

I.R. NO. 96-11

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDDLESEX COUNTY COLLEGE,

Charging Party,

-and-

Docket No. CE-96-9

MIDDLESEX COUNTY COLLEGE  
POLICE, FOP LODGE NO. 85,

Respondent.

**SYNOPSIS**

In an action brought by Middlesex County College, a Commission Designee declines to restrain the Commission's Director of Arbitration from deciding whether the parties should proceed to compulsory interest arbitration. The College argued that the parties were not at impasse, therefore, the FOP's petition for interest arbitration should be stayed. The FOP argued the parties had reached impasse. The College argued that the Designee should decide whether the interest arbitration petition should be processed.

The Commission Designee held that the decision on whether a Designee should decide an issue within the authority of the Director is a major policy issue that should be decided by the whole Commission.

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Appearances:

For the Charging Party Jackson, Lewis, Schnitzler &  
Krupman, Esqs.  
(Michael R. Esposito, of counsel)

For the Respondent Loccke & Correia, P.A.  
(Joseph Licata, of counsel)

INTERLOCUTORY DECISION

On November 27, 1995, Middlesex County College filed an unfair practice charge against the Middlesex County College Police, FOP Lodge No. 85, alleging it violated subsection 5.4(b)(3) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.<sup>1/</sup> The College alleged that the FOP failed to negotiate in good faith and placed pre-conditions on further negotiations. In the charge the College referred to the Respondent's having filed a

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<sup>1/</sup> This subsection prohibits employee organizations, their representatives or agents from: "(3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit."

petition to initiate compulsory interest arbitration, and it seeks an order staying the FOP's petition and ordering the Respondent to continue negotiations.

The unfair practice charge was accompanied by an application for interim relief, an order to show cause together with an affidavit, seeking to restrain further processing of Respondent's petition for interest arbitration. I executed the Order on November 30, 1995, making it returnable on December 15, 1995. On December 7, 1995, the College submitted a brief in support of its application. On December 13, 1995, the FOP submitted a brief and affidavit in opposition to the application.

In a telephone conference call on the return date the parties argued in support of their positions.

Both parties are aware of the standards that have been developed by the Commission for evaluating interim relief requests. These standards are similar to those applied by the Courts when considering 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 pleadings show that the parties had completed three negotiations sessions between May 16 and June 14, 1995. The FOP had informed the College at the first meeting that incorporation of a wage step guide in the contract was a critical issue. The College rejected that concept and did not agree to it in subsequent sessions.

By letter of August 22, 1995, the FOP filed a petition to initiate compulsory interest arbitration with the Commission's Director of Arbitration. By letter of September 26, 1995, the College filed its formal objection to the FOP's petition with the Director of Arbitration.

The parties held additional negotiation sessions on October 17 and 31, 1995. The FOP continued to seek a wage step guide but no agreement was reached on that issue. At the conclusion of the last session the FOP's negotiator allegedly placed a pre-condition on further negotiations.

Neither party sought to schedule additional sessions. By letter of November 10, 1995 the FOP asked the Acting Director of Arbitration to process its petition. The charge and this application ensued.

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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).

The College's case is premised on its argument that the parties were not at impasse, and that the FOP had placed a pre-condition on further negotiations. The FOP argued that the parties had reached impasse, and that the College's position of rejecting the concept of a wage step guide had "crystallized". The parties vigorously argued over whether impasse had been reached.

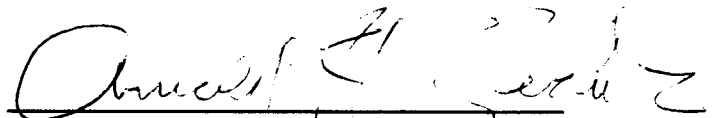
In this case the College seeks an unusual result. Normally, an employers interim relief application seeks to restrain a union, or an independent arbitrator, from taking certain specific action. Here, however, the College seeks to have proceedings before the Commission's Director of Arbitration stayed. It is the Director's responsibility to determine whether interest arbitration should be implemented in a given case. Here the College argued that I should make the determination of whether the standards have been met to require compulsory interest arbitration.

The FOP, relying on Middlesex County College, I.R. No. 90-18, 16 NJPER 225 (121104 1990), argued that the Commission, in a similar dispute between these parties, had already denied a similar application finding no irreparable harm. In Middlesex, the Designee found that the Commission was already exercising its authority through the Director of Arbitration.

The College's argument that my judgment be substituted for that of the Director would be a significant deviation from current Commission procedure. It is a matter of policy that should only be decided by the full Commission.

Given the College's novel request, it is not possible to conclude it would satisfy the substantial likelihood of success standard. Therefore, it has not met the heavy burden for interim relief.

Accordingly, the application for a restraint is denied.



Arnold H. Zudick  
Commission Designee

Dated: December 19, 1995  
Trenton, New Jersey