

I.R. NO. 88-11

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WILLINGBORO,

Respondent,

-and-

Docket No. CO-88-171

WILLINGBORO FRATERNAL ORDER OF
POLICE LODGE 38,

Charging Party.

SYNOPSIS

A Commission Designee declines to restrain the Township of Willingboro from changing shift assignments in the Police Department from fixed shifts to rotating shifts. Although the unfair practice charge was filed while the parties were without a contract, the parties entered into a contract for the current year before the hearing was convened. Accordingly, the Willingboro FOP failed to demonstrate irreparable harm in this matter. This is an interim decision only and is subject to a final Commission determination.

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Appearances:

For the Respondent
Kearns and Kearns
(William J. Kearns, of counsel)

For the Charging Party
Colflesh & Burris, Esqs.
(Ralph H. Colflesh, of counsel)

INTERLOCUTORY DECISION

On December 30, 1987 the Willingboro Fraternal Order of Police ("FOP") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") alleging that the Township of Willingboro ("Township") violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically subsections 1, 5 and 7^{1/} when it unilaterally

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with,

Footnote Continued on Next Page

implemented a change in shift structure from straight shifts to rotating shifts.

The charge was accompanied by an Application for Interim Relief. An Order to Show Cause was signed and made returnable for January 21, 1988 at which time a hearing was held and both parties were given the opportunity to argue orally and submit affidavits.

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/}

1/ Footnote Continued From Previous Page

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; (7) Violating any of the rules and regulations established by the commission."

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).

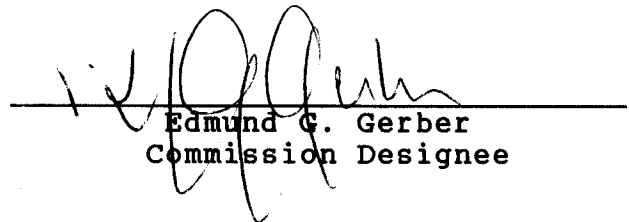
The contract between the parties expired on December 31, 1987 and no successor agreement was signed. Although the contract is silent as to the issue of shifts it is undisputed that since 1981 all police in the unit represented by the FOP worked straight shifts. The Town announced that on or about January 1, 1988 all officers would commence working rotating shifts. The FOP argues that such a change in shifts during the pendency of negotiations would have a chilling effect on those negotiations. However, on January 19, two days prior to the Show Cause hearing, the parties entered into a new contract for 1988. The FOP still urges that an order be entered restraining the Township from enforcing the new rotating shift schedules.

The FOP is correct that under certain circumstances, the issue of rotating versus fixed shifts can be negotiable. However, negotiability must be balanced against the legitimate needs of the Township to provide proper police service. See Borough of Atlantic Highlands vs. Atlantic Highlands P.B.A. Local 242, 192 N.J. Super. 71 (App. Div. 1983) cert. den. 96 N.J. 293 (1984); City of Newark, 12 NJPER 20 (¶17008 1986); Borough of Closter, 11 NJPER 132 (¶16059 1985) and Township of Mount Laurel and Mount Laurel Township Police Officers Association, 215 N.J. Super 108 (App. Div. 1987).

Here, the Township claims the change in shifts was made in order to provide a better mix of minority officers and to provide new officers with experience and training to handle certain situations which occur only at certain times of the day.

The issues raised by the Township seem to be issues of legitimate concern. The outcome of this case at this time is unclear. It cannot be said that the FOP has a substantial likelihood of success. Rather, a full and complete record is required to determine whether the alteration of shift schedules here is negotiable. The Application for Interim Relief is denied.

Given the significant alteration of work patterns, this matter does warrant an expeditied hearing and a Complaint and Notice of Hearing is being issued today.


Edmund G. Gerber
Commission Designee

DATED: January 22, 1988
Trenton, New Jersey