

D.U.P. NO. 97-6

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

NEW JERSEY STATE JUDICIARY

Respondent,

-and-

Docket No. CO-95-289

PROBATION ASSOCIATION OF NEW JERSEY,
MONMOUTH LOCAL #113,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a charge alleging the State Judiciary refused to negotiate over its decision to require employees to attend staff training on a Saturday. The Director finds that the union waived its right to demand negotiations over workweek changes by its "letter of agreement" with the Judiciary. That agreement clearly gives the Judiciary the right to modify the employees' workweek upon proper notice.

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Appearances:

For the Respondent
Mark A. Rosenbaum, Employee Relations Administrator

For the Charging Party
John Warms, Consultant

REFUSAL TO ISSUE COMPLAINT

On February 23, 1995, Probation Association of New Jersey^{1/} filed an unfair practice charge with the Public Employment Relations Commission against the New Jersey Judiciary, Monmouth Vicinage, alleging that the Judiciary violated subsections 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act

^{1/} The charge was initially filed by Monmouth Local 113, PANJ, as the majority representative of Monmouth County probation employees. However, in July 1995, we certified the State-wide PANJ organization as the exclusive representative of all probation officers in a State-wide unit. On March 16, 1996, the State PANJ assumed the processing of this charge.

N.J.S.A. 34:13A-1 et seq.^{2/} PANJ alleges that the Judiciary refused to negotiate over its decision to require employees to work on Saturday, March 25, 1995. The Judiciary admits that it required employees to work on a Saturday, but denies that it had an obligation to negotiate over that decision.

Based upon the allegations set forth in the charge, I find that the charge does not meet the Commission's Complaint issuance standard and must be dismissed.

On January 30, 1995, the Court announced mandatory staff training to be conducted on Saturday, March 25, 1995. On February 6, PANJ made a written demand to bargain over the requirement that employees work on a Saturday, which PANJ characterized as a "condition of employment." The Judiciary declined to negotiate with PANJ over the issue.

* * *

PANJ alleges that the Judiciary violated its negotiations obligation under section 5.3 of the Act. That section provides:

Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established.

^{2/} 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. (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."

To prove a violation of this section a charging party must show that a working condition has been instituted or changed without negotiations. Hunterdon Cty. Freeholder Bd. and CWA, 116 N.J. 322 (1989); Red Bank Reg. Ed. Ass'n v. Red Bank Reg. H.S. Bd. of Ed., 78 N.J. 122, 140 (1978); Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed Ass'n, 78 N.J. 25, 52 (1978). An employer may defeat this claim if it establishes a clear and unequivocal waiver of the majority representative's statutory right to negotiate. Passaic Cty Reg. H.S. Dist. #1 Bd. of Ed., P.E.R.C. No. 91-11, 16 NJPER 446 (¶21192 1990). Here, there is such a waiver.

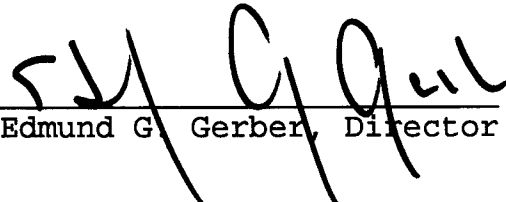
In implementing the Judiciary Unification Act to merge bargaining units from each county into State-wide units, the Judiciary and PANJ, as well as other labor organizations representing Judiciary employees, negotiated and signed a "Letter of Agreement" in December, 1994, setting forth the parameters of negotiability for issues affecting Judiciary employees. That Agreement provides,

Current hours of work, existing flex-time arrangements, and existing work schedules shall continue unless the Judiciary determines that a change in the hours of work, work schedules or flex-time arrangement will be implemented; in which case, no less than thirty (30) days written notice shall be provided to the majority representative prior to such implementation. Upon request of the majority representative to discuss this issue, representatives of the Judiciary will meet with the majority representative to discuss the proposed change.

The language of this agreement clearly gives the employer the right to modify the employees' workweek, with appropriate notice

to the union. By this language, PANJ has waived its right to demand negotiations over changes in the workweek. Accordingly, I find that the charge does not allege a violation of the Act and I refuse to issue a complaint. N.J.A.C. 19:14-1.5 and 2.1. The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: July 19, 1996
Trenton, New Jersey