

I.R. NO. 90-3

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF EAST BRUNSWICK,

Respondent,

-and-

Docket No. CO-89-386

P.B.A., LOCAL NO. 145,

Charging Party.

SYNOPSIS

A Commission Designee declines to restrain the Township of East Brunswick from altering work shifts. The PBA argued that the shift change was made to reduce the cost of overtime. The Township claims that the shift changes were made to insure proper deployment of police during the time of the greatest number of incident calls. Given the conflicting evidence before the Commission Designee, it could not be determined whether the shift changes were motivated by governmental policy reasons or by reasons of economy. Accordingly, the charging party did not establish it had a substantial likelihood of success.

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Appearances:

For the Respondent
David A. Wallace, Esq.

For the Charging Party
Weinberg & Kaplow
(Irwin Weinberg, of counsel)

INTERLOCUTORY DECISION

On June 28, 1989, PBA Local No. 145 ("PBA") filed an unfair practice charge and Application for Interim Relief against the Township of East Brunswick ("Township"). The charge alleges that the Township violated subsections 5.4(a)(1), (2), (3), (5) and (7) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act")^{1/} when on May 1, 1989, without negotiating with

^{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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (3) Discriminating in regard to

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the PBA, the Township added a fourth work shift of 3 p.m. to 11 p.m. to the existing three shift rotation. In the prior seven years, all patrolmen work three weekly rotating shifts (morning, evening and night). Patrolmen are now assigned a second 3 p.m. to 11 p.m. shift so that out of the four weekly shifts a patrolmen works, he/she works the 3 p.m. to 11 p.m. shift twice.

I conducted a hearing on the Application for Interim Relief on July 19, 1989 having been delegated such authority by the Public Employment Relations Commission ("Commission"). Both parties argued orally and submitted affidavits in support of their positions.^{2/}

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

1/ Footnote Continued From Previous Page

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."

2/ At the time of the initial application for interim relief, the PBA also sought a temporary restraining order and that application was denied.

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.^{3/}

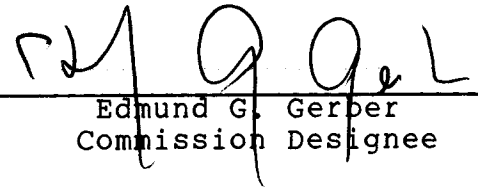
It is undisputed that effective May 1, 1989, the schedule of all patrolmen was altered so that in addition to the three rotating shifts, they were required to work a fourth 3 p.m. to 11 p.m. shift and this shift alteration was implemented without negotiating with the PBA. It is the Township's position that the greatest number of incident calls occur during the 3 p.m. to 11 p.m. shift and to insure sufficient police force and deployment of officers for the safety of fellow officers and for the safety and convenience of the Township itself, it made the shift change.

The PBA argues that the shift change was made as a way to simply reduce the cost of overtime. Conflicting affidavits were submitted by both sides in support of their respective positions as to the motivation of the shift change. In Mt. Laurel Tp., P.E.R.C. No. 86-72, 12 NJPER 23 (¶17008 1985), aff'd 215 N.J. Super. 108 (App. Div. 1987), the Commission held that an employer does not have the absolute right to alter police schedules. Rather, the negotiability of the alterations of such schedules is dependent upon the existence of a legitimate governmental policy. If the

^{3/} 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).

alterations were made purely for economic means, then the schedule alteration might be negotiable.

Here, given the conflicting evidence before me, it cannot be determined whether the motivations for the shift change were for governmental policy reasons or reasons of economy. Accordingly, the charging party has not established it has a substantial likelihood of success in prevailing on the facts in this matter and its Application for Interim Relief is denied.



Edmund G. Gerber
Commission Designee

DATED: July 20, 1989
Trenton, New Jersey