D.U.P. NO. 91-12

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

In the Matter of

STATE OF NEW JERSEY,
DEPARTMENT OF HUMAN SERVICES,

Respondent,

-and-

Docket No. CO-91-26

CWA LOCAL 1040,

Charging Party.

SYNPOPSIS

The Director of Unfair Practices refuses to issue a complaint on a Charge which asserts that the employer failed to notify and to negotiate certain work schedule changes with the union. Noting that the facts alleged did not amount to a change or announcement of a change in the schedule, the Director finds that the charge fails to state an unfair practice. Further, the Director notes that in an earlier case, State of New Jersey, P.E.R.C. No. 86-64, 11 NJPER 723 (¶16254 1985), the Commission construed a similar provision to permit the State to change work schedules, subject to notice requirements. Finding that this Charge merely asserts a breach of contract, and none of the exceptions listed in State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, are present, the Director dismisses the Charge.

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Appearances:

For the Respondent
Office of Employee Relations
(Frank Mason, Director)

For the Charging Party
Norman Leavens, President, Local 1040

REFUSAL TO ISSUE COMPLAINT

On August 1, 1990, the Communications Workers of America, Local 1040 ("CWA") filed unfair practice charges against the State of New Jersey, Department of Human Services ("State") with the Public Employment Relations Commission ("Commission"). The charges allege that the State violated subsections 5.4(a)(2), (5) and (7) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1.1 et seq. ("Act").[1/] On August 14, 1990, we wrote to the parties

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1/ These subsections prohibit public employers, their representatives or agents from: (2) Dominating or interfering with the formation, existence or administration of any

Footnote Continued on Next Page

indicating our intention to dismiss the charge. CWA responded to our letter with an amended charge on August 20, 1990. On September 27, 1990, the State responded to the charge and amended charge.

The Commission has delegated its authority to issue complaints to me and established a standard upon which an unfair practice complaint may be issued. The standard provides that a complaint shall issue if it appears that the charging party's allegations, if true, may constitute unfair practices within the meaning of the Act.[2/] If this standard is not met, I may decline to issue a complaint.[3/]

For the reasons stated below, I find that the Commission's complaint issuance standard has not been met by the charging party.

CWA alleges that the State violated the Act by failing to notify the union of work schedule changes under consideration for certain registered nurses and to negotiate these changes with CWA. CWA's amended charge alleges that the State did not notify CWA of the work schedule changes proposed by the Department of Human Services to the Department of Personnel and that the State did not

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1/ Footnote Continued From Previous Page

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 grievances presented by the majority representative; (7) Violating any of the rules and regulations established by the Commission.

2/ N.J.A.C. 19:14-2.1.

3/ N.J.A.C. 19:14-2.3.

seek to negotiate these changes with CWA. However, the charge does not state that an official announcement was made or that a change was implemented.

The charge only alleges that one state agency proposed a work schedule change for certain of its employees to another agency. There is no allegation in the charge that the work schedule proposal made to the Department of Personnel will result in a work schedule change nor may I presume, based upon these allegations, that, if a change did occur, the employer would fail to negotiate concerning affected terms and conditions of employment.

Article VIII, Section A, of the parties' current contract, effective from July 1, 1989 through June 30, 1992, states:

> 2. Hours of work for "NL" employees may be adjusted by the responsible agency official in keeping with existing regulations and procedures.
>
> 3. Where practicable the normal workweek shall consist of five (5) consecutive work days.
>
> 4. For fixed workweek employees, when schedule changes are made the maximum possible notice, which shall not be less than seven (7) working days, except for unforeseen circumstances, shall be given to the affected employees.
>
> 5. For fixed workweek employees, when such employees' shift is changed, adequate advance notice which normally will be at least seven (7) working days and which shall not be less than forty-eight (48) hours, except in the case of an emergency, will be given to the affected employee.

While the gravamen of CWA's charge seems to involve the proper application of this contract provision, the proviso appears to give the employer the authority to adjust work schedules, subject to fulfilling certain procedures.

In State of New Jersey, P.E.R.C. No. 86-64, 11 NJPER 723 (¶16254 1985), the Commission construed a different portion of this same provision in an earlier contract. There, the Commission held that the parties' contract authorized the State to make work schedule changes. The Commisssion stated:

> The issue here, of course, is not whether NJCSA/NJSEA waived its right to negotiate such cha[n]ges, but whether the CWA did. The mere fact that a predecessor majority representative waived a right in the past certainly could not constitute a waiver in negotiations with a new majority representative. Here, however, there is specific unrebutted evidence that the CWA waived this right.
>
> The point is that the evidence establishes that CWA had specifically agreed to the meaning of language contained in the agreement based upon the negotiations with NJCSA/NJSEA and CWA presented no evidence to rebut this. This meaning...clearly establishes that the State had a reserved right under the agreement to change starting and stopping times in exchange for notice of any changes.
> State of New Jersey at 726.

Thus, the Commission has interpreted this provision to permit the State to change work schedules, subject to notice requirements.

The State relies on the contract language in defense of its actions here and the State's reliance on that language appears reasonable.

In N.J. Dept. of Human Services, P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984), the Commission held that where there is a claim of a contract violation, the Commission will not entertain an allegation of a violation of subsection (a)(5) if an employer

reasonably relies upon contract language for its actions and does not disregard or repudiate the contract. Here, the State relies on the same contract provision that the union claims has been violated. Although an arbitrator may reach a different determination and find the contract was violated, the Commission will not find an unfair practice.

Based upon the foregoing, I conclude that the charging party has not met the Commission's complaint issuance standard. Accordingly, I decline to issue a complaint in this matter and the charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Edmund G. Gerber, Director

DATED: October 18, 1990
Trenton, New Jersey