

I.R. NO. 90-12

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of
COUNTY OF SUSSEX,

Respondent,

-and-

Docket No. CO-90-172

COMMUNICATIONS WORKERS OF AMERICA,

Charging Party.

SYNOPSIS

The County of Sussex eliminated its autonomous County Welfare Board and converted the Welfare Board into an Agency within the County government. The non-supervisory employees of the former Welfare Board are represented by the Communications Workers of America ("CWA"). The County refused to honor the provisions of the contract between the CWA and the former Welfare Board. CWA requested an interim restraint compelling the County to honor the contract between itself and the former Welfare Board.

A Commission Designee found that because the Board exercised control over the Welfare Board and now directly employs the same workers and because the transfer of work resulted in an "expected or reasonably foreseeable benefit to the old employer relating to the elimination of its labor obligations", the County is obligated to honor the contract between the CWA and the Welfare Board. The County of Sussex was ordered to cease and desist from refusing to implement the provisions of the collective negotiations agreement between the County of Sussex and the CWA.

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Appearances:

For the Respondent
Hansbury, Martin & Knapp, Esqs.
(Fredric M. Knapp, of counsel)

For the Charging Party
Steven P. Weissman, Esq.

INTERLOCUTORY DECISION

On December 22, 1989, the Communications Workers of America, AFL-CIO ("CWA") filed an Unfair Practice Charge against the County of Sussex ("County") alleging that it violated N.J.S.A. 34:13A-5.1 et seq., specifically subsections 5.4(a)(1) and (5).^{1/}

The CWA charge alleges that CWA was certified as the majority representative of non-supervisory employees of the Sussex

^{1/} 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."

County Welfare Board ("Welfare Board" or "Board"). The CWA signed a collective negotiations agreement with the Board which expires on December 31, 1990. On or about November 18, 1989, Sussex County converted the Welfare Board to an agency which is a Division of the Department of Human Services. The County refused to recognize CWA as the majority representative of the non-supervisory employees of the Welfare Agency. On or about December 19, 1989, the County passed a resolution establishing new salary ranges for titles in the non-supervisory welfare unit represented by CWA. The resolution took effect on January 1, 1990. The County now refuses to implement salary increases for Welfare Agency employees pursuant to the negotiated agreement between the Board and the CWA.

The charge was accompanied by an Order to Show Cause which was later signed. The matter was heard on January 4, 1990.

The County alleges that on or about November 18, 1989, it reorganized its structure of government. Pursuant to the reorganization, the County abolished various autonomous boards including the Sussex County Welfare Board. The Board's functions were transferred to a Welfare Agency operating as a unit of the Sussex County Department of Human Services. The County admits that prior to the reorganization, non-supervisory welfare employees were represented by CWA. The County further admits that a collective bargaining agreement exists between the CWA and the Welfare Board through December 31, 1990. The County argues, however, that on January 1, 1990 it became the employer of the non-supervisory

welfare employees, pursuant to the reorganization. The County maintains it was not bound by the contract between the CWA and the Sussex County Welfare Board. It intimates that these employees belong in the existing County-wide unit.

The facts in this matter are largely undisputed. The County Welfare Board was composed of two of the three County Freeholders, the County Adjuster and approximately five other members who were approved by the County, pursuant to N.J.S.A. 44:1-11. The County approved the Welfare Board's budget.

The elimination of the Welfare Board was part of a larger restructuring of Sussex County government, including the expansion of the Freeholder Board from three to five members.

Sam Seamens, former director of the Welfare Board is now the director of the new Welfare Agency. The three administrative supervisors continue to report to Seamens.

All of the community of interest factors of Welfare employees remain the same. Their work, supervision and physical plant remain the same. The workloads, work locations, governmental mission and the general day-to-day operation of the entity remain unchanged.

Although the CWA and Board contract provides a 5% salary increase plus increment on January 1, 1990 the money has not been paid to unit employees. Further, the President of Council 20, which represents the County's white and blue collar employees informed the CWA that Council 20 now represents the former Welfare Board

employees. The salaries in the contract between the Board and the CWA average about \$3,500 more than salaries for comparable titles in the County and Council 20 contract.

* * *

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/}

It is unlikely that the Director of Representation or the Commission will find that the unit represented by the CWA will be merged into the County unit. The Commission has consistently held that historically separate negotiations units will be preserved as long as their separate identities can be maintained. See Passaic County, P.E.R.C. No. 87-123, 13 NJPER 298 (¶18125 1987) and Englewood Bd. of Ed., P.E.R.C. No. 82-25, 7 NJPER 516 (¶12229 1981).

^{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).

The County argues that AFSCME v. Hudson Cty. Welfare Bd., 141 N.J. Super. 25 (Ch. Div. 1976) absolves the County of all labor relations obligations vis-a-vis the CWA and the old Welfare Board unit. However, nothing in the text of that decision addresses the County's labor relations obligation. It merely upheld the right of a county to abolish its welfare board. There is little Commission law governing this matter so I will be guided, where applicable, by private sector law.

When a business is purchased or otherwise taken over by another, the degree of the new employer's obligation to negotiate with an exclusive representative of the old employer is determined by the degree of continuity. In other words, if the old entity is dissolved or if the work force is integrated and absorbed into the new employer's larger workforce, then (as the County claims here) the new employer has no obligation to negotiate. If however, the workforce and the operation remain intact and there is continuity, then the new employer has a continuing obligation to negotiate with the representative of the employees. NLRB v. Burns International Detective Agency, Inc., 406 U.S. 272, 80 LRRM 2225 (1972); Howard Johnson Co. Inc. v. Detroit Local Joint Bd. of Hotel & Restaurant Employees, 417 U.S. 249, 86 LRRM 2449 (1974).

The obligation to negotiate carries with it the obligation to maintain existing terms and conditions of employment until a new agreement is reached. Morris Cty Bd. of Social Services, I.R. No. 87-14, 13 NJPER 142 (¶18062 1987).

(It is) a generally accepted principal in both public and private sector labor relations that the unilateral alteration of terms and conditions of employment, e.g. salaries, during the course of collective negotiations for either a first agreement...or a contract to succeed an expired agreement, constitutes an illegal refusal to negotiate in good faith.

The Commission and the Courts have thus recognized that normally the very act of unilaterally modifying a particular term and condition of employment, at least in the absence of a genuine post-fact-finding impasse, contradicts, in and of itself, the meaning of collective negotiations inasmuch as ordinarily one cannot unilaterally act and still collectively negotiate about the same subject. The status quo relating to terms and conditions of employment may be established by relying upon past practices or prior negotiations agreement.

See Hudson Cty. v. Hudson Cty. PBA Loc. 51, P.E.R.C. No. 78-48, 4 NJPER 87 (¶4041 1978), aff'd App. Div. Dkt. No. A-2444-77 (4/9/79)

The Act is intended to promote labor stability. It would be totally antithetical to the public policy of the Act to substitute economic and other forms of coercive pressure for negotiations and impasse resolution procedures. See State of New Jersey and CWA, I.R. No. 82-2, 7 NJPER 532 (¶12234 1981).

The successor employer must maintain the status quo pending negotiations for a new agreement.

However, where substantially the same entity controls both the old and the new employer, the NLRB looks to whether the new entity is a "continuation" of the old. If so, the new employer is merely the "alter ego" of the old and it must abide by all the negotiations obligations of its predecessor. The Developing Labor

Law, at 735 (2d ed., Vol. 1). The determination of whether the new employer is the alter ego of the old is fact sensitive. "Each case must turn on its own facts". Clinton Foods, Inc., 240 NLRB 1246, 100 LRRM 1416 (1979).

In McAllister Brothers, Inc., 819 F2 439 (4th Cir. 1987), 125 LRRM 2570, the Court held that where a business operation is transferred,

...the initial question is whether substantially the same entity controls both the old and new employer. If this control exists, then the inquiry must turn to whether the transfer resulted in an expected or reasonably foreseeable benefit to the old employer related to the elimination of its labor obligations. See Alkire v. NLRB, 718 F.2d 1014, 114 LRRM 2180 (4th Cir. 1983).

Here, the County exercised significant control over the Board during the Board's existence and the County exercised the ultimate degree of control when it terminated the Board's existence..

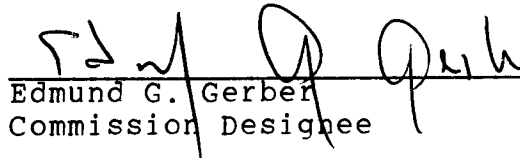
Moreover, the County expected a substantial benefit in eliminating the CWA contract. Employees of the County were paid substantially less money than those in comparable positions under the CWA contract.

In applying the McAllister Brothers test to this case, I find that if the County was permitted to eliminate a political subdivision, and thereby eliminate contractual obligations, the statutory mission of the Act to promote labor stability would be seriously disrupted. Such actions are coercive and promote labor unrest.

Here, the CWA has met its burden. It would be far less disruptive here to order the County to honor the obligations of the CWA and Welfare Board contract, pending the final disposition of this matter by the Commission than it would be to permit the County to unilaterally impose new terms and conditions of employment upon these employees.

Accordingly, I find that the County is obligated to honor the contract between the CWA and the Welfare Board in full.

Therefore, it is hereby ordered that the County of Sussex cease and desist from refusing to implement the provisions of the collective negotiations agreement between the County of Sussex and the CWA.


Edmund G. Gerber
Commission Designee

Dated: January 18, 1990
Trenton, New Jersey