

I.R. NO. 86-3

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF CLARK,

Respondent,

-and-

DOCKET NO. CO-86-60

UNION COUNCIL NO. 8, NEW JERSEY
CIVIL SERVICE ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee declines to issue an interim restraint in a matter brought by Union Council No. 8, New Jersey Civil Service Association against the Township of Clark before the Public Employment Relations Commission. The facts in the instant matter reveal that none of the alleged unfair practices were occurring at the time that this matter was heard by the designee.

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Appearances:

For the Respondent
Fink & Rosner, Esqs.
(Stanley Fink of Counsel)

For the Charging Party
Fox & Fox, Esqs.
(Frederic M. Knapp of Counsel)

INTERLOCUTORY DECISION

On August 29, 1985, Union Council #8 of the New Jersey Civil Service Association (Council 8) filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") against the Township of Clark ("Township") alleging a violation of §§5.4(a)(1), (2), (3), (4), (5) and (7) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

("Act").^{1/} Council 8 is the certified representative for white-collar employees employed by the Township and these same parties are signatories to a collective negotiations agreement which is due to expire on December 31, 1985.^{2/}

It was alleged that, negotiations for a successor agreement commenced on March 1, 1985. Just before these negotiations began, the Township unilaterally and without negotiations, altered a bargaining unit member's hours of work in a manner contrary to the provisions of the collective bargaining agreement. However, an understanding was entered into between Council 8 and the Township.

^{1/} 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 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; (7) Violating any of the rules and regulations established by the commission."

^{2/} Article 27 of the Agreement between the parties provides an expiration date of December 31, 1984. However, the cover face of the Agreement and the charge indicate the contract is to run through 1985. In addition, the Attorneys of record have indicated that this contract is to expire at the end of 1985.

The understanding required the employee to report to work at 8:30 a.m.. The contract provides that the normal working hours in the unit are from 9 a.m. to 4 p.m. until April 30, 1985. However, it is alleged that the Township did not change this employees' hours back to the normal contract hours on May 1, 1985.

It was further alleged that the negotiations for a successor agreement continued until the filing of a Notice of Impasse in August of 1985. During the course of said negotiations, the Township required a second bargaining unit member to work hours in excess of those set forth in the collective bargaining agreement without obtaining approval from the Association. Specifically, the Township required this second employee to work from 9 a.m. to 5 p.m. one day each week.

It was alleged that these actions have caused and will continue to cause irreparable harm to the Charging Party and the unilateral modification of working hours undermines the foundation of the collective negotiations representatives ability to negotiate for its unit members.

The Charging Party, therefore, requested Interim Relief in the form of an order directing the Township to cease and desist from unilaterally requiring employees to work hours contrary to the terms of the existing collective negotiations agreement. An Order to Show Cause was executed and after one adjournment was made returnable on

September 6, 1985. On that day I conducted a Hearing pursuant to N.J.A.C. 19:14-9.4 the parties presented oral argument and limited oral testimony was taken with my consent.

The grounds for the issuance of a restraint, pursuant to the Commission's rules are set forth in N.J.A.C. 19:14-9.2(c), the Charging Party must demonstrate a substantial likelihood of success on the merits of the entire charge and immediate and irreparable harm will ensue if relief is not ordered.

Both conditions must be met before Interim Relief will be granted. Although I do not here decide whether the Charging Party might ultimately prevail on the merits of its unfair practice charge before the full Commission, I am not satisfied that the requisite heavy burden for the issuance of Interim Relief has been met.

The contract provision, Article V, "Hours of Work" Section 1 states:

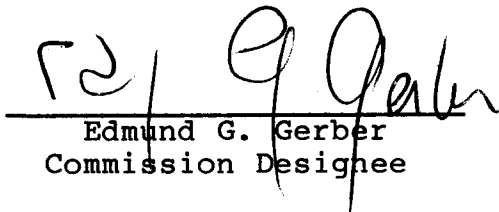
...established hours of work for all employees, except as otherwise hereinafter expressly provided, shall be 35 hours in a week of five (5) days, beginning on Monday and terminating on Friday. Each day's work, except if otherwise requested by the department head and agreed to by the Association, shall begin at 9:00 a.m. and terminate at 4:00 p.m.

Hours of work involves a mandatorily negotiable term and condition of employment. However, an Employer's managerial obligation to insure that it fulfills its governmental mission allows an Employer to alter those hours on an emergency basis. See

Galloway Tp. Bd. of Ed., 78 N.J. 1 (1978) and State of New Jersey Department of Transportation and C.W.A., AFL-CIO and IFPTE, Local 195, AFL-CIO, I.R. No. 84-6 (1983).

The facts here reveal that at the present time all unit members are working hours in compliance with the provisions of the contract. Since there currently is no alteration of the terms of the contract no harm is being committed at present and hence, there is no need for an extraordinary remedy here.

In denying the instant motion, I am doing so without prejudice. Therefore, if during the course of the ongoing negotiations the employees are ordered to work hours outside the normal contract hours in violation of the contract I will entertain a new request for Interim Relief.


Edmund G. Gerber
Commission Designee

DATED: October 3, 1985
Trenton, New Jersey