I.R. NO. 93-18

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MERCER COUNTY PARK COMMISSION,

Respondent,

-and- Docket No. CO-93-381

AFSCME, COUNCIL 73, LOCAL 2287,

Charging Party.

SYNOPSIS

A Commission Designee declines to restrain the County of Mercer from unilaterally implementing a change in work schedules of certain employees represented by AFSCME, Council 73, Local 2287. The County alleged that it had a right to make the shift changes under the existing contract. That contract seems to grant to the County the right to make the disputed shift changes. Such disputes should be resolved through the contract grievance procedure. State of New Jersey (Dept. of Human Serv.), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). The Application is denied.

I.R. NO. 93-18

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MERCER COUNTY PARK COMMISSION,

Respondent,

-and- Docket No. CO-93-381

AFSCME, COUNCIL 73, LOCAL 2287,

Charging Party.

Appearances:

For the Respondent
Sydney S. Souter, Attorney

For the Charging Party
Gerard J. Meara, Staff Representative

INTERLOCUTORY DECISION

On April 22, 1993, AFSCME, Council 73, Local 2287 filed an unfair practice charge with the Public Employment Relations Commission against the Mercer County Park Commission. The charge alleges that the County violated New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.; specifically subsections 5.4 (a)(1) and (5)[1/] when on April 16, 1993 it unilaterally

---

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."

implemented a change in work schedules without negotiating the change with the majority representative. AFSCME also filed an Application for Interim Relief seeking an interim restraint of the County. The Application was executed and made returnable for May 27, 1993. At that time, the parties argued orally and presented evidence. The parties sought to file additional briefs and affidavits. That request was granted and the parties had until June 1, 1993 to file them.

Those County employees who were assigned to work at the golf courses had, in prior years, worked a regular Monday to Friday schedule 6 a.m. to 2 p.m. Weekend work was on a voluntary basis, the hours were 5 a.m. to 1 p.m. and was paid at the overtime rate. On April 16, 1993, the County began to assign employees to work weekends at straight time on a rotating basis. AFSCME alleged that this change in schedules constitutes a unilateral change in terms and conditions of employment.

The County asserts that it had a right to make these shift changes under the existing contract. The contract provides that employees in a continuous operation may be assigned to work Saturdays and Sundays as part of their normal work week.

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/

The contract between the parties at Article 4 states:

> 4.1 The work week shall consist of five (5) consecutive days, Monday through Friday, inclusive except for employees in continuous operations. A continuous operation is defined as an operation where the nature of the work provides for more than an eight (8) hour period per day and/or more than five (5) days per week. Any exception to the work schedules as outlined above may be made by the Employer and the Union by mutual agreement.
>
> 4.2 Where the nature of the work involved requires continuous operations, employees will have their schedules arranged in a manner which will assure, on a rotation basis, that all employees will have an equal share of Saturdays and Sundays off, distributed evenly through the year.

Where an unfair practice charge centers on a dispute over contract interpretation, the Commission will normally not exercise its jurisdiction. Such disputes should be resolved through the contract grievance procedure. State of New Jersey (Dept. of Human Serv.), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

AFSCME has not met its burden here. The golf course is in operation seven-days-a-week. It seems to be a continuous

---

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).

operation. The language of 4.2 provides that unit members in a continuous operation may be assigned to work Saturdays and Sundays on a rotating basis. Although the Union claims that the Saturday and Sunday work is not being evenly distributed and the weekend schedule requires employees to work an hour earlier, these disputes may be more properly resolved in an arbitration proceeding.

This is not the type of dispute which is appropriate for granting an extraordinary remedy. The Union has not met its heavy burden. The Application is denied.

Edmund G. Gerber
Commission Designee

DATED: June 8, 1993
Trenton, New Jersey