

I.R. NO. 93-19

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF DOVER

Respondent,

-and-

Docket No. CO-93-372

PBA LOCAL 107, SOA,

Charging Party.

SYNOPSIS

A Commission Designee declines to restrain the Town of Dover from unilaterally implementing terms and conditions of employment. The PBA failed to demonstrate that it was the majority representative of the employees in question.

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Appearances:

For the Respondent  
Johnson & Johnson, attorneys  
(George W. Johnson, of counsel)

For the Charging Party  
Loccke & Correia, attorneys  
(Manuel A. Correia, of counsel)

INTERLOCUTORY DECISION

On April 19, 1993, PBA Local 107 (SOA) filed an unfair practice charge with the Public Employment Relations Commission alleging that the Town of Dover committed an unfair practise charge within the meaning of New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.; specifically, subsections 5.4(a) (1), (2), (3), (5) & (7)<sup>1/</sup> when on or about April 17, 1993 it

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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. (2) Dominating or interfering with the formation, existence or administration of

"unilaterally notified the charging party that effective immediately member employees were required to take all holidays off, be compensated for longevity per the currently effective contract, be subjected to prescription co-payments per said contract, receive wage compensation not in accordance with past practice and received notice the position of captain was unilaterally removed from the unit."

An application for interim relief accompanied the unfair practice charge. An Order to Show Cause was executed and made returnable for May 3, 1993. A hearing was conducted and the parties were given the opportunity to file supplemental affidavits and briefs. These documents were received by June 2, 1993.

The Township opposes the application. It argues that the last contract between itself and the charging party expired December 31, 1988. Shortly thereafter, the unit was abandoned. The Town has voluntarily recognized a new unit of superior officers which excludes the captain. However, there is no current or recently expired agreement in effect between the parties.

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1/ Footnote Continued From Previous Page

any employee organization. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage 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. (7) Violating any of the rules and regulations established by the commission."

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.<sup>2/</sup>

The SOA acknowledges that the last contract between the parties was a one-year agreement for 1988. However, the SOA has agreed to, and received from the Town, the identical compensation package that was agreed to between the Town and the Local 107 Patrolman and Sergeants unit. The theory of the SOA is that the Town has an obligation to maintain all terms and conditions of employment of the expired contract pending negotiations for a successor agreement.

The SOA has failed to meet its heavy burden here. The evidence introduced by the SOA does not demonstrate there was a recently expired agreement between the parties. The absence of any written agreement since 1988 lends substantial weight to the

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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).

employer's argument that the unit was abandoned and no agreements were negotiated since then.

Accordingly I decline to enter an order in this matter.  
The application for interim relief is denied.



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Edmund G. Gerber  
Commission Designee

DATED: June 9, 1993  
Trenton, New Jersey