I.R. NO. 94-6

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Respondent,

-and- Docket No. CO-94-125

NEWARK COUNCIL NO. 21, NJCSA,
IFPTE, AFL-CIO,

Charging Party.

SYNOPSIS

In an application for interim relief, a Commission Designee refused to restrain the City of Newark from reducing the hours of certain employees represented by Newark Council No. 21, NJCSA, IFPTE, AFL-CIO. It was alleged that reductions in hours violated an express provision of the contract. However, the contract provision did not clearly establish terms and conditions of employment. Further, the Charging Party was aware of the City's actions as early as May 4, 1993 and notices of this action were given in July 1993, but the papers were not filed until October 25, 1993. Such a delay is needlessly disruptive of the entire labor relations process. The Commission Designee stated that under the circumstances, he would not enter an order where charging party's prompt action could avoid the necessity of an emergent order.

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Appearances:

For the Respondent,
JoAnne Watson, attorney

For the Charging Party
Fox and Fox, attorneys
(Dennis J. Alessi, of counsel)

INTERLOCUTORY DECISION

On October 25, 1993, Newark Council No. 21, NJCSA, IFPTE, AFL-CIO filed an unfair practice charge and Application for Interim Relief alleging that the City of Newark violated N.J.S.A. 34:13A-5.1 et seq.; specifically, subsection 5.4(a)(1) and (5)[1/] when it announced that, effective November 1, 1993, it was reducing the work

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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."

week of Recreation Leaders from 40 hours per week to 20 hours per week. In addition to a reduction in the salary, recreation leaders would have a dramatic increase in their contribution to their health insurance coverage. It was further alleged that these actions were irreparable in nature.

The Order to Show Cause was executed and made returnable for November 1, 1993.

The City opposes the Application claiming that this was not a reduction in hours. Rather, all full-time Recreation Leaders were laid-off and the same employees were then rehired as 20 hour employees. The City claims this action was a managerial prerogative and accordingly, it was not obligated to negotiate this change with the charging party. The City alternatively argues that the contract between the parties does not set a specific work week. Since no term and condition of employment is set, it could not have altered an established term and condition of employment.

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 provides at Article VI - Work Week:

> Those employees covered by this Agreement for whom the current work week is thirty (30) hours per week, six (6) hours per day exclusive of the lunch period shall continue such work week until September 1, 1980. Effective September 1, 1980, the work week shall be thirty-five (35) hours per week, seven (7) hours per day exclusive of the lunch period. Those employees covered by this Agreement whose work week was thirty-five (35) hours or more prior to September 1, 1980, shall continue working the same number of hours as heretofore, during the life of this Agreement.

The Commission held in Gloucester County Board of Chosen Freeholders, and Communications Workers of America, P.E.R.C. No. 93-96, 19 NJPER 244 (¶24120 1993):

> work hours are a mandatorily negotiable term and condition of employment...an employer must negotiate over reductions in the work year, work week, and work day of unit positions.

Moreover, a claim that full time hours must be maintained for particular positions should be resolved through the negotiated grievance procedure.

Here, if Article VI establishes full-time hours for the employees in question, then the City's conduct might be improper. However, Article VI is not so clear. Article VI refers to those

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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).

employees who, prior to September 1980, worked 30 hours per week would effective September 1, 1980 work 35 hours per week. The Article concludes "...those employees covered by this Agreement whose work week was thirty-five (35) hours or more...shall continue working the same number of hours" (emphasis added). This language contemplates different length work weeks and does not establish specific work weeks for specific unit employees. The charging party failed to demonstrate it has a substantial likelihood of prevailing on the facts.

Moreover, the charging party was aware of the City's action as early as May 4, 1993. Further, notices of what the City characterizes as lay-offs were given in July 1993, yet the papers in this action were not brought until October 25, 1993. I cannot overlook the charging party's failure to bring this matter in a timely fashion. Such a delay is needlessly disruptive of the entire labor relations process. I will not, under the circumstances, enter an order where charging party's prompt action could avoid the necessity of an emergent order.

The Application for Interim Relief is denied.

BY ORDER OF THE COMMISSION

Edmund G. Gerber
Commission Designee

DATED: November 10, 1993
Trenton, New Jersey