

I.R. NO. 93-1

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF SOMERSET,

Respondent,

-and-

Docket No. CO-93-2

COMMUNICATION WORKERS OF AMERICA,

Charging Party.

SYNOPSIS

A Commission Designee declines to restrain the County of Somerset from implementing dual shifts at its Recycling Center. The County maintains that it had an emergency and had to impose the dual shifts to process a backlog of accumulated unprocessed material. However, prior to the hearing, CWA and the County reached an interim agreement as to working hours of the affected employees through Labor Day, September 7, 1992. Accordingly, there is no imminent irreparable harm and the Application for Interim Relief is denied.

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Appearances:

For the Respondent
Shanley & Fisher, attorneys
(Patrick M. Stanton, of counsel)

For the Charging Party
John Loos, CWA Representative

INTERLOCUTORY DECISION

On July 2, 1992, the Communication Workers of America filed an unfair practice charge with the Public Employment Relations Commission alleging that Somerset County engaged in unfair practices within the meaning of N.J.S.A. 34:13A-5.1 et seq.; specifically subsections (a) (1) and (5)^{1/} when during negotiations for a first contract between the parties, the County announced that it was

^{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."

unilaterally changing the hours of work of represented assembly line workers for June 18 and June 19. All employees who worked from 8 a.m. - 4:30 p.m. had their hours changed to either 7 a.m. - 3:30 p.m. or 2 p.m. - 10:30 p.m. On June 18, the County again announced that it was changing the shift hours of these employees on Thursday, June 25 and Friday, June 26. It was alleged the actions of the County were an attempt to coerce employees in their exercise of their rights to negotiate over terms and conditions of employment.

The charge was accompanied by an Order to Show Cause which was executed and made returnable for July 15, 1992. A hearing was conducted on that date.

The employer does not dispute these alterations in shift work. It asserts, however, that there was an emergency situation at the Recycling Center where these employees worked; the amount of unprocessed material stored on site had grown to the point where it threatened to overwhelm the operation. It was determined that the split shifts on the assembly line were needed to process these materials. The County discussed its intention to implement the two shift operation to the CWA and the CWA offered an alternative: employees work four hours of overtime commencing at the conclusion of their regular eight hour shift. The County agreed to the proposal provided the Union could get 32 employees to work the overtime. When the Union was unable to obtain the volunteers, the employer claims it had no alternative but to order the overtime. The County also pointed out that after the filing of this unfair

practice charge, it and the CWA negotiated a settlement effective through Labor Day to provide sufficient employee hours to process this backlog of material: Employees will work two hours of overtime each day.

The union disputes that an emergency exists and is concerned that the employer may re-institute the "emergency shifts" after Labor Day.

Here, the charging party has failed to meet its heavy burden.

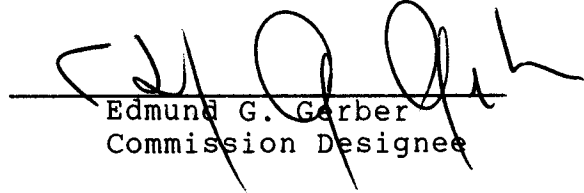
The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when addressing similar applications. The moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegations in a 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/}

Given that the union and the employer have reached an interim agreement as to working hours and there is a dispute as to whether a legitimate emergency existed, I cannot say the CWA has a substantial likelihood of success in prevailing at a hearing, nor can I say that the harm is irreparable.

^{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).

The Application for Interim Relief is denied.

BY ORDER OF THE COMMISSION



Edmund G. Gerber
Commission Designee

DATED: July 22, 1992
Trenton, New Jersey