

I.R. NO. 88-5

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BAYONNE BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-88-86

AFSCME, COUNCIL 52, LOCAL 2251,

Charging Party.

SYNOPSIS

A Commission Designee declines to restrain the Bayonne Board of Education from unilaterally implementing the use of time clocks among employees represented by AFSCME Council 52, Local 2251. The unilateral implementation of time keeping procedures including time clocks is not a term and condition of employment and therefore the Board's action would not be an unfair practice.

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Appearances:

For the Respondent
Apruzzese, McDermott, Mastro & Murphy
(Robert T. Clarke, of counsel)

For the Charging Party
Oxford, Cohen, Blunda, Friedman,
LeVine & Brooks, Esqs.
(Sanford R. Oxford, of counsel)

INTERLOCUTORY DECISION

On September 24, 1987, AFSCME Council 52, Local 2251 filed an unfair practice charge with the Public Employment Relations Commission ("Commission") against the Bayonne Board of Education ("Board"). The charge alleged that the Board violated express contract provisions when it announced that, effective October 1, 1987, it was going to institute the use of time clocks for certain employees represented by AFSCME. The Charge was accompanied by an Order to Show Cause which was signed and made returnable on September 29, 1987 and a Show Cause hearing was conducted on that

date. Both parties argued orally. There is no dispute that the contract between the parties provides:

All employees must sign in at the beginning of the work day, sign in and out for lunch breaks, and sign out at the end of the shift.

Moreover during the negotiations for the current contract, the Board demanded that the contract language be altered to grant to the Board the right to implement time clocks. The parties entered into a Memorandum of Agreement dated February 26, 1987 which reads as follows:

The Board withdraws its proposal to implement time clocks, without prejudice, and the parties hereby agree that their legal rights are preserved as to this issue.

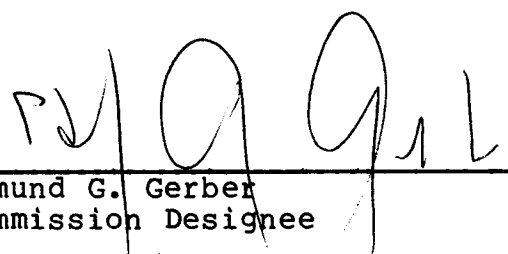
The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when addressing similar applications. The moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegations in a 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.^{1/}

^{1/} 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 Charging Party here has not demonstrated that it has a substantial likelihood of success in prevailing on its legal allegation at a full plenary hearing. The Courts and the Commission have held that a public employer has the authority to unilaterally implement time keeping procedures. This includes the unilateral implementation of the use of time clocks. See Galloway Tp., 135 N.J. Super. 269 (Chan. Div. 1975), aff'd 142 N.J. Super. 44,; Tp. of Pennsauken, 5 NJPER 486 (¶10248 1979); Bergen County Utilities, 9 NJPER 640 (¶14274 1983).

Here, assuming that the contractual provision for signing in does not contemplate the use of time clocks, the employer would not commit an unfair practice for the provision does not concern a term and condition of employment. Therefore, the contract provision cannot be binding on the employer.

Accordingly, the Application for Interim Relief is denied. This decision is an interim decision only and is subject to a decision by the full Commission.


Edmund G. Gerber
Commission Designee

DATED: October 1, 1987
Trenton, New Jersey