO-96-193

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
COUNCIL 1,

Charging Party.

SYNOPSIS

A Commission Designee declines to restrain the State from implementing a new work schedule which requires employees to work weekends at a number of State institutions. The parties' contract contains language concerning the disputed issue and the matter was deferred to arbitration.

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Appearances:

For the Respondent,
Deborah T. Poritz, Attorney General
(Mary L. Cupo-Cruz, Sr. Deputy Attorney General)

For the Charging Party,
Szaferman, Lakind, Blumstein, Watter & Blader, attorneys
(Sidney H. Lehmann, of counsel)

INTERLOCUTORY DECISION

On January 16, 1996, the American Federation of State, County and Municipal Employees, Council 1 filed an unfair practice charge against the State of New Jersey, Department of Human Services and Department of Military and Veterans Affairs making the allegations in the following five paragraphs.

AFSCME and the State are parties to a collective negotiations agreement covering employees in the Health, Care and Rehabilitation Services of both the Department of Human Services and the Department of Military and Veterans Affairs. For many years,

employees in facilities at the Greenbrook Regional Center, Glen Gardner Geriatric Center, Greystone Park Psychiatric Hospital, Ancora Psychiatric Hospital, Woodbridge Diagnostics Center, Marlboro Psychiatric Hospital and Menlo Park Soldiers Home, more formally known as the New Jersey Memorial Home for Disabled Soldiers, Menlo Park, in the AFSCME unit have had as a term and condition of employment the right to take every other weekend off. In some of these instances, that benefit is a result of a past practice. This term and condition of employment is evidenced by a written agreement at the Menlo Park Soldiers Home.

On or about March 1, 1995, during the course of negotiations for a successor agreement between the State and AFSCME, the State advised AFSCME Council 1 that effective March 18, 1995, it would begin eliminating the every other weekend off schedule at the named State facilities. AFSCME objected and filed an unfair practice charge (CO-95-326), claiming that changing the work schedule would be a unilateral change in terms and conditions of employment.

On July 1, 1995, the parties concluded their negotiations for the State-wide current contract. There is no mention in the new agreement of any alteration of the every other weekend off schedule at the named facilities. Nevertheless, the State contacted Local AFSCME offices and notified them that effective January 27, 1996 the State would unilaterally eliminate the every other weekend off schedule.

AFSCME responded that is willing to commence negotiations on the State's plan to eliminate every other weekend off.

AFSCME alleges that the State has never negotiated concerning the change in the every other weekend off schedule. It claims that the State's actions constitute a unilateral alteration of a term and condition of employment. It further alleges that when the State contacted Local AFSCME officers, it bypassed the Executive Director, Sherryl Gordon.

AFSCME requested a temporary order restraining the State from eliminating the every other weekend off schedule on January 27, 1996 at the Menlo Park Home and the Greenbrook Facility. The request was denied and an order to show cause was executed and made returnable for January 30, 1996. The order required the State to show cause why it should not be restrained from eliminating the every other weekend off schedule at the eight affected facilities.

The State claims it has the contractual right to make the scheduling change in accordance with Article XVII, Hours of Work, Section C:

> An employee whose scheduled days off are changed shall be given maximum advance notice, which will be at least five (5) days, except in the case of an emergency. Should such advance notice not be given, an employee affected shall not be deprived of the opportunity to work the regularly scheduled number of hours in his workweek. The use of a notification period of less than five (5) days shall not be abused. Work schedules that are used to indicate changes in days off, shift changes, etc., will be posted at the same location in the work unit where employees sign in and off shifts.

It also argues there would be irreparable harm to the State if the relief sought were to be granted.

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.[1/]

The Commission previously dealt with a similar dispute at the Menlo Park Soldiers Home in State of New Jersey, Department of Military and Veterans Affairs (Menlo Park Soldiers Home), and AFSCME Council 1, P.E.R.C. No. 91-40, 16 NJPER 583 (¶21257 1990) (Menlo Park I), and State of New Jersey, Department of Military and Veterans Affairs (Menlo Park Soldiers Home), American Federation of State, County and Municipal Employees, Council No. 1, P.E.R.C. No. 91-54, 17 NJPER 55 (¶22022 1990) (Menlo Park II).

Council 1 argues that Menlo Park I effectively rejects the State's contention that it had a contractual right to unilaterally

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1/ 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).

change the work schedule. However in Menlo Park II, the Commission clarified its decision and stated, "We did not set aside Article 17 or interpret it to require negotiations before changing employer work schedules." The Commission emphasized that its decision was based on the 1981 local agreement[2/] and that it was not intimating any opinion as to how the case might have been analyzed absent that agreement. In Menlo Park I and II, the employer was held to have

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2/ That agreement provides:

> It is understood that in order for employees in the title of Human Services Technician, Human Services Assistant and Practical Nurse to be scheduled off every other weekend, the following conditions will be continually met.
>
> 1. All employees will work as scheduled except for valid reasons.
>
> 2. Employees who for valid reasons cannot work as scheduled on the weekend will arrange for another employee of the same title to work his/her scheduled tour of duty.
>
> 3. The number of employees who were scheduled to work on weekends and who call off for valid reasons will not exceed five (5) per cent of the total employees in the three (3) titles scheduled to work on the weekend.
>
> If the above three (3) conditions are not met, the every other weekend scheduled off program is subject to cancellation. If the Home determines that it is necessary to change the scheduled weekends off program, the Union will be notified and a meeting will be scheduled if requested. It is the intention of the Home to revert to a weekend off schedule of eery third weekend off if the subject every other weekend program does not meet the above conditions.

violated the Act because it did not make any attempt to comply with the conditions set forth in the local agreement before it changed the work schedule at the Menlo Park facility.

In this case, unlike Menlo Park I and II, there is evidence the employer may have attempted to comply with the conditions set forth in the local agreement covering the Menlo Park facility. Whether or not it has actually complied with the conditions of the local agreement is a contractual issue that should be resolved through the parties' negotiated grievance procedures.

With respect to the seven other institutions, I repeat that Menlo Park I and II did not establish, contrary to AFSCME's argument, that the employer lacked a right under the State-wide contract to modify the work schedules. It appears that the propriety of the State's work schedule modifications depends upon analyzing the parties' asserted rights under the State-wide contract and any other facility-specific agreements or mutually-recognized practices. These contractual issues should also be resolved through the parties' negotiated grievance procedures.

I recognize that the disruptive effect of the scheduling change on the employees' lives is substantial. It would serve the interests of both the State and Council 1 to have this matter promptly resolved. In my capacity as Director of Unfair Practices as well as the Commission designee in this case, I am therefore deferring this matter for 90 days with the expectation that the parties will pursue an expedited arbitration procedure to resolve

these contractual disputes as rapidly as possible. The Commission shall retain jurisdiction of this matter during that period.

BY ORDER OF THE COMMISSION

Edmund G. Gerber
Commission Designee

DATED: February 2, 1996
Trenton, New Jersey