

I.R. NO. 87-15

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF PASSAIC,

Respondent,

-and-

Docket Nos. CO-87-161
CO-87-162
CO-87-163
CO-87-164

LOCAL 153, OPEIU and
LOCAL 32, OPEIU,

Charging Parties.

SYNOPSIS

A Commission Designee restrains the County of Passaic from unilaterally increasing the hours of work of its employees after the expiration of a collective negotiations contract. The County announced that it was unable to ratify any new contracts for 1987 until March and these units were without contracts beginning January 1.

Nevertheless, the County unilaterally announced that effective January 1, the hours of work of all its employees would be increased.

The Commission and the Courts have long held that, where an employer makes a unilateral change in a term and condition of employment during the course of negotiations and before the exhaustion of the dispute resolution mechanisms of the Commission, the employer's action is violative of the Act and the harm done to the negotiations process is irreparable. The issuance of a restraining order under these facts is appropriate. Galloway Twp. Bd. of Ed. v. Galloway Twp. Ed. Assoc., 78 N.J. 25, 48-50 (1978); State of New Jersey, I.R. No. 82-2, 7 NJPER 532 (1981).

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Appearances:

For the Respondent
Michael H. Glovin, Esq.

For the Charging Parties
Schneider, Cohen, Solomon, Leder & Montalbano
(J. Sheldon Cohen, of counsel)

INTERLOCUTORY DECISION

On December 26, 1986, Locals 153 and 32 of the OPEIU filed four unfair practice charges against the County of Passaic. The charges all allege that four contracts between the County and Locals 153 and 32 were due to expire on December 31, 1986.

It was specifically alleged that on December 17, 1986, the County unilaterally and without negotiations announced that the work week of the employees in these units would be increased to a minimum of 35 hours per week. It was also alleged that, in the clerical personnel units of the Superintendent of Schools and of the

Administration Building which are both represented by Local 153, the parties had reached tentative agreements for successor agreements. However, no agreement was signed.

The tentative agreements make no reference to the change of work week for the employees in those units. It was alleged that the County's conduct was violative of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act). Specifically, §5.4(1) and (5)^{1/}

The unfair practice charges were accompanied by an Application for Interim Relief and Order to Show Cause. Further, the OPEIU requested a Temporary Restraining Order. On December 31, 1986, I heard arguments on the request for temporary restraints and an Order was signed restraining the County from increasing work hours of the affected employees pending the return date for a hearing on the motion which by mutual agreement was set for January 15, 1987. On that date, both parties had an opportunity to present briefs, submit affidavits and argue orally.

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied

^{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; and (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."

by the Courts when confronted with similar applications. The moving party must show it has a substantial likelihood of success on the legal and factual allegations in the final Commission decision and it must show it will be irreparably harmed if the requested relief is not granted. Both of these standards must be satisfied before the requested relief will be granted. Furthermore, the relative hardship to the parties must be evaluated before interim relief may be granted.


The facts in this matter are not in dispute. The County and the Union were engaged in negotiations for a successor contract and a tentative agreement had been reached for at least some of the units. The County announced that it could not determine its financial situation for the following year and accordingly requested that the tentative contracts not be signed until March 19, 1987, when it would be able to evaluate its financial and budgetary status. The Unions acquiesced to the County's request. However, on December 17, 1986 the County, without negotiations, announced that it was unilaterally increasing the hours of County employees to a minimum 35 hours per week.

When the OPEIU contacted the County concerning this announcement, the County stated that it was willing to negotiate salaries for this work week increase and proposals were submitted by the Union for a salary adjustment for the increase. The County did submit a counter proposal which the Union found unacceptable. The Union demanded that in order to reach an agreement the County reopen

negotiations for the 1987 contract. The County refused to negotiate for the 1987 agreement and stated that it would only negotiate the hour increase.

The Commission and the Courts have long held that, where an employer makes a unilateral change in a term and condition of employment during the course of negotiations and before the exhaustion of the dispute resolution mechanisms of the Commission, the employer's action is violative of the Act and the harm done to the negotiations process is irreparable. The issuance of a restraining order under these facts is appropriate. Galloway Twp. Bd. of Ed. v. Galloway Twp. Ed. Assoc., 78 N.J. 25, 48-50 (1978); State of New Jersey, I.R. No. 82-2, 7 NJPER 532 (1981).

Accordingly, the County is restrained from increasing hours for its employees in the units represented by Local 153 and 32 of the OPEIU pending a full plenary hearing before the Commission.



Edmund G. Gerber
Commission Designee

DATED: January 30, 1987
Trenton, New Jersey