I.R. NO. 94-12

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,
(DEPARTMENT OF PERSONNEL),

Public Employer,

-and-

Docket No. CO-94-376

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO,

Charging Party.

SYNOPSIS

A Commission Designee declines to restrain the State of New Jersey, Department of Personnel, from reducing the hours of work of certain employees in the title of Human Resource Development Institute (HRDI) who are in the Department of Personnel. In March 1991, the CWA and the Acting Commissioner of Personnel entered an agreement permitting the CWA to continue to represent these employees after they were brought into the Department of Personnel. However, the State argues that the HRDI employees as employees of the Department of Personnel are subject to N.J.S.A. 11A:2-11(b) and therefore are deemed to be confidential employees within the meaning of the New Jersey Employer-Employee Relations Act. Therefore, the HRDI employees must be considered confidential and are not entitled to the protections of the Act. Although the State did not dispute the existence of the agreement, it argues that to the extent the agreement permits negotiations for HRDI employees, it is unenforceable. The statutory language must prevail.

It was held that although the agreement granted to HRDI employees the protections of the Act, the State's argument that the agreement is legally unenforceable raises issues which can only be resolved at a full hearing. The Application for Interim Relief is denied.

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Appearances:

For the Public Employer
Deborah T. Poritz, Attorney General
(Michael L. Diller, Deputy Attorney General)

For the Charging Party
Weissman & Mintz, attorneys
(Steven P. Weissman, of counsel)

INTERLOCUTORY DECISION

On June 14, 1994, the Communications Workers of America filed an unfair practice charge against the State of New Jersey, Department of Personnel. The charge alleges that the State violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.; specifically subsections (a)(1), (3) and (5)[1/] when on or

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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

Footnote Continued on Next Page

about May 17, 1994, the Commissioner of the Department of Personnel notified 39 employees in the title of Human Resource Development Institute (HRDI) who are represented by the CWA that their work weeks would be reduced to 35 hours effective July 9, 1994. CWA demanded negotiations but the State refused to negotiate over this announced unilateral change.

The unfair practice charge was accompanied by an Application for Interim Relief. The Application was executed and made returnable for June 29, 1994. A hearing was conducted on that date.

CWA alleges that its representation of HRDI employees is pursuant to an agreement issued in March 1991 by the Acting Commissioner of Personnel. That agreement provides that employees who had been performing training functions in various departments of State government and who had been represented by CWA would continue to be represented by the union after the consolidation of training functions pursuant to Executive Order No. 12. That Agreement states in relevant part:

> Titles presently in CWA negotiations units and any titles assigned to the CWA negotiations unit in the future that are utilized at the HRDI, will

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1/ Footnote Continued From Previous Page

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."

> be represented by CWA at the HRDI. All employees in such titles [will] thus be included in the CWA bargaining units unless individual positions meet the criteria for confidential status under the New Jersey Employer-Employee Relations Act.

The CWA claims that because of this agreement, these employees were never placed into the Department of Personnel.

It is not disputed that on or about April 1994, the union was provided with layoff guidelines in anticipation of a new round of State layoffs. Those guidelines provided that departments could reduce employee workweeks from 40 to 35 hours as a pre-layoff action. The DOP also provided to each department a list of titles having 40 hour workweeks to assist the department in initiating such action.

By letter dated May 2, 1994, the CWA advised the State that any reduction in employee workweeks would be violative of CWA's collective negotiations agreement.

In a letter dated May 17, 1994, the Commissioner of the Department of Personnel advised employees that their workweeks were being reduced to 35 hours and such a reduction would result in a salary decrease.

On May 18, 1994, the Union spoke with the Acting Director of the Governor's Office of Employee Relations and maintained that a change in the hours and compensation violated the contract between CWA and the State. Nevertheless, the State refused to negotiate.

The State argues that the HRDI employees are employees of the Department of Personnel and pursuant to <u>N.J.S.A</u>. 11A:2-11(b) all

employees of the Department of Personnel are deemed to be confidential employees within the meaning of the New Jersey Employer-Employee Relations Act. Therefore, the HRDI employees must be considered confidential and are not entitled to the protections of the Act. To the extent that Executive Order #12 permits negotiations for HRDI employees, it is unenforceable; the statutory language must prevail. The State also argued that the lay-offs are appropriate and proper under the DOP regulations.

Finally, the State argues that if the CWA should ultimately prevail before the Commission, these employees could be made whole and be compensated for their lost hours of work. Accordingly, the alleged harm is not irreparable and this matter is not appropriate for an interim order.

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/]

The Application for Interim Relief must be denied.

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).

Local 195, IFPTE v. State, 88 N.J. 383 (1982), articulates the standards for determining whether a subject is mandatorily negotiable:

> [A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; (3)....

Here, although the CWA argues that, by agreement with the State, the HRDI employees enjoy the protections of the Act and should not be considered confidential employees, this argument raises factual issues as to the agreement that can only be resolved at a full hearing. Moreover, the State acknowledges that if the CWA prevails, these employees could be made whole through a monetary award.

Accordingly, an interim award would not be appropriate. The Application for Interim Relief is denied.

BY ORDER OF THE COMMISSION

Edmund G. Gerber
Commission Designee

DATED: June 30, 1994
Trenton, New Jersey