

P.E.R.C. NO. 76-9

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TOWNSHIP OF STAFFORD,  
Respondent,

- and -

Docket No. CO-76-65

COMMUNICATIONS WORKERS OF AMERICA,  
AFL-CIO,  
Charging Party.

For the Respondent, Haines, Schuman & Butz, Esqs.  
(William J. McMahon, Esq.)

For the Charging Party, Kapelsohn, Lerner, Reitman & Maisel, Esqs.  
(Sidney Reitman, Esq.)

INTERLOCUTORY DECISION AND ORDER

On September 5, 1975 the Communications Workers of America, AFL-CIO ("C.W.A.") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") alleging that the Township of Stafford ("Township") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act").<sup>1/</sup>

<sup>1/</sup> The subsections of the Act allegedly violated are N.J.S.A. 34:13A-5.4(a)(1), (5) and (7). These subsections prohibit employers 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 the unit, or refusing to process grievances presented by the majority representative... (7) Violating any of the rules and regulations established by the commission."

Specifically, it is claimed that the Township's refusal to meet with the C.W.A., the Township's threat to contract out the work of employees in the unit without first negotiating regarding the decision to contract out and its effects upon the employees, and the Township's solicitation of bids on its refuse collection services, again without negotiations, constitute violations of the Act.

Simultaneously with the filing of the charge and pursuant to N.J.A.C. 19:14-9.1 et seq., the C.W.A. filed a request for interim relief pendente lite. On September 5, 1975, an Order to Show Cause was signed by Commissioner John F. Lanson of the Public Employment Relations Commission, setting a return date of September 12, 1975, requiring the Township to show cause why an order should not be entered enjoining the Township from contracting out or receiving bids for the contracting out or from taking any action with respect to contracting out of any work usually performed by employees in the certified unit. The parties have filed briefs and have argued orally before the undersigned, who has been delegated by the Commission the authority to act upon such requests on its behalf.

The material facts are neither complicated nor in dispute. On January 17, 1975 the C.W.A. filed a petition for certification of public employee representative. Pursuant to an Agreement for Consent Election, a secret ballot election was held February 28, 1975 among eligible voters.<sup>2/</sup> The C.W.A. received 20 votes, five employees voted against representation, and four ballots were challenged. Timely objections to the election were

<sup>2/</sup> The parties agreed that the appropriate negotiating unit included all blue collar employees employed by the Township of Stafford and excluded all other employees including police, managerial executives, confidential employees, craftsmen, professionals and supervisors within the meaning of the Act.

filed by the Township.

The Township was advised of its obligation to provide probative evidence substantiating its objections. No such evidence was offered. Finally, on April 14, 1975, the undersigned issued a decision dismissing the objections and certifying the C.W.A. as the majority representative of the employees in the unit for the purpose of collective negotiations. See In re Township of Stafford, E.D. No. 70, 1 NJPER 16 (1975).

No request for review was filed with the Commission with respect to E.D. No. 70. However, on May 29, 1975, the Township filed with the Appellate Division of the Superior Court a notice of appeal from E.D. No. 70.

Thereafter on May 30, 1975, the C.W.A. filed an Unfair Practice Charge against the Township (Docket No. CO-117) alleging a refusal to negotiate in good faith. On July 10, 1975, the undersigned issued a Complaint and Notice of Hearing regarding that charge. On the date of the scheduled hearing, August 7, 1975, the parties agreed to waive an evidentiary hearing and agreed to submit the matter to the Commission for a decision on the basis of the stipulated facts.<sup>3/</sup>

The parties stipulated that the Township did not meet with the C.W.A. to negotiate a mutually acceptable agreement at any time subsequent to the issuance of the certification of representative despite repeated requests by the C.W.A. They stipulated that the Township asserts that it will not meet with the C.W.A. for the purpose of negotiating a mutually acceptable agreement until the appeal filed by the Township with the Appel-

<sup>3/</sup> Prior to the scheduled hearing, the Township sought from the Appellate Division a stay of the proceedings before the Public Employment Relations Commission. The requested stay was denied.

late Division is decided.

It is stipulated that a meeting was held on July 15, 1975 at which the C.W.A. presented its proposals but there was never any response to the proposals. Furthermore, the parties stipulated that an ordinance was introduced and adopted May 8, 1975 which, among other things, included the hourly pay rates for employees in the Public Works Department. This resulted in wage increases for certain of these employees.

On August 11, 1975, the Township adopted a resolution directing the Clerk to advertise for Bids for Refuse Collection. Bids are to be received at a regular Township Committee meeting to be held September 25, 1975. The specifications provide that the terms of the contract should begin October 1, 1975 and shall continue for one, two or three years depending upon whether the Township accepts a bid for one, two or three years.

In support of its application, the C.W.A. makes several arguments. It is urged that the relief sought is necessary in order to preserve the status quo so that the Commission can render a meaningful adjudication of the issues presented. The essential subject matter of the dispute will be dissipated if the relief is denied. Additionally, it is argued that not only will the employees — especially in the present economy characterized by high rates of unemployment — and the certified representative be adversely affected and irreparably harmed<sup>4/</sup> but that the public interest in the harmony and stability of labor relations which the statute attempts to promote through negotiations and voluntary mediation will be frustrated.

<sup>4/</sup> In this connection, the C.W.A. points out that not only pay, holiday and other benefits but also hospitalization insurance coverage would be lost if the work is contracted out.

It is contended that there is no question but that the Township is obligated to negotiate regarding this matter -- the decision to contract out unit work -- and its impact upon terms and conditions of employment. It is pointed out that the C.W.A. has never had an opportunity to meet the "economy" arguments of the Township<sup>5/</sup> because there have been no negotiations. Finally, the C.W.A. contends that while the harm to C.W.A. and the employees concerned would be substantial if the work is contracted out, the harm to the Township would be very little if the relief sought were granted pending the disposition of this matter. The work would continue to be performed by the same people who have been doing it for years.

In opposing the requested interim relief, the Township relies primarily upon an earlier decision of the Commission in which interim relief was denied. In re Township of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 37 (1975). It is argued that the Township has the power and authority to contract out the work.<sup>6/</sup> It is pointed out that the solicitation of bids is not tantamount to their acceptance. Finally, the relief sought should be denied because there would be no irreparable harm and because there is doubt on the law and the facts regarding the ultimate disposition of this matter.

The undersigned is persuaded, on the facts in this case, that an order should be issued. This matter is distinguishable from Little Egg

<sup>5/</sup> The resolution states that the contract demands of the C.W.A. would increase tremendously the operating costs of the Sanitation Department.

<sup>6/</sup> The C.W.A. does not dispute this authority as long as it is exercised consistent with the obligations placed on the Township by the Act.

Harbor, supra. In Little Egg Harbor, the public employer was negotiating with the union. The obligation to negotiate had been accepted. In fact, agreement had been reached on virtually all elements of a contract except on the issue of contracting out and one or two other matters. The parties had negotiated the issue of contracting out to at least some extent.<sup>7/</sup> The employer readily acknowledged this obligation to negotiate with the union and with the remaining employees in the event that the refuse collection was contracted out.

In contrast, in the instant matter the Township will not negotiate at all. That, in fact, is the essence of the dispute: is the employer under an obligation to negotiate with the C.W.A.? While the C.W.A. has been certified by the Commission as the majority representative of the blue collar employees of the Township, the Township has appealed from that certification. Under these circumstances it seems appropriate to permit the litigation -- which has been initiated by the Township -- to run its course while at the same time preserving the integrity of the negotiating unit pending the outcome of litigation. Thus, if the C.W.A. prevails and the Township is found to have an obligation to negotiate with the C.W.A. -- and in the judgment of the undersigned that would not be an unlikely conclusion<sup>8/</sup> -- the unit represented by the C.W.A. will be intact. On the other

<sup>7/</sup> The union's original proposal would have precluded contracting out during the terms of the agreement. The employer had countered with a proposal that would have permitted contracting out at any time by the employer.

<sup>8/</sup> It is observed that the C.W.A. recently filed in the Appellate Division a motion to dismiss the Township's appeal for failure to exhaust administrative remedies, based upon the availability of Commission review of E.D. No. 70 and the Township's failure to seek same.

hand, if the work in question is contracted out during the pendency of the appeal, then the disposition of the appeal would be essentially academic. There would be little meaning to such a favorable determination to the C.W.A. because a substantial portion of the work would have been eliminated and the union's majority status in the residual unit could have been undermined or destroyed.

Additionally, there can be little doubt but that the impact of the decision to contract out as it affects terms and conditions of employment -- if not the decision itself -- is within the scope of negotiations. Thus, if the Township is found to be obligated to negotiate with the C.W.A., the essence of the instant dispute would be subject to the obligation to negotiate.

In short, the undersigned cannot disregard what clearly appears to be a course of conduct on the part of the Township calculated to avoid the negotiating obligation imposed upon it by the Act. The history of the relationship between these parties, ever since the C.W.A. prevailed in the February 28, 1975 secret ballot election, is considerably more indicative of delay and evasion on the part of the Township than any other explanation that has been or might be proffered. The undersigned is quite frankly unwilling to sit idly by while the last nail is hammered in the coffin.

IT IS, THEREFORE, ORDERED, pursuant to N.J.A.C. 19:14-9.4(a), that the Township of Stafford, its officers, agents, employees and attorneys, and such persons in active concert or participation with them, are hereby enjoined from contracting out, or receiving bids for contracting out, or from taking any action with respect to contracting out, of any work nor-

mally performed by the employees in the unit as certified by the undersigned April 14, 1975 in E.D. No. 70, pending the disposition of the instant Unfair Practice Charge or until further order of the Commission or its named designee.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

By

  
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Jeffrey B. Tener  
Executive Director

DATED: Trenton, New Jersey  
September 22, 1975