

P.E.R.C. NO. 2010-64

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF CAMDEN,

Respondent,

-and-

Docket No. CO-2010-157

CAMDEN COUNTY COUNCIL #10,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission grants Camden County Council 10's motion for reconsideration of I.R. No. 2010-9, 35 NJPER 448 (¶148 2009), in which a Commission designee denied Council 10's request for interim relief on an unfair practice charge it filed against the County of Camden. The charge alleges that the County violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when the County unilaterally changed the work schedules of juvenile detention officers and senior detention officers from 8 to 12-hour shifts. The designee denied interim relief based on a factual dispute over whether the contractual work hours provision authorized the change, but ordered negotiations over the impact of the schedule change. The Commission grants reconsideration to clarify its role in interpreting contracts during consideration of interim relief applications, but upholds the designee's order denying interim relief based upon a factual dispute as to the meaning of the parties' Managements Rights clause, which reserves to the County the right to determine work schedules and shifts.

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.

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Appearances:

For the Respondent, Michael Brennan, Camden County  
Counsel (Howard Wilson, Assistant County Counsel)

For the Charging Party, Spear Wilderman, attorneys  
(James Katz, of counsel)

DECISION

This case comes to us by way of a motion for reconsideration of an interim relief decision issued by a Commission designee. Camden County Council #10 filed an unfair practice charge against the County of Camden. The charge alleges that the County violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1), (2), (5) and (7),<sup>1/</sup> when

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<sup>1/</sup> These provisions 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. (2) Dominating or interfering with the formation, existence or administration of any employee organization . . . (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 (continued...)"

it unilaterally changed the work schedules of juvenile detention officers and senior juvenile detention officers from 8 to 12-hour shifts. The charge was accompanied by an application for interim relief. The designee denied the request for a restraint of the decision to implement the shift change because of a factual dispute over whether the contractual work hours position authorized the change, but ordered negotiations over the impact of the schedule change. I.R. No. 2010-9, 35 NJPER 448 (¶148 2009). We grant reconsideration and affirm the designee's Order because of a factual dispute over whether the management rights provision authorized the change.

The charge was filed on November 2, 2009. An Order to Show Cause on the interim relief application was signed on November 4 scheduling a return date for November 17. The County then decided to postpone implementation of the schedule change pending determination of Council 10's application for interim relief. The parties filed briefs, affidavits and exhibits and argued orally before the designee. These undisputed facts were found by the designee.

Council 10 represents approximately 754 County civilian employees, including approximately 80 juvenile detention officers

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1/ (...continued)  
grievances presented by the majority representative . . .  
(7) Violating any of the rules and regulations established  
by the commission."

("JDOs") working at the Youth Center, a residential juvenile detention facility. The most recent collective negotiations agreement between Council 10 and the County was effective January 1, 2003 through December 31, 2007. The parties are in negotiations for a new agreement. On October 23, 2009, Council 10 filed a Notice of Impasse (I-2010-088) and the parties were assigned a mediator on October 28, 2009.

The Youth Center is a 24-hour operation. Currently, JDOs work three fixed eight-hour shifts: 7:00 a.m. to 3:00 p.m.; 3:00 p.m. to 11:00 p.m., and 11:00 p.m. to 7:00 a.m.

In July 2009, then-acting Director of Camden County Department of Public Safety Edward Fanelle began considering a change in the work schedule of the Youth Center from 8 to 12-hour shifts to decrease overtime, minimize shift shortages, and reallocate staffing levels. At Fanelle's direction, Youth Center Chief of Operations Johann Arnold formed a 12-hour shift committee composed of management and union representatives.

On August 3, 2009, a meeting was held with union representatives, employees and supervisors to discuss the issue. Fanelle and Council 10 President Karl Walko attended the meeting. At the meeting, the JDOs voiced their opposition to 12-hour shifts, stressing that the change would interfere with personal and family life and was unnecessary and unsafe. Walko also explained that an employee survey conducted by Council 10

revealed that up to 80% of the JDOs were opposed to the shift change. Walko certifies that Fanelle stated that he would not force anyone to go to 12-hour shifts. Fanelle certifies that he stated that 12-hour shifts would happen or the County would entertain any viable option.

On September 30, 2009, Walko wrote to Youth Center Administrator Robert Reid, inquiring whether a decision had been made on the shift change and requesting negotiations. Reid did not respond. In October 2009, after learning that the County was requesting employees' shift preferences for a 12-hour schedule, Walko asked the County's Director of Human Resources, Frank Cirii, whether the County intended to make the shift change. Cirii indicated he did not know. On October 27, an attorney for Council 10 emailed Assistant County Counsel Howard Wilson. On October 28, Wilson replied that the County intended to implement 12-hour shifts on November 15, 2009. The 12-hour shifts to be implemented at the Youth Center are as follows: 7:00 a.m. to 7:00 p.m., 11:00 A.M. to 11:00 p.m. and 11:00 p.m. to 11:00 a.m.

Article III of the parties' most recent collective agreement, Work Schedules, provides, in pertinent part:

A. The regularly scheduled work week shall consist of thirty (30) through forty-eight (48) hours per week as noted elsewhere in this agreement.

\* \* \*

E. All employees covered by the Agreement shall receive a salary predicated on the appropriate hourly rate for their title multiplied by the actual number of hours that comprise their scheduled work week.

F. Dispatchers covered by this Agreement who are employed at the Camden County Communications Center shall work a twelve (12) hour shift and the daily benefits of such employee such as vacations, sick days, etc, shall accordingly reflect this length of shift. For example a twelve (12) hour shift employee will receive two (2) sick days for each three (3) received by an eight (8) hour shift employee. However, with respect to discipline, a day shall be considered eight (8) hours. The County may discontinue the aforementioned twelve (12) hour shift.

Article XXIX of the parties' agreement, Management Rights, provides that the County retains the right:

A.2. To make rules of procedure and conduct, to use improved methods and equipment, to determine work schedules and shifts, to decide the number of employees needed for any particular time, and to be in sole charge of the quality and quantity of work required.

The designee denied the request for a restraint of the decision to implement the shift change after finding that the expired contract does not clearly provide for an eight-hour shift; the question of the County's authority to change the JDOs shifts is more appropriately resolved by an arbitrator than this Commission; and that interim relief is not the forum to resolve the meaning of the contract. The designee did, however, order the County to negotiate with Council 10 for 30 days concerning the impact of the shift change, specifically salary (including

overtime and shift differential), bereavement, sick or personal days, and discipline.

Council 10 argues that we should grant reconsideration because:

The designee erred by failing to place the burden on the County of demonstrating that the parties' contract clearly and unequivocally waives its obligation to bargain over lengthening the work day, and instead erroneously shifted the burden to the union to show that the contract precludes such a change;

The designee erred by failing to order interim relief pending the parties' negotiations over the economic terms relating to the four hour lengthening of the employees' work day;

The designee erred by limiting negotiations over the economic issues relating to the lengthening of the work day to 30 days; and

A relative balancing of the hardships involved favors the granting of the union's motion for reconsideration and interim relief.

The County opposes reconsideration. It argues that:

[I]n an interim relief setting, it is the charging party that must establish a likelihood of success on the merits of its application. It has failed to do so because, arguably, the parties' contract allows for 12-hour shifts as the Commission designee so found. Whether the charging party has waived its right to negotiate over the change to 12-hour shifts is not yet an issue before the Commission. . . .

It further argues that the parties' contract reserves to the County the right "determine work schedules and shifts" and the

right to change the starting time of an employee's shift upon proper notice to the employee and discussion with the union; the designee's decision does not limit negotiations over the impact issues to 30 days and if it did, that would not constitute the extraordinary circumstances needed for reconsideration; and the public interest is not served by granting interim relief.

Reconsideration will be granted in extraordinary circumstances, but only in cases of exceptional importance will we intrude into the regular interim relief process by granting a motion for reconsideration of an interim relief decision by the full Commission. City of Passaic, P.E.R.C. No. 2004-50, 30 NJPER 67 (¶21 2004); N.J.A.C. 19:14-8.4. We grant reconsideration, but deny Council 10's request for relief.

We grant reconsideration to clarify our role in interpreting contracts during consideration of interim relief applications. Our designee stated that the question of the County's authority to change JDO shifts from 8 to 12 hours under contract language establishing a work week of "thirty (30) through forty-eight (48) hours" is more appropriately resolved by an arbitrator. She also stated, citing State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984), that interim relief is not the forum to resolve the meaning of the contract.

Human Services cautions against permitting litigation of mere breach of contract claims in the guise of unfair practice charges. That case concerned two alleged breaches of the



parties' collective negotiations agreement. We concluded that allegations setting forth at most a mere breach of contract do not warrant the exercise of our unfair practice jurisdiction.

Here, Council No. 10 does not claim a contractual right or seek enforcement of any contractual provision. Instead, it claims that the County has changed a mandatorily negotiable term and condition of employment without the prior negotiations required by N.J.S.A. 34:13A-5.3. It wants the employer to negotiate before changing the past practice of having employees work eight-hour shifts.

The County has raised a contractual defense to the allegation of a unilateral change. While our role is not to enforce contractual rights, we are charged with determining whether the employer violated its statutory negotiations obligation. In so doing, we must consider whether the charging party, through the contract, agreed to waive its statutory negotiations right. See NLRB v. C & C Plywood Corp., 385 U.S. 421 (1967) (contractual defense does not divest NLRB of jurisdiction to determine whether employer unilaterally changed terms and conditions of employment). Any waiver of a statutory right to negotiate must be "clear and unmistakable." Red Bank Reg. Ed. Ass'n v. Red Bank Reg. H.S. Bd. of Ed., 78 N.J. 122, 140 (1978).

In this case, the contract's management rights clause reserves to the County the right "to determine work schedules and shifts." While broadly-worded management rights clauses do not generally constitute a clear and unmistakable waiver of the right to negotiate over specific topics, this clause specifies that management has the right to determine work schedules and shifts. Thus, we conclude that Council 10 has not met its burden of establishing a substantial likelihood of success on the merits. This is not to say that it will not prevail on the merits of its claim in the unfair practice proceeding or arbitration, if this matter is deferred to arbitration. We simply find that Council 10 has not met the more difficult burden of establishing a substantial likelihood of success on the merits.

As for the designee's order that the parties negotiate for 30 days concerning impact issues, we agree with both parties that the obligation to negotiate extends beyond 30 days. As the designee's order does not include any time limit, there is no need to modify that order.

ORDER

The motion for reconsideration is granted. The Commission designee's Order is affirmed.

BY ORDER OF THE COMMISSION

Commissioners Colligan, Eaton, Fuller, Krengel and Voos voted in favor of this decision. None opposed. Commissioner Watkins was not present.

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ISSUED: March 25, 2010

Trenton, New Jersey