I.R. No. 2007-3

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF MORRIS,

Respondent,

-and- Docket No. CO-2007-063

DISTRICT 1199J, NUHHCE, AFSCME
AFL-CIO,

Charging Party.

SYNOPSIS

A Commission Designee denies an application for interim relief seeking to restrain the County of Morris from changing the weekend work schedule of certain employees. The parties relied upon language in their collective agreement to support their respective positions. That language must be interpreted through the parties contract arbitration provision. Thus, the Commission Designee could not conclude that the charging party had a substantial likelihood of success on the merits of the case.

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Appearances:

For the Respondent, Carmagnola & Ritardi, LLC (Steven F. Ritardi, of counsel)

For the Charging Party, Oxfeld Cohen, P.C. (Sasha A. Wolf, of counsel)

INTERLOCUTORY DECISION

On August 29, 2006, District 1199J, NUHHCE, AFSCME, AFL-CIO (District 1199J), filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the County of Morris (County) violated the New Jersey Employer-Employee Relations Act (Act), specifically N.J.S.A. 34:13A-5.4a(5).[1/] The charge was accompanied by an application for

1/ This provision prohibits public employers, their representatives or agents from: "(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."

interim relief seeking to require the County to return to an alternating weekend work schedule for certain employees.

The charge alleges that on or about September 10, 2006, the County intended to (and did) unilaterally change the weekend work schedule of certain employees in the positions of Institutional Attendant and Senior Institutional Attendant, also known as Certified Nursing Assistants's (CNA's), from every other weekend off to working two out of three weekends resulting in only having every third weekend off. District 1199J relied on the parties practice and specific terms of their collective agreement to support its charge and argued that many employees would be irreparably harmed by the change. The County argued it negotiated over the change and it relied on the terms of the parties collective agreement as a defense to its actions.

An Order to Respond was signed on September 7, 2006 resulting in the County's September 22, 2006 response to the application.

The following facts appear:

The County and 1199J are parties to a collective negotiations agreement effective from January 1, 2005 through December 31, 2008. The pertinent sections of the Work Hours and Work Week provision, Article VI provides as follows:

> 1. The current practice and policy regarding work week, hours of work and overtime will remain in effect except as otherwise specifically set forth herein.

Effective upon the execution of this collective bargaining unit agreement, all Laundry Department employees shall work a seven day rotating schedule. This shall include working Saturday, Sunday and official Holidays that occur on weekends as part of their base schedule. Employees who work in patient clothing shall continue to work their current schedule.

3. Weekend duty (Nursing Dept. Aides)

There is a list of 60 Institutional Attendants (aides) with the least seniority. These aides will be required to work two (2) out of three weekends. All other aides will be scheduled to work no more than every other weekend. Said list shall be maintained at 60 and any new aide hired shall cause the most senior aide to be scheduled to work every other weekend.

Any aide now working two out of three weekends who by seniority would be removed from the list, who elects to work two out of three weekends, shall be counted as part of the list of 60.

Notwithstanding the provisions of this section, the parties have agreed to temporarily suspend use of the "list of sixty (60)," as described above, effective January 1, 1996 per the continuation of a sidebar agreement.

The suspension of the "list of sixty (60)" aides required to work two (2) out of three weekends will be suspended on an experimental basis. The continuation of the "every other weekend program," as described in the sidebar agreement, shall be subject to the mutual consent of the Union and Board. The procedure for the successful implementation of the program by the parties is described in the sidebar agreement executed and dated March 15, 1995, which shall be continued for the term of the Agreement (2002-2004) and is appended herein.

The side bar agreement referred to in Section Three above provides as follows:

> The parties acknowledge that Morris View must provide quality resident care seven days a week. Therefore, providing appropriate staffing to care for the residents is essential.
>
> The parties have agreed to implement on an experimental basis an every other weekend duty for the employees in the Institutional Attendant job classification. The parties have set forth the following procedure for the successful implementation of the program:
>
> 1. Employees who have voluntarily signed up and are approved for overtime on the weekends will be required to work the approved overtime. Failure to work the approved overtime shall be counted as an absence from work and corrective action for such absences will be taken as necessary.
>
> 2. The needs of the service will be considered when granting benefit time on the weekend.
>
> 3. Institutional Attendants commencing work in 1989 will be scheduled to work every other weekend effective September 24, 1995.
>
> 4. All other Institutional Attendants will be scheduled to work every other weekend effective January 1, 1996.
>
> Continuation of this Side Bar Agreement beyond the 1994-1996 Agreement shall be subject to the mutual consent of 1199J and Board of Social Services.

At meetings in April and early May 2006, the County discussed issues regarding the CNA's schedules. By letter of May 19, 2006 from the County to District 1199J, the County made known

its position it could no longer use the every other weekend off system for attendants and expressed its need to use the every third weekend off schedule for those employees. It offered to meet and negotiate. The pertinent part of that letter provides:

> Currently employees in both titles, Institutional Attendant and Senior Institutional Attendant work every other weekend via a Side Bar Agreement entered into in 1995. Pursuant to the terms and conditions of that Side Bar Agreement, its continuation is subject to mutual consent by 1199J and the Board of Social Services the employer at the time, since replaced by the Board of Chosen Freeholders. After a thorough review of employee work schedules and upon the recommendation of consultants, we can no longer afford to schedule the Institutional Attendants and Senior Institutional Attendants to work every other weekend. Accordingly, the County is proposing a change in work schedules that will result in every third weekend off for the Institutional Attendants and Senior Institutional Attendants.

The parties met and discussed the issue on June 23, 2006, and the County sent follow-up correspondence, but no agreement was reached on the issue. Consequently, by letter of July 24, 2006, the County notified District 1199J that effective September 10, 2006 all Attendants would have every third weekend off.

ANALYSIS

To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not

granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975).

District 1199J alleges a contract violation, it claims the County has not responded to its proposals on the issue and it presents several examples of what it believes to be irreparable harm. The County argues that the interim relief standards have not been met, it claims it has negotiated over the issues, that it is acting consistent with the collective agreement, and it disputes District 1199J claims that it has not responded to its proposals on the issue.

The facts presented do not support the finding of a substantial likelihood of success. Both the terms of the side-bar agreement on the issue and Article VI Section 3 of the parties agreement provide that the every other weekend off schedule was subject to mutual consent, and the County's letter of May 19, 2006, appears to have withdrawn its consent to that schedule. Since the County has raised the side-bar and contract as a defense, and since those documents may give the County the right to take the action complained of without further

negotiations, only an arbitrator's interpretation of the relevant documents as provided by the parties grievance procedure in Article XVII (17) can determine the likelihood of success for either party. Consequently, I cannot conclude that District 1199J has a "substantial" likelihood of success on the merits of its application. Since the first interim relief standard has not been met, it is unnecessary for me to consider the irreparable harm claims.

Accordingly, based upon the above findings and analysis, I issue the following:

ORDER

The application for interim relief is denied.[2/]

Arnold H. Zudick
Commission Designee

DATED: October 19, 2006
Trenton, New Jersey

2/ This case will be return to normal unfair practice processing.