

I.R. NO. 91-10

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF MOUNT OLIVE,

Respondent,

-and-

Docket No. CO-91-111

MOUNT OLIVE PUBLIC EMPLOYEE'S ASSOCIATION,

Charging Party.

SYNOPSIS

In an action brought by the Mount Olive Public Employees Association, a Commission Designee declines to restrain the Township of Mt. Olive from assigning members of the road division to a rotating night shift without negotiating this change. The Township claimed the imposition of the night shift was intended to improve response time of the road crew to hazardous ice and snow conditions during the night time hours. The Association failed to show it had a substantial likelihood of prevailing before the Commission.

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Appearances:

For the Respondent
Courter, Kobert, Laufer, Purcell & Cohen, attorneys
(Fredric M. Knapp, of counsel)

For the Charging Party
Schwartz, Pisano, Simon & Edelstein, attorneys
(Nathanya G. Simon, of counsel)

INTERLOCUTORY DECISION

On November 8, 1990, the Mt. Olive Public Employees Association ("Association") filed an unfair practice charge with the Public Employment Relations Commission ("Commission") against Mt. Olive Township ("Township") alleging that the Township violated subsections 5.4(a)(1), (3) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act")^{1/} by unilaterally changing the terms and conditions of

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the

employment which had been negotiated pursuant to the contract. Specifically, by assigning members of the road division to a rotating night shift assignment without negotiating this charge.

The charge was accompanied by a request for interim relief and an Order to Show Cause. The Order was made returnable for December 6, 1990.

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.^{2/}

1/ Footnote Continued From Previous Page

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. (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/ 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 Township does not dispute that it unilaterally imposed a rotating night shift. It claims, however, that the imposition of a night shift was designed to improve response time of the road crew to hazardous ice and snow conditions that develop at night on the Township's roadways. The Association argues that the Township initially stated that the assignments were being made in order to save money on overtime and it was only after the Association filed this charge that the Township said that this was a safety measure. There is a factual dispute in the record here as to what was told to the employees at the meeting where this schedule was first announced. Kevin Miele, Sr. states by way of affidavit, that no mention was made of safety considerations. Greg Hill, the Business Administrator, states by way of affidavit that he stated at that meeting the Township's primary concern was response time for snow and ice removal. He acknowledged that other representatives of the Township stated that there would be cost savings.

Miele also testified that working the night shift was a particular hardship for him. His wife also worked a night shift and he had to find someone to care for his young children.

It is undisputed that the Township did not seek to negotiate compensation for the imposition of the new shift. The contract language is silent as to this specific issue.

Although other employees in this same union, particularly police dispatchers, do work regular rotating shifts, the evidence is clear that the employees in question never worked rotating shifts.

Accordingly, the Association has a substantial likelihood of success on the merits in showing that the employer committed an unfair practice when it failed to negotiate compensation for this change in shift assignments. See Gloucester Cty., P.E.R.C. No. 89-70, 15 NJPER 69 (¶20026 1988). In Mt. Laurel Tp., 215 N.J. 108 (App. Div. 1987), the Appellate Division affirmed P.E.R.C. No. 86-72, 12 NJPER 23 (¶17008 1985) where a governmental interest is at stake the alteration of shift schedules is non-negotiable. However, where a shift schedule is changed for economic reasons, such a change must be negotiated before implementation. Here, the motivation of the Township is a central issue in this matter. The Association has not shown it has a substantial likelihood that it will prevail before the Commission in demonstrating that the shift change was not motivated for the well being of the residents of the Township.

Accordingly, the Application to rescind the order is denied. This matter will go forward to a full plenary hearing and a final decision by the Commission. It is expected that the Township will negotiate with the Association as to this change in shift assignments.



Edmund G. Gerber
Commission Designee

DATED: December 14, 1990
Trenton, New Jersey