

I.R. NO. 92-1

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF STATE POLICE,

Respondent,

-and-

Docket No. CO-91-298

IFPTE, LOCAL 195, AFL-CIO,

Charging Party.

SYNOPSIS

A Commission Designee declines to restrain the State from implementing lay-offs among certain communication operators who work within the State Police. It was alleged by IFPTE, Local 195, AFL-CIO that duties formerly performed by communication operators were to be assumed by State Troopers. There was a factual dispute as to whether the communication operators' work has been historically shared with the State Troopers. The Commission has held that negotiations are not required when unit work is transferred, if the affected units have historically shared the work.

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Appearances:

For the Respondent
Robert J. DelTufo, Attorney General
(Stephan M. Schwartz, Deputy Attorney General)

For the Charging Party
Balk, Oxfeld, Mandell & Cohen, attorneys
(Arnold S. Cohen, Esq.)

INTERLOCUTORY DECISION

On May 6, 1991, the International Federation of Professional and Technical Engineers, Local 195, AFL-CIO ("Local 195") filed an unfair practice charge against the State of New Jersey, New Jersey State Police and Department of Law and Public Safety ("State") alleging that it violated N.J.S.A. 34:13A-5.1 et seq; specifically subsection 5.4(a)(1), (4) and (5).^{1/} Local 195

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the

represents 140 communications officers who work within the State Police and 185 guards who work within the Department of Law and Public Safety. Effective June 28, 1991, 123 Communications workers and 123 guards were scheduled to be laid-off.

It was specifically alleged that these lay-offs were planned and decided upon without the input of Local 195 and further, the State refused to provide information concerning the lay-offs to Local 195.

It was further alleged that the job duties of the communications operators and guards were to be assumed by State Troopers in violation of New Jersey Department of Personnel Rules and Regulations.

On June 26, 1991, Local 195 filed an Application for Interim Relief. An Order to Show Cause was executed and made returnable for June 28, 1991. However, prior to the return date, the State rescinded the lay-off notices and the hearing scheduled for June 28, 1991 was cancelled. A new hearing date of July 11, 1991 was scheduled.

1/ Footnote Continued From Previous Page

rights guaranteed to them by this act. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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."

It is undisputed that between June 28, 1991 and July 12, 1991, the State enacted a new budget and the proposed number of lay-offs was reduced to 38 communications operators and 55 building guards. Local 195 now alleges it is an unfair practice for these lay-offs to take place without good faith negotiations.

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.^{2/}

A public employer has a non-negotiable right to lay-off employees. State v. State Supervisory Employees Ass'n., 78 N.J. 58 (1978). However, the shifting of work from employees within a particular unit to other public employees outside of the unit is a mandatory subject of negotiations. Middlesex Cty. College, P.E.R.C. No. 78-13, 4 NJPER 47 (¶4023 1977); Piscataway Tp. Bd.Ed., P.E.R.C. No. 78-81, 4 NJPER 246 (¶4124 1978)(Piscataway); Rutgers, The State

^{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).

University, P.E.R.C. No. 79-72, 5 NJPER 186 (¶10103 1979), mot. for recon. den. P.E.R.C. No. 79-92, 5 NJPER 230 (¶10128 1979), aff'd App. Div. Dkt. No. A-3651-78, 6 NJPER 340 (¶11170 1980); Middlesex Cty., P.E.R.C. No. 79-80, 5 NJPER 194 (¶10111 1979), aff'd in relevant part, App. Div. Dkt. No. A-3564-78 (1980); Rutgers, The State University, P.E.R.C. No. 82-20, 7 NJPER 505 (¶12224 1981), aff'd App. Div. Dkt. No. A-468-81T1 (1983).

In general, a public employer must negotiate over the shifting of unit work to employees in another unit. However, the Commission will not find an unfair practice if unit work has historically been shared by the effected units. Town of Dover, P.E.R.C. No. 89-104, 15 NJPER 264 (¶20111 1989). In Dover, police dispatchers were laid-off. The dispatchers' work was transferred to police officers who were not in the dispatchers unit. Prior to the lay-off, police officers did dispatchers work on week-ends and substituted for them during the week. The Commission held that since the work was shared by both units, negotiations were not required before the Town assigned additional dispatcher duties to police.

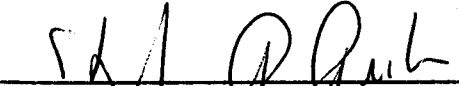
The facts in the competing affidavits are in dispute. For example, Dolores A. Gorczyca affirms that "The persons employed as Communications Operator are the only persons to have fully performed the job duties of Communications Operator". Lt. Colonel Richard Jankowski certifies that, "In the past and at the present time at the NJSP, communications operators were never employed in enough numbers to fully perform all the communications needs at each station on each shift. Therefore, state troopers have already been regularly scheduled at each troop station to perform communications

functions." Jankowski also certified that "a new radio system allows for a reorganization and regionalization."

The affidavits submitted by both parties are vague regarding the duties of the guards within the unit before and after the lay-off.

Considering how quickly the facts have developed and how unclear the facts are, I believe that a plenary hearing and full record is necessary for a determination in this case.

Accordingly, Local 195's Application for Interim Relief is denied.



Edmund G. Gerber
Commission Designee

DATED: July 12, 1991
Trenton, New Jersey