

I.R. NO. 89-4

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,

Respondent,

-and-

Docket No. CO-89-72

JERSEY CITY POBA

Charging Party.

SYNOPSIS

The Commission Designee declines to restrain the City of Jersey City from instituting a new shift schedule. The City alleges that the shift schedule was based upon the City's operational needs and the Commission Designee could not predict whether the Commission will find the City had an obligation to negotiate the new shift schedules before their implementation.

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Appearances:

For the Respondent
Martin R. Pachman, Esq.

For the Charging Party
Schneider, Cohen, Solomon, Leder & Montalbano, Esqs.
(David S. Solomon, of counsel)

INTERLOCUTORY DECISION

On September 8, 1988, the Jersey City POBA ("POBA") filed an unfair practice charge and an application for temporary restraints and interim relief against the City of Jersey City ("City") with the Public Employment Relations Commission ("Commission"). The charge alleges that the City violated subsections 5.4 (a)(1) and (5) of the New Jersey Employer-Employee

Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act")^{1/} when on September 7, 1988 the City announced that it would unilaterally change, without negotiations, the work schedules of employees who are working in line command, administrative or support capacities as stated in General Order 22-88. Such officer would no longer work a 5-2, 5-3 schedule but rather would work a 5-2, 5-2, 4-3 schedule.

I conducted a hearing on September 8, 1988 on the application for temporary restraints, having been delegated such authority by the Commission. The City made an appearance in opposition to the hearing on the temporary restraints. A temporary restraint was entered and a return date was set for September 15, 1988 for a hearing on the application for a restraint pending a final Commission decision.

On the 15th, I conducted a hearing and the parties had an opportunity to present evidence, argue orally and submit briefs.

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 parties must demonstrate that they have a substantial likelihood of

^{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."

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/}

In March 1988, the City altered the schedules of the officers in question, during the course of negotiations for a successor contract, by changing their shift schedules from five-days on two-days off, four-days on three-days off (5-2, 4-3) to five-days on two-days off, five-days on three-days off (5-2, 5-3). The POBA filed an application for interim relief at that time claiming the shift change was a repudiation of the contract. See City of Jersey City, I.R. 88-14, 14 NJPER 267 (¶19100 1988). The POBA's application was denied since the contract between the parties expressly provided for a fifteen section schedule (that is 5-2, 5-3 shift). The City did not repudiate the terms of the collective negotiation contract.

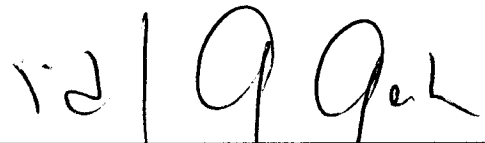
Under the 5-2, 5-3 shift schedule instituted in March, the days off for administrative patrolmen are not limited to the weekends but rather change from week-to-week. Under the old 5-2, 4-3 schedule, the administrative police never worked on weekends. It is the City's position that it is highly inefficient for the administrative police to work on the weekends. These officers must

^{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).

deal with other governmental bodies as well as the City's own civilian administrative personnel on a regular basis. These other offices are closed weekends. Moreover, for certain administrative police assignments, such as in the Courts and in the fiscal office, replacement officers would need special training. The Chief and other high-level police officers do not work weekends while their administrative staff work on a 5-2, 5-3 shift. Accordingly, to satisfy its operational needs, the City issued an Order instituting a new 5-2, 5-2, 4-3 shift schedule.

In Mt. Laurel Tp., P.E.R.C. No. 86-72, 12 NJPER 23 (¶17008 1985), aff'd 215 N.J. Super. 108 (App. Div. 1987), the Appellate Division made clear that an employer does not have an unfettered right to alter police schedules. On the basis of the evidence introduced by the City, I cannot confidently predict whether the Commission will find that the City had an obligation to negotiate the shift schedules before their implementation. There is a lack of caselaw following Mt. Laurel to offer sufficient guidance here. One cannot say that the POBA has a substantial likelihood of prevailing on the law in this matter.

Accordingly, the temporary restraints against the City are dissolved and the POBA's request for an interim restraint pending a full Commission decision is denied.



Edmund G. Gerber
Commission Designee

DATED: September 20, 1988
Trenton, New Jersey