

I.R. NO. 87-17

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HUNTERDON COUNTY BOARD OF SOCIAL  
SERVICES,

Respondent,

-and-

Docket No. CO-87-203

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO,

Charging Party.

SYNOPSIS

A Commission Designee restrains the Hunterdon County Board of Social Services from unilaterally altering procedures for taking vacations during the pendency of negotiations for a successor contract between the Hunterdon County Board of Social Services and Communications Workers of America, AFL-CIO.

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INTERLOCUTORY DECISION

On February 2, 1987, the Communications Workers of America, AFL-CIO (C.W.A.) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the Hunterdon County Board of Social Services (Board) violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4 et seq. (Act); specifically subsections (1) and (5).<sup>1/</sup>

On or about August 1986, C.W.A. and the Board have been involved in negotiations for a successor contract. No new contract was entered into when these contracts expired on December 31, 1986.

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<sup>1/</sup> 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; and (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."

On January 9, 1987, the Director of the Board issued a Memorandum unilaterally altering terms and conditions of employment with respect to vacation and other leave benefits. Specifically, requests for less than full day units would no longer be approved, the carry over of vacation days in excess of 1/3 of an employee's vacation entitlement was severely restricted and the Board's Director relegated to himself the right to "schedule an employee's unscheduled vacation leave."

Accompanying the charge was an Application for Interim Relief which asked that the Board show cause before the Commission why an interlocutory order should not be issued restraining the County from implementing these changes in vacation policy pending negotiations for a successor agreement. An Order to Show Cause was signed and both parties waived a hearing and relied on their filed papers.

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.

It is undisputed that the parties were engaged in negotiations for a successor agreement at the time of the expiration of the contract and the County admits that the Board Director did promulgate new vacation rules as alleged by the Association.

The law in this area is well settled. The Commission, as confirmed by the Courts, has held that the terms and conditions of employment which are in effect at the time a contract expires must be maintained until the parties have exhausted the Commission's dispute resolution mechanisms. See, Galloway Tp. Bd.Ed. v. Galloway Tp. Ed.Assn., 78 N.J. 25 (1978); Union Cty. Reg. H.S. Bd.Ed., P.E.R.C. No. 78-27, 4 NJPER 11 (¶4007 1977); Hudson Cty. Bd.Chosen Freeholders v. Hudson Cty. PBA Local No. 51, App. Div. Docket No. A-2444-77 (4/9/79), aff'g P.E.R.C. No. 78-48, 4 NJPER 87 (¶14041 1978); Rutgers, The State University v. Rutgers University College Teachers Assn., App. Div. Docket No. A-1572-79 (4/1/81) aff'g P.E.R.C. No. 80-66, 5 NJPER 539 (¶10278 1979); City of Vineland, I.R. No. 81-1, 7 NJPER 324 (¶12142 1981) interim order enforced and leave to appeal denied, App. Div. Docket No. AM-1037-80T3 (7/15/81); State of New Jersey, I.R. No. 82-2, 7 NJPER 532 (¶12235 1981); ewark Public Library, I.R. No. 84-9, 10 NJPER 321 (¶15154 1984); Belleville Bd.Ed., I.R. No. 87-5, 12 NJPER 692 (¶17262 1986).

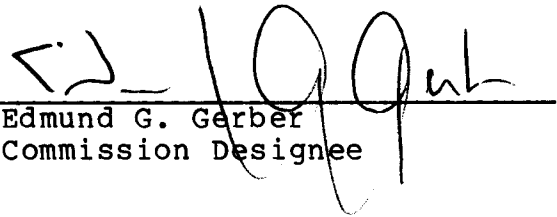
Here, the Board's unilateral alteration of the provisions of the terms and conditions of employment during the pendency of negotiations impermissibly chills those negotiations. See Galloway, supra.

Accordingly, the C.W.A. has a substantial likelihood of success in prevailing at a full plenary hearing in this matter and further the chilling effect placed upon the negotiations of the terms and conditions of employment will irreparably interfere with negotiations and finally in balancing the harms, restraining the County from implementing the changes in vacation policy have a minimal impact upon the Board.

Accordingly, I enter the following ORDER.

ORDER

The Hunterdon County Board of Social Services is hereby ORDERED to rescind the memorandum issued on January 9, 1987 by the Director of the Board of Social Services limiting vacation requests to full day units, limiting the carry over of vacation days and granting to the Director the right to schedule an employees unscheduled vacation leave. This is an interim order only subject to a final Commission hearing.

  
Edmund G. Gerber  
Commission Designee

DATED: March 3, 1987  
Trenton, New Jersey