STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY, DEPARTMENT
OF TRANSPORTATION,

Respondent,

-and- Docket No. CO-84-164

COMMUNICATION WORKERS OF
AMERICA, AFL-CIO,

Charging Party.

STATE OF NEW JERSEY, DEPARTMENT
OF TRANSPORTATION,

Respondent,

-and- Docket No. CO-84-170

INTERNATIONAL FEDERATION OF PRO-
FESSIONAL & TECHNICAL ENGINEERS,
LOCAL 195, AFL-CIO,

Charging Party.

SYNOPSIS

The Chairman of the Public Employment Relations Commission denies the request of the Communication Workers of America, AFL-CIO for interim relief pending determination of its unfair practice charge against the State of New Jersey, Department of Transportation. The charge alleged that the State unilaterally changed the work hours from 7:30 a.m. through 4:00 p.m. to 8:00 a.m. through 4:30 p.m. While not concluding that the State had a contractual right to make this change, the Chairman is not satisfied at this point on the record before him that there is a substantial likelihood of success on the merits of the charge. The Chairman, however, directs the Administrator of Unfair Practices to determine immediately whether a Complaint and Notice of Hearing should issue or whether the charge should be deferred to arbitration.

I.R. NO. 84-6

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PROFESSIONAL & TECHNICAL ENGINEERS,
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Appearances:

For the State of New Jersey, The Hon. Irwin Kimmelman, Attorney General (Michael Diller, Deputy Attorney General)

For Communication Workers of America, AFL-CIO (Steven Weissman, Of Counsel)

For International Federation of Professional & Technical Engineers, Local 195 (Nancy Iris Oxfeld, of Counsel)

INTERLOCUTORY DECISION

On December 20, 1983, the Communication Workers of America, AFL-CIO, ("CWA") filed an unfair practice charge against the State of New Jersey alleging a violation of subsection 5.4(a) (1) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

On December 29, 1983, IFPTE, Local 195, AFL-CIO ("Local 195") filed an unfair practice charge against the State of New Jersey alleging a violation of subsection 5.4(a)(1), (3), and (5).[1/]

The substance of these charges is that the State has unilaterally altered the terms and conditions of employment of certain employees without prior negotiations by changing the work hours from 7:30 a.m. through 4:00 p.m. to 8:00 a.m. through 4:30 p.m. This change is scheduled to be effective January 3, 1984. The charging parties were notified of the proposed change on December 9, 1983. Pursuant to N.J.A.C. 19:14-9.1, the CWA applied for interim relief pending final disposition of the unfair practices proceeding by the Commission seeking a restraining order against the implementation of the administrative directive.

An Order to Show Cause was executed on December 20, 1983 to be returnable December 29, 1983.[2/] On December 29, 1983, I conducted a hearing pursuant to N.J.A.C. 19:14-9.4. The parties presented oral argument and limited oral testimony was taken at my request. The participation of Local 195 was permitted at the

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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 in the exercise of the rights guaranteed to them by this act; and (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."

2/ An objection was raised by the State claiming that CWA's application was procedurally defective since CWA did not serve the State with the unfair practice charge or supporting affidavit. The State received these papers prior to the hearing and were afforded ample time to review same. I proceeded to conduct the hearing on the merits of the application.

hearing since the substance of its unfair practice charge was substantially the same as CWA's.

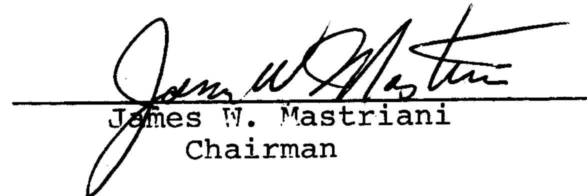
The grounds for the issuance of a restraint pursuant to the Commission's rules are set forth in N.J.A.C. 19:14-9.2(c). The charging party must demonstrate (1) substantial likelihood of success on the merits of the charge, and (2) that immediate and irreparable harm will ensue if relief is not ordered. Both conditions must be met before interim relief will be granted.

While I do not decide whether the charging parties might ultimately prevail on the merits of their respective unfair practice charges either before the Commission or through appropriate contractual enforcement proceedings, I am simply not satisfied that the requisite heavy burden for the issuance of interim relief has been met.

The charging parties have made a persuasive case that the dominant issue herein involves mandatorily negotiable terms and conditions of employment. See Galloway Township Board of Education, 78 N.J. 1 (1978). However, the principal defense of the State is that it has a reserved right under the respective collectively negotiated agreements to alter the working hours of these unit employees. In fact, the agreements specifically include, inter alia, provisions governing management rights, shift schedules, and hours of work of unit employees. Thus, it is at least arguable that the State has a contractual right to so alter these employees' work hours. While N.J.S.A. 34:13A-5.3 does not permit unilateral alterations in terms and conditions of employment without prior negotiations, it is well established

that there is no unlawful unilateral change where a collectively negotiated agreement permits such a change during the term of an agreement. See, e.g., Town of Irvington, P.E.R.C. No. 82-63, 7 NJPER 94 (¶13038 1982). While I am not concluding that the State has such a right pursuant to the labor agreements, I am not satisfied at this point on the record before me that the charging parties have established a likelihood of success on the merits of their charges.

Accordingly, I deny the petitioner's request for interim relief and refer the respective unfair practice charges to the Commission's Administrator of Unfair Practices for an immediate determination as to whether a Complaint and Notice of Hearing should issue or whether the unfair practice charges should be deferred to arbitration pursuant to the Commission's deferral to arbitration policy.



James W. Mastriani
Chairman

DATED: Trenton, New Jersey
December 30, 1983