

I.R. 87-25

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of  
COUNTY OF ESSEX,

Respondent,

-and-

Docket No. CO-87-254

PBA LOCAL 157,

Charging Party.

SYNOPSIS

A Commission Designee declines to restrain the County of Essex from creating a new work schedule for correction officers. The County established, for the purposes of the hearing, that the shift changes were imposed to insure proper manning levels and proper supervision. Since the shift change was based upon a managerial decision, it was non-negotiable.

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Appearances:

For the Respondent  
Apruzzese, McDermott, Mastro & Murphy  
(Robert T. Clarke, of counsel)

For the Charging Party  
Loccke & Correia, Esqs.  
(Leon B. Savetsky, of counsel)

INTERLOCUTORY DECISION

On March 5, 1987, P.B.A. Local 157 filed an unfair practice charge with the Public Employment Relations Commission. The charge was accompanied by an Application for Interim Relief. An Order to Show Cause was signed and made returnable for March 12, 1987 and by consent of the parties the return date was adjourned and the matter was held on March 31, 1987.

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied 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 P.B.A. alleges that on February 4, 1987 the Jail Administrator, without prior negotiations or discussion, issued an order creating a new work schedule for correction officers which, in effect, reduced the number of shifts from three to two. The eliminated shift was a two day a week shift of 16 hours per day on Saturday and Sunday. It is claimed that this action was taken in an effort to chill the negotiations which were leading up to interest arbitration between the parties. The Order to Show Cause that was executed required the charging party to file an original and two copies of its brief three days prior to the return date of the Order. However, no brief was ever filed.

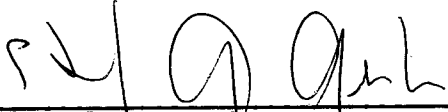
The Respondent County, by way of affidavits and briefs argues that the shift change was necessary to insure proper manning levels and proper supervision and to avoid problems arising out of alleged inmate abuse during the week-end shift. This shift change was non-negotiable since it was based on a managerial prerogative. It is true that uniformed employees work schedules are mandatorily negotiable unless the public employers need to control the work schedule outweighs the employees' interest in negotiating the work

schedule. "The critical issue is whether a negotiated agreement will significantly interfere with the managerial prerogative to determine governmental policy. If so, then the government interest will be dominant over that of the employees and the issue will not be negotiable. This is a fact intensive determination which must be fine-tuned to the details of each case." The Association failed to introduce any arguments or factual evidence to counter the Board's proffered reason for the elimination of the shift. Mt. Laurel Township and Mt. Laurel Township Police Officers Association, 12 NJPER 23 (¶17008 1985), aff'd. App. Div. Docket No. A-2408-85T6 (Feb. 11, 1987). Accordingly, its application for Interim Relief is denied.

There were two additional charges alleged to the unfair practice by the P.B.A. One involved the reassignment of the president of the P.B.A. For the last 13 years the president of the P.B.A. was permitted to wear civilian clothes when carrying out his work assignment and the current president, since his election three years ago, has been permitted to perform his duties in civilian clothes. The president, however, was ordered a new assignment which required him to wear a uniform on duty. It was claimed that this assignment was motivated by anti union animus and was intended to chill interest arbitration. The County, by way of affidavits, maintains that the P.B.A. president did not properly carry out his formal job duties which resulted in a serious disturbance at the jail and the transfer was in response to the P.B.A. president's job

performance and not his P.B.A. activity. As to this allegation there is a substantial conflict of fact and it cannot be said that the P.B.A. has a substantial likelihood of success before the Commission.

The final allegation was that the P.B.A. was ordered to move out of its offices on location at the jail. In fact, the P.B.A. was permitted to move into the room which housed its offices three years ago. The County maintains that the move was motivated by a need for larger classroom space and it had a managerial prerogative to provide sufficient classroom space. Since the new office space was the same as that which formerly housed the P.B.A., and there is no allegation of a repudiation of any contractual agreement, I do not believe that the P.B.A. has shown it has a substantial likelihood of demonstrating a unilateral change in terms and conditions of employment before the Commission. Accordingly, the application for interim relief is denied.

  
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Edmund G. Gerber  
Commission Designee

DATED: April 14, 1987  
Trenton, New Jersey