

I.R. NO. 88-18

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Respondent,

-and-

Docket No. CO-88-293

COUNCIL OF NEW JERSEY STATE COLLEGE  
LOCALS, NJSFT, AFT/AFL-CIO,

Charging Party,

SYNOPSIS

This matter arose after the Appellate Division of the Superior Court ruled that mandatory retirement of faculty reaching the age of 70 in the New Jersey State Colleges is an inherent managerial prerogative and is therefore not negotiable. The Court went on to hold that negotiations may take place on the procedural aspects of mandatory retirement. The Charging Party, Council of State College Locals, NJSFT, AFT/AFL-CIO, thereafter demanded that the State begin negotiations on the procedural aspects of mandatory retirement. No agreement was reached between the parties. Nevertheless, the State served notice on at least five tenured faculty members of the New Jersey State Colleges that they will be required to retire at the close of the Spring 1988 semester. The Charging Party brought this action seeking to restrain the mandatory retirement of these five faculty members. The Application was denied since there is an available remedy of reinstatement with back-pay and interest for the effected employees if the ordered retirement was improper.

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Appearances:

For the Respondent  
Melvin Mounts, Deputy Attorney General

For the Charging Party  
Dwyer & Canellis, Esqs.  
(Paul J. Burns, of counsel)

INTERLOCUTORY DECISION

On May 16, 1988, the Council of New Jersey State College Locals, NJSFT, AFT/AFL-CIO ("Charging Party") filed an unfair practice charge accompanied by an Application for Interim Relief with the Public Employment Relations Commission.

The charge alleges that, a decision was rendered by the Appellate Division of the Superior Court that involved these same two parties which held that the substantive decision to retire a tenured employee upon reaching age 70 is an inherent management prerogative concerning important educational policy and is therefore not negotiable. Notwithstanding this, negotiations may take place

on the procedural aspects of mandatory retirement as it affects tenured employees. The Charging Party thereupon demanded that the State begin negotiations on issues relating to the procedural aspects of mandatory retirement. No agreement was reached between the parties concerning such procedures. Nevertheless, it is alleged that the State served notices on at least five tenured faculty members of the New Jersey State Colleges that effective June 30, 1988 they will be required to retire. The charge alleges that by this conduct the State of New Jersey violated subsections a(1) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13a-1 et seq. (the Act).<sup>1/</sup>

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


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<sup>1/</sup> 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 and (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."

relief, the relative hardship to the parties in granting or denying the relief must be considered.<sup>2/</sup>

Here, without regard to the underlying merits of the Charging Parties' position, I do not believe that it has demonstrated irreparable harm if the State is not restrained. Assuming that the State improperly ordered the retirement of the employees in question, I do not believe that the harm which will occur if the relief is not granted is irreparable. The State in its brief, admits there is an available remedy of reinstatement with back-pay and interest for the effected employees.

The granting of interim relief is an extraordinary remedy which should only be granted in cases where there can be no other effective remedy. In this instance, reinstatement and back-pay would be sufficient to remedy the alleged violations of the Act. Accordingly, the Application for Interim Relief is denied.

  
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Edmund G. Gerber  
Commission Designee

DATED: May 27, 1988  
Trenton, New Jersey

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<sup>2/</sup> 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).