

I.R. NO. 91-2

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of
CITY OF WILDWOOD,

Respondent,

-and-

Docket No. CO-90-359

CAPE LOCAL 1983,

Charging Party

SYNOPSIS

CAPE Local 1983 sought interim relief restraining the City of Wildwood from assigning one mechanic from working every weekend from June 1 to September 1. The Commission Designee declines the application. Local 1983 claims the assignment was motivated by a desire to discourage protected activity. There is a substantial question of fact concerning the City's motivation. Evidence was submitted that in February 1990 the City decided not to purchase new police cars as was their normal practice and the City anticipated greater than normal maintenance requirements of police cars during the busy summer season and accordingly created the weekend assignment.

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Appearances:

For the Respondent
DeMaria, Ellis & Hunt, attorneys
(Richard M. Salsberg, of counsel)

For the Charging Party
Tomar, Simonoff, Adourian & O'Brien, attorneys
(Mary L. Crangle, of counsel)

INTERLOCUTORY DECISION

On June 12, 1990, CAPE, Local 1983 ("CAPE") filed an unfair practice charge with the Public Employment Relations Commission ("Commission") alleging that the City of Wildwood ("City") violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (3) and (5)^{1/} when, on

^{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. (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.

Footnote Continued on Next Page

or about May 25, 1990, the City announced and then unilaterally implemented a change in the working schedule for mechanics employed by the City of Wildwood and represented by CAPE which altered the longstanding practice of working Monday through Friday and required one mechanic to work every weekend from June 1 through September 1, without negotiating the change or the effects of the change with CAPE despite its repeated requests. It was alleged that this unilateral action was unlawfully motivated and taken in retaliation for the exercise of protected rights by Mechanic Larry Cellucci, who is Vice President of CAPE and chief shop steward.

The unfair practice charge was accompanied by an Application to Show Cause. The Order to Show Cause was executed and made returnable for June 19, 1990.^{2/}

The City argued that the reason for the change in shifts was not done in retaliation of protected rights but was rather a managerial decision of the City. Prior to this year, the City purchased new police cars every three years. According to the affidavits submitted by the City, the City officially decided in February 1990 not to purchase new cars but rather run the existing

1/ Footnote Continued From Previous Page

(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.

2/ The matter was adjourned and was ultimately heard on July 3, 1990.

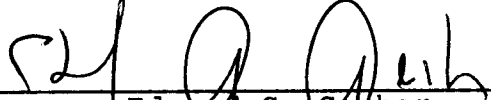
police cars for a fourth year. As a consequence, it was found that it was necessary to assign mechanics to weekend duty in the summer to insure that any cars which broke down on the weekend during this busy season could be prepared and back on the street as quickly as possible.

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.^{3/}

Here, the Union has not met its burden. There is a substantial question of fact concerning the City's motivation for the alteration of facts. If the shift changes were made to ensure proper police coverage as stated in the City's affidavit, then the shift changes would be a managerial prerogative and thus non-negotiable. See Mt. Laurel Township, P.E.R.C. No. 86-72, 12 NJPER 23 (¶17008 1985), aff'd 215 N.J. Super. 108 (App. Div. 1987).

^{3/} 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).

Accordingly, the Application for Interim Relief is denied.
A plenary hearing will be held in this matter.



Edmund G. Gerber
Commission Designee

DATED: July 6, 1990
Trenton, New Jersey