I.R. NO. 89-16

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY
DEPARTMENT OF LABOR,

Respondent,

-and- Docket No. CO-89-309

COMMUNICATIONS WORKERS OF AMERICA,

Charging Party.

Appearances:

For the Respondent
Richard Fornaro, Deputy Attorney General

For the Charging Party
Steven P. Weissman, Esq.

INTERLOCUTORY DECISION

On April 19, 1989, the Communications Workers of America ("CWA") filed an unfair practice charge with an Order to Show Cause with Temporary Restraints with the Public Employment Relations Commission ("Commission") against the Department of Labor, State of New Jersey ("State"). The CWA seeks to enjoin the State from denying CWA representatives the right to conduct worksite meetings on the workfloors of the Labor and Industry building in accordance with prior practice and pursuant to the schedule of worksite "on-floor" meetings issued by Robert J. Yokavonus in January 1989. It further seeks an order requiring the respondent to immediately restore all cancelled "on-floor" meetings. The unfair practice charge alleges that the State violated subsections 5.4(a)(1), (3)

and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").[1/]

A hearing on the temporary restraints was conducted on April 19, 1989 on the papers submitted by the CWA. The State made an appearance and had the opportunity to argue orally. At that time, an Order was entered into on the record concerning a meeting scheduled for the following day, April 20, 1989.

This Order is limited to the CWA's demand to reschedule the cancelled "on-floor" meetings which were scheduled for April 12, 17, 18 and 19, 1989.

Article XXVI of the collective negotiations agreement between the State and the CWA provides that the CWA officials have the right of access to premises of the State on union business and moreover, that "union officials shall have the opportunity to consult with employees in the unit before the start of the work shift, during lunch or breaks or after completion of the work shift. The State will designate appropriate places for such meetings at its facilities".

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. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage 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."

Pursuant to this contract provision Robert J. Yokavonus, Director of Administrative Services, promulgated a memorandum stating:

> Effective Tuesday, January 17, 1989, the Communications Workers of America will be granted continued access to the Labor Building in accordance with the attached schedule. This access will be permitted on the floors and in those rooms identified on the specific dates. The worksite visits will be conducted at those times as indicated. Also attached is a schedule of worksite meetings for the various Trenton satellite offices.
>
> The meetings are to be of a fifteen minute duration and employees may utilize their break time to attend these meetings, if they so wish.

A schedule of worksite access meetings in the Labor and Industry Building for January through May 1989 was distributed along with this memorandum. Such "on-floor" meetings have been scheduled on a continuous basis since 1981. The memorandum provides for meetings on, among other dates, April 12, 17, 18 and 19, 1989.

The CWA and the State have commenced negotiations for a successor agreement on April 12, 1989. The current contract will expire on June 30, 1989.

The CWA argues that a dispute has developed between CWA representative and management at the Yard Avenue office of the Division of Vocational Rehabilitation in the Department of Labor. On March 9, 1989, a worker at that facility received a reprimand. In response to the reprimand CWA prepared a leaflet critical of management of the Vocational Rehabilitation office. On April 7, 1989, Arcioni called the New Jersey Area Director of the

Communications Workers of America, Robert Pursell. By way of affidavit, Pursell alleges that Arcioni in this telephone conversation indicated that if the problems persisted, "on-floor" worksite meetings might be discontinued. On April 12, 1989, the Department of Labor stated that CWA representatives could not hold worksite meetings in the Labor and Industry building as per the January 1989 schedule but rather such meetings could only be held in the 2nd floor cafeteria. The CWA argues that it cannot conduct an effective meeting in the cafeteria with workers who are not located on the second floor because of the time it may take some workers to get there and return.

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/]

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).

It is well settled that an employer's unilateral alteration of the prevailing terms and conditions of employment during collective negotiations constitutes a refusal to negotiate and provides the basis for interim relief. See State of New Jersey, I.R. No. 82-2, 7 NJPER 532 (¶12235 1981); Galloway Tp. Bd. of Ed. and Galloway Tp. Education Association, 78 N.J. 25 (1978).

Here, the contract between the parties grants the employer the right to "designate appropriate places for such meetings at its facilities." Accordingly, it does not appear at this juncture that CWA has a reasonable likelihood of proving that the State had to hold "on-floor" meetings. However, I also note that the January 6, 1989 memorandum of Yokavonus states that the CWA will have meetings of 15 minute duration. It is premature to consider whether the State will comply with this memorandum or will reschedule any meetings cancelled because CWA insisted on having them held on the floors.

ORDER

CWA's application for a temporary restraining order requiring the State to conduct "on-floor" meetings is denied consistent with this opinion.

A return date on the Order to Show Cause has been set for May 1, 1989 at 9:30 a.m.

Edmund G. Gerber
Commission Designee

DATED: April 21, 1989
Trenton, New Jersey