

D.U.P. NO. 94-12

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

STATE OF NEW JERSEY,

Respondent,

-and-

Docket No. CO-93-129

COMMUNICATIONS WORKERS OF AMERICA,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by CWA, Local 1040, on behalf of telephone operator Lucille Connor, against the State of New Jersey, Department of Military and Veterans Affairs. The Director finds that the State had the managerial prerogative to unilaterally institute an electronic mail system and abolish the telephone operator position. The Director further finds that the facts alleged do not show that the State eroded the bargaining unit by reassigning unit work to a non-unit employee. Finally, the Director finds that an allegation that Connor "should retire" does not fall within the purview of the Act, as it is directed at Connor's age, not activities protected by the Act.

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Appearances:

For the Respondent,
Melvin Gelade, Director, Office of Employee Relations
(David Collins, Coordinator)

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

REFUSAL TO ISSUE COMPLAINT

On October 16, 1992, Local 1040, Communications Workers of America filed an Unfair Practice Charge with the Public Employment Relations Commission against the State of New Jersey, Department of Military and Veterans Affairs. 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 5.4(a)(2), (3) and (5), ^{1/} by demoting Lucille Connor from her telephone operator

^{1/} These subsections prohibit public employers, their representatives or agents from: "(2) Dominating or

position at the Menlo Park Veterans Memorial Home and replacing her with a temporary employee. Local 1040 claims that in taking this action, the State has eroded the bargaining unit. Also, Local 1040 contends that the State has condoned inappropriate statements by its personnel officer that Connor "should retire".

The State denies that it violated the Act. It argues that a layoff is a managerial prerogative, and to the extent the present issue is one of proper classification or appointment, those matters are exclusively within the purview of the New Jersey Merit System Board. Further, it explains that no temporary employee is assigned to operate telephones at the Veterans Home, since the telephone center and the telephone operator position have been abolished there.

On or about September 18, 1992, Lucille Connor was informed that a reduction in force would be conducted at the Menlo Park Veterans Memorial Home and Connor's position of telephone operator was to be abolished and replaced by an electronic voice mail system. Also, on or about September 18, Connor claims that the personnel officer at the Home told her that "she should retire".

1/ Footnote Continued From Previous Page

interfering with the formation, existence or administration of any employee organization. (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."

Prior to the implementation of the electronic voice mail system, a "Green Thumb", or temporary employee, was temporarily assigned to replace a telephone operator who had died. The temporary employee and Connor worked at the telephone center until the electronic voice mail system was implemented on or about October 1, 1992. Upon implementation of the system, Connor's position was abolished and, pursuant to the New Jersey Civil Service Act and its regulations, N.J.S.A. 11A:8-1 et seq. and N.J.A.C. 4A:8-1 et seq. she bumped into the position of clerk-bookkeeper. The temporary employee remained at the telephone center for less than five days after Connor left. Thereafter, the telephone center was permanently closed and the temporary employee was transferred to another position which did not involve answering telephones.

ANALYSIS

A public employer generally has the managerial prerogative to reduce its work force by abolishing an existing position. State v. State Supervisory Employees Association, 78 N.J. 54, 84-90 (1978); Middletown Township Board of Education, D.U.P. No. 93-21, 19 NJPER 102 (¶24046 1993); County College of Morris, P.E.R.C. No. 93-24, 18 NJPER 477 (¶23216 1992). Thus, the State had the managerial prerogative to unilaterally institute an electronic mail system and abolish the telephone operator position.

The facts alleged do not support a contention that the State abolished Connor's telephone operator position and assigned

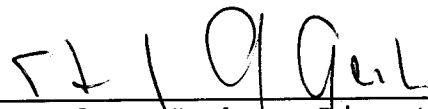
those duties to a temporary employee in order to erode the bargaining unit. The temporary employee performed telephone operator duties at the telephone center for less than five days after Connor ceased performing these duties. Thereafter, the telephone center was permanently closed and the temporary employee was assigned other duties not involving answering telephones. Thus, the facts alleged do not show that the State eroded the bargaining unit by reassigning unit work to a non-unit employee. Compare City of Newark, P.E.R.C. No. 88-105, 14 NJPER 335 (¶19125 1988).

Finally, the allegation involving a remark that Connor "should retire" does not fall within the purview of the Act, as it is directed at Connor's age, not activities protected by the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.^{2/}

Accordingly, based upon the foregoing, I find the Commission's complaint issuance standard has not been met and refuse to issue a complaint on the allegations of this charge.^{3/}

The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: August 27, 1993
Trenton, New Jersey

^{2/} Connor has been pursuing an age discrimination claim before the Equal Employment Opportunity Commission.

^{3/} N.J.A.C. 19:14-2.3.