

I.R. NO. 91-11

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF MIDDLESEX,

Respondent,

-and-

Docket No. CO-91-148

MIDDLESEX COUNTY CORRECTIONS OFFICERS  
PBA LOCAL 152,

Charging Party.

SYNOPSIS

A Commission Designee declines to restrain the County of Middlesex from eliminating weekend shifts. On December 3, 1990, PBA Local 152 filed a grievance alleging the County refused to safely staff new dormitories in the prison. The PBA alleged the prison warden stated if the grievance was not withdrawn, weekend shifts would be discontinued. The PBA did not withdraw the grievance and the County announced the elimination of the new shifts.

There was ample evidence that the County had to take cost saving measures and weekend shifts were very costly. The union failed to show it had a substantial likelihood of success on the facts. Bridgewater, 95 N.J. 235 (1984).

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Appearances:

For the Respondent  
John J. Hoagland, County Counsel  
(Robert C. Rafano, of counsel)

For the Charging Party  
Loccke & Correia, attorneys  
(Michael J. Rappa, of counsel)

INTERLOCUTORY DECISION

On December 12, 1990, the Middlesex County Corrections Officers, PBA Local 152 ("PBA") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission"). The PBA alleged that the County of Middlesex ("County") violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 ("Act"); specifically subsection 5.4(a)(1) through (a)(7).<sup>1/</sup> It was

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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. (2) Dominating or

Footnote Continued on Next Page

specifically alleged that the most recent collective negotiations agreement between the PBA and the County expired December 31, 1990. On or about December 3, 1990, the PBA filed a grievance alleging the County refused to safely staff new dormitories in the prisons. The dormitories contain approximately 126 inmates and are supervised by two corrections officers. It was alleged that Larry Cavanagh, PBA representative, was advised by Warden Rudolph Johnson that if the grievance was not withdrawn, the Warden would discontinue weekend shifts for correction officers. The PBA refused to withdraw the grievance and on December 6, 1990, Warden Johnson issued orders eliminating the weekend shift. It is alleged that the shift was eliminated in retaliation for the filing of the grievance.

The unfair practice charge was accompanied by a Request for an Order to Show Cause. An Order to Show Cause was executed and made returnable for January 3, 1991. The County filed an answer

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1/ Footnote Continued From Previous Page

interfering with the formation, existence or administration of any employee organization. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (7) Violating any of the rules and regulations established by the commission."

denying all the allegations contained in the unfair practice charge. A hearing was held and both sides submitted affidavits and other evidence and both sides argued orally.

For some five or six years, there was a schedule in effect at the County's prisons wherein corrections officers worked 16 hours Saturday and 16 hours Sunday for a total of 32 hours. Since the officers are paid time and one-half for all work in excess of eight hours a day, they were paid overtime at time and a half for eight hours both days. Accordingly, the corrections officers were paid for a 40 hour week for a weekend shift. These schedules are known as weekend schedules.

It is undisputed that the PBA filed a grievance concerning safety issues in a new corrections facility wherein two corrections officers were supervising some 126 inmates. Correction Officer Larry Cavanagh and Lieutenant James R. Tolentino signed affidavits concerning a conversation between Warden Johnson and Cavanagh. The affidavits state that the Warden told Cavanagh that "if the grievances were withdrawn, he could defend the weekend schedule." In the Certification of Warden Johnson, he states that the elimination of the special weekend schedule in retaliation of the grievances filed by the PBA "is without merit and ridiculous." Johnson never specifically denied in his Certification that he made the comments. Johnson's certification, as well as affidavits of other County officials, state that Johnson was instructed to reduce the entire work force by some 29 persons or alternatively to reduce

the prison budget by \$1,072,000.00. Johnson's certification, states that he was forced to take some type of action and since the weekend schedules were very expensive due to the amount of overtime, he, on December 6, 1990, issued a Memorandum notifying affected employees that the shifts would be eliminated. This was done to minimize the reduction of manning levels at the prison.

The contract between the parties provides at Article 18 "a one calendar week notice in writing will be supplied before shift assignments are altered, except in emergency situations."

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.<sup>2/</sup>

I do not believe that the Commission's standards for interim relief have been met. The PBA charges center on two theories: 1) the County, through Warden Johnson, discriminated

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<sup>2/</sup> 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).

against PBA members by the elimination of the weekend shift because it refused to withdraw the grievance in violation of subsection 5.4(a)(3) of the Act; and 2) the employer unilaterally altered the established terms and conditions of employment by the elimination of the weekend schedule in violation of subsection 5.4(a)(5) of the Act.

In Bridgewater Tp. v. Bridgewater Public Works Assn., 95 N.J. 235 (1984), the Supreme Court established the test for determining violations of subsection 5.4(a)(3). The Charging Party must first make a prima facie case that the employer discriminated against employees for the exercise of protected rights and then the employer has the burden of going forward to show the resultant activity would have taken place anyway regardless of the discriminatory action. Here, I believe that the County satisfied the second portion of this test. It is not clear that the County would not have taken this action if the PBA withdrew the grievance. There is ample evidence that the County had to take cost saving measures to preserve manning levels in the prisons and it is not unreasonable that the County would eliminate a shift where 50% of the hours worked were paid at an overtime rate.

Similarly, I do not believe that the charging party demonstrated that it would prevail on its subsection (a)(5) allegation. The contract arguably may give the employer the right to eliminate weekend shifts. I do not believe that the PBA has shown it has a substantial likelihood of success in prevailing at a

plenary hearing on this issue. A contractual provision is controlling over a past practice where the mutual intent of the parties can be discerned. New Jersey Sports and Exposition Authority, 13 NJPER 711 (¶18264 1987).

Accordingly, the Application for Interim Relief is denied and this matter shall go forward to a full plenary hearing.

  
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Edmund G. Gerber  
Commission Designee

DATED: January 9, 1991  
Trenton, New Jersey