

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY
(DEPARTMENT OF HUMAN SERVICES AND
DEPARTMENT OF MILITARY AND VETERANS
AFFAIRS),

Respondent,

-and-

Docket No. CO-96-193

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
COUNCIL 1,

Charging Party.

SYNOPSIS

The American Federation of State, County and Municipal Employees, Council 1 appealed a decision of the Director of Unfair Practices deferring to binding arbitration an unfair practice charge it filed against the State of New Jersey (Department of Human Services and Department of Military and Veterans Affairs). The Public Employment Relations Commission notes that a deferral to arbitration is not a refusal to issue a Complaint. Because a deferral is interlocutory, it cannot be appealed without obtaining special permission to appeal. The Commission treats AFSCME's request as one for special permission to appeal and determines that deferral was appropriate under established case law.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

P.E.R.C. NO. 96-57

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COUNTY AND MUNICIPAL EMPLOYEES,
COUNCIL 1,

Charging Party.

Appearances:

For the Respondent, Deborah T. Poritz, Attorney General
(Mary L. Cupo-Cruz, Senior Deputy Attorney General)

For the Charging Party, Szaferman, Lakind, Blumstein,
Watter & Blader, attorneys (Sidney H. Lehmann, of counsel)

DECISION AND ORDER

On February 13, 1996, the American Federation of State,
County and Municipal Employees, Council 1 appealed that portion of
I.R. No. 96-13, 22 NJPER ____ (¶____ 1996), that it believes might
constitute a refusal to issue a Complaint. In that decision,
Commission designee Edmund G. Gerber denied an application for
interim relief. Acting in his capacity as Director of Unfair
Practices, he then wrote:

I am therefore deferring this matter for 90 days
with the expectation that the parties will pursue

an expedited arbitration procedure to resolve these contractual disputes as rapidly as possible. The Commission shall retain jurisdiction of this matter during that period.

On February 20, 1996, the employer filed a response. It does not understand I.R. No. 96-13 to encompass a final decision by the Director refusing to issue a Complaint. It seeks clarification and an extension of time to file a response if, in fact, an appeal is accepted.

A deferral to arbitration is not a refusal to issue a Complaint. Where a case is deferred before a Complaint issues, a decision on whether a Complaint should issue will not be made until arbitration is completed and only if certain conditions are met warranting reactivation of the case.

Because a deferral decision is interlocutory, it cannot be appealed without obtaining special permission to appeal under N.J.A.C. 19:14-4.6. We will treat AFSCME's request as one for special permission to appeal.

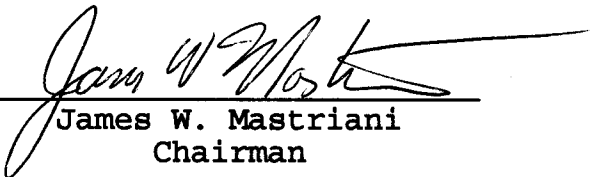
Deferral to arbitration is the preferred mechanism when a charge essentially alleges a violation of subsection 5.4(a)(5) interrelated with an alleged breach of contract and when the employer has not asserted that the dispute is not contractually or legally arbitrable. Brookdale Comm. College, P.E.R.C. 83-131, 9 NJPER 266 (¶14122 1983); see also Passaic Cty. Bd. of Ed., P.E.R.C. No. 89-98, 15 NJPER 257 (¶20106 1989). In this case, the union has alleged that the employer unilaterally eliminated an every other weekend off policy in violation of local agreements, oral agreements

and past practices. The employer has denied that it entered into any agreements granting employees every other weekend off, and it has claimed that even assuming such a practice existed, it complied with its contractual obligation to notify AFSCME of its intention to change an employment condition. This case thus involves substantial contractual claims. It was appropriate under established caselaw to defer the dispute to the contractual arbitration process. Under that caselaw, we retain jurisdiction to review any contention that an award does not adequately resolve the unfair practice allegations. Accordingly, we deny special permission to appeal.

ORDER

The request of the American Federation of State, County and Municipal Employees for special permission to appeal is denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

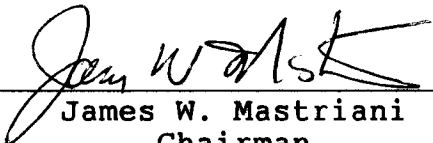
Chairman Mastriani, Commissioners Boose, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Buchanan abstained from consideration.

DATED: February 29, 1996
Trenton, New Jersey
ISSUED: March 1, 1996

ORDER

Reconsideration is granted and P.E.R.C No. 91-40 is clarified in accordance with this decision.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Johnson, Reid, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey
December 17, 1990
ISSUED: December 18, 1990