I.R. NO. 87-20

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY SPORTS AND EXPOSITION AUTHORITY,

Respondent,

-and-

Docket No. CO-87-256

LOCAL 734, LABORERS' INTERNATIONAL UNION
OF NORTH AMERICA,

Charging Party.

SYNOPSIS

A Designee of the Public Employment Relations Commission declines to restrain the New Jersey Sport & Exposition Authority from altering the weekly schedule of employees represented by Local 734, Laborers' International Union of North America. The Union brought an unfair practice charge and request for interim restraints. However, it was found at this preliminary stage of the proceeding the Union failed to demonstrate that its members would suffer irreparable harm if relief were not granted.

For ten years, the employees in question worked Monday through Saturday inclusive. In June 1986, the work week was changed to Monday through Friday and in February the Authority promulgated a rule that the employees would work Monday through Saturday with one day off during the middle of the week. Throughout this ten year period, the contract provided that the normal work week would be Monday through Sunday.

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Appearances:

For the Respondent,
Grotta, Glassman & Hoffman
(M. Joan Foster, of counsel)

For the Charging Party
Schneider, Cohen, Solomon, Leder & Montalbano
(Bruce D. Leder, of counsel)

INTERLOCUTORY DECISION

On March 5, 1987, Local 734 of the Laborers' International Union of North America (Union) filed an unfair practice charge with the Public Employment Relations Commission (Commission) against the New Jersey Sports and Exposition Authority (Authority). The Charge alleges that, by notice posted on or about February 9, 1987, the Authority unilaterally, without negotiations and illegally changed the work schedule of the employees represented by the Union. This change is scheduled to be effective March 16, 1987. It was alleged that this conduct violated the New Jersey Public Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), specifically, 5.4(a)(1) and (5).

The unfair practice charge was accompanied by an Application for Interim Relief. An Order to Show Cause was signed and made returnable for March 10, 1987. A hearing was held on that date. Both parties filed briefs, submitted affidavits and argued orally.

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when confronted with similar applications. The moving party must show it has a substantial likelihood of success on the legal and factual allegations in the final Commission decision and it must show it will be irreparably harmed if the requested relief is not granted. Both of these standards must be satisfied before the requested relief will be granted. Furthermore, the relative hardship to the parties must be evaluated before interim relief may be granted.

The facts in this matter are not in dispute. A contract was entered into between the parties in July 1986 and the parties are apparently living under the terms of this contract although it has not been signed by the Authority. The contract provides in Article 3, Section 1 that:

> The work week shall be Monday through Sunday both inclusive and shall be comprised of eight (8) hour days. Arena event cleaners will have a four (4) hour call.

For the past ten years, employees in the unit have worked a work week of at least Monday through Friday and for most of that

time employees worked a six day work week, Monday through Saturday. In August of 1986, the Authority reduced the work week from Monday through Saturday to Monday through Friday. That reduction in the work week is the subject of a separate grievance by the Union. The Authority filed a Scope of Negotiations petition (Docket No. SN-87-48) with this Commission which is still pending. In February 1987, the Authority announced that it was changing the schedule of work for its employees to a five day schedule for the approximately 75 employees of the Union wherein all employees would work Thursday, Friday and Saturday. One-third of the employees would have off Monday, one-third would have off Tuesday, and one-third would have off Wednesday.

It is the Union's contention that abandonment of a Monday through Friday work week was an unlawful unilateral change in terms and conditions of employment and specifically that a work week became a term and condition of employment through a past practice of the last ten years. It is argued that the irreparable harm created here is that the employees have a legitimate expectation and personal needs in the work week schedule.

The Authority argues that it was their managerial prerogative to alter the work week and that this decision was reached on the basis of what they consider the proper manning levels they needed to insure the proper delivery of services. They argued alternatively that the contract provision must prevail over the past practice and that it has the authority to alter the work week.

It is not necessary here to determine the substantial likelihood of the Union's prevailing before the full Commission for I do not believe that the Union has demonstrated sufficient irreparable harm in this matter. There has been no allegation that these employees would suffer any loss beyond having a day off in the middle of the week - rather than a Saturday. Yet, by the terms of the contract and past practice they have an obligation to work Saturdays if so assigned. Any damages to these employees, it would seem, could be remedied with a financial award.

Accordingly, the application for interim relief is denied.

Edmund G. Gerber
Commission Designee

DATED: March 11, 1987
Trenton, New Jersey