

I.R. NO. 95-18

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Respondent,

-and-

Docket No. CO-95-259

COMMUNICATIONS WORKERS OF AMERICA,  
AFL-CIO,

Charging Party.

Appearances:

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

For the Charging Party  
Weissman & Mintz, attorneys  
(Steven P. Weissman, of counsel)

INTERLOCUTORY DECISION

On February 6, 1995, the Communications Workers of America, AFL-CIO filed an unfair practice charge against the Governor's Office of Employee Relations (State of New Jersey). In general, the charge alleges that the State has announced an intention to reduce the work week and compensation of 1,800 employees of the Department of Environmental Protection. These employees currently work 40 hours per week and would have their work week reduced to 35 hours with a corresponding reduction in compensation. CWA alleges that the State has refused to negotiate over these issues and has maintained that its announced intention is not mandatorily

negotiable. The charge specifically alleges that this conduct violates N.J.S.A. 34:13A-5.4(a)(1) and (5).<sup>1/</sup>

CWA also filed an Order to Show Cause seeking interim relief directing the State to rescind its announced intention. The Order was executed and a hearing was held on March 31, 1995.<sup>2/</sup>

The intentions of the State as expressed in the Governor's Budget in Brief of January 23, 1995 are not in dispute. The union was advised by DEP officials on January 25, 1995 that the reduction in hours and compensation would become effective July 1, 1995, the first day of a new fiscal year and the day after the expiration of the current collective negotiations agreement.

In addition to the legal arguments contained in each party's brief, affidavits and certifications were submitted. These

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<sup>1/</sup> 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."

<sup>2/</sup> 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 party must demonstrate that it has a substantial likelihood of 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. 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).

documents reflect that the State contemplates its action as an alternative to eliminating positions and staff through layoffs and that it has engaged in discussions with CWA representatives.

Although discussions concerning the proposed layoffs have recently occurred, formal collective negotiations for a new agreement have not yet taken place.

Both parties are well aware that wages and hours of work are mandatorily negotiable issues but also that statutory and regulatory schemes may impact upon their negotiability. Notwithstanding the State's assertions in this proceeding that it may not negotiate these issues upon demand of the union, I cannot assume that, once formal negotiations commence, the State will be unwilling to address these issues at the negotiations table. No legal bar exists, at least in the early stages of negotiations, which prevents proposals and counterproposal on any issues of magnitude even where a party has a belief that there might ultimately be a lawful limitation on its authority. The resolution of these and other similar issues could indeed be central to a total agreement on all issues of significance even where case law may not permit the inclusion of all those issues in a legal and enforceable collective negotiations agreement.

In the absence of a demonstrated refusal to address these issues through collective negotiations, it would be inappropriate to review the merits of the parties' expressed legal positions and

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therefore I deny this application for interim relief without prejudice.

BY ORDER OF THE COMMISSION

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Edmund G. Gerber  
Commission Designee

DATED: April 6, 1995