I. R. NO. 84-13

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matters of

STATE OF NEW JERSEY, OFFICE
OF EMPLOYEE RELATIONS,

Respondent,

-and- Docket No. CO-84-280

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO,

Charging Party.

STATE OF NEW JERSEY, OFFICE
OF EMPLOYEE RELATIONS,

Respondent,

-and- Docket No. CO-84-281

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO,

Charging Party.

SYNOPSIS

Upon application for interim relief brought by the Charging Party, a designee of the Commission denies the request by Charging Party for an Order directing the Respondent to reinstate certain employees who were discharged by the State of New Jersey Department of Labor after the filing of unfair practice and clarification of unit proceedings before the Commission. The CWA asserts that the State's discharge of the employees was motivated by CWA's institution of the aforementioned proceedings. The State denies that the employee furloughs were motivated by the exercise of any protected rights, but rather were due to a declining number of unemployment claims and a consequent decrease in federal funding levels for the Division of Unemployment and Disability Insurance. In its explanation of the furloughs, the State contested several of the facts upon which Charging Party's unfair practice claims are based. The undersigned is thus unable to conclude that the Charging Party has demonstrated a substantial likelihood of success upon the merits of this case and accordingly, the interim relief request was denied.

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Appearances:

For the Respondent
Hon. Irving I. Kimmelman, Attorney General
(Michael L. Diller, D.A.G.)

For the Charging Party
Steven P. Weissman, Associate Counsel, C.W.A.

INTERLOCUTORY DECISION

On April 10, 1984, the Communications Workers of America, AFL-CIO (the "Charging Party" or the "CWA") filed two Unfair Practice Charges with the Public Employment Relations Commission (the "Commission") alleging that the State of New Jersey (the "Respondent" or the "State") had violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"). On April 26, 1984, the CWA filed an amendment to one of the above-referred charges

(Docket No. CO-84-280). In the charge, it is alleged that the State violated subsections 5.4(a)(1), (4) and (5) of the Act by refusing to negotiate concerning the terms and conditions of employment of certain employees (Intermittent Claims Takers [ICTs] and Intermittent Claims Examiners [ICEs]) whom the CWA asserts are covered under one of its various collective negotiations agreements with the State; it is further alleged that the State discharged several ICTs in retaliation for the CWA's filing of several legal actions on April 10, 1984 concerning said employees. 1/

Also on April 26, 1984, the CWA filed an Order to Show Cause with the Commission, asking that the State show cause why an Order should not be entered directing the Respondent to: recognize that all ICTs and ICEs who are employed for 20 or more hours per week, in positions which have existed for six or more months, as members of CWA's Administrative and Clerical and Professional Units, respectively; apply the terms and conditions of employment contained in the applicable Collective Bargaining Agreements to said employees as though they are provisional employees under Civil Service; and to reinstate all ICEs and ICTs employed by the Department of Labor, who were discharged after the filing of the Unfair Practice Charges (CO-84-280 and CO-84-281) and Clarification of Unit Petitions (CU-84-90 and CU-84-89) by CWA with the Public Employment Relations Commission on April 10, 1984.

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; (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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."

The Order to Show Cause was executed and made returnable on May 31, 1984. On that date, the undersigned conducted an Order to Show Cause hearing, having been delegated such authority to act upon requests for interim relief on behalf of the full Commission. Both parties submitted briefs and argued orally at the hearing.

The standards that have been developed by the Commission for evaluating interim relief requests are quite similar to those applied by the courts when confronted with like applications. The test is twofold: the substantial likelihood of success on the legal and factual allegations in the final Commission decision, and the irreparable nature of the harm that will occur if the requested relief is not granted. 2/ Both standards must be satisfied before the requested relief will be granted.

At the hearing, the CWA indicated that, based upon the recently issued decision in In re State of New Jersey, I.R. No. 84-11, NJPER (¶ 1984), it was withdrawing those aspects of its requested interim relief order directing the Respondent to recognize that all ICTs and ICEs who are employed for 20 or more hours per week, in positions which have existed for six or more months, as members of CWA's Administrative and Clerical and Professional Units, respectively, and to apply the terms and conditions of employment contained in the applicable collective bargaining agreements to said employees as though they are provisional employees under Civil Service. Given the withdrawal of those aspects of the interim relief order, the only issue remaining in the instant

2/ In re Twp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975); In re State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); and In re Twp. of Stafford, P.E.R.C. No. 79-9, 1 NJPER 59 (1975).

interim relief matter is the reinstatement of the ICTs and the ICEs who were allegedly discriminatorily discharged.

The CWA contends, as set forth in its affidavits and arguments, that on April 10, 1984, it filed several actions with the Public Employment Relations Commission, the Equal Employment Opportunity Commission and the Civil Service Commission seeking to advance various rights on behalf of ICTs and ICEs. On April 12, 1984, the Department of Labor discharged 18 ICTs from the Department's Interstate Claims Office. The CWA asserts that the State's discharge of the employees was motivated by CWA's institution of the aforementioned legal actions. The CWA claims that there had been no reduction in the number of claims being processed by the office and in fact, on April 18, 1984, five permanent full-time employees were transferred to the Interstate Claims Office to assist with the processing of claims. The CWA argues that the timing of the events herein is so close that there can be no doubt that the discharges were motivated by CWA's having filed the above-referred legal proceedings on behalf of the ICTs and ICEs.

The CWA asserts that the State's conduct has caused irreparable harm -- financial and emotional hardships to discharged employees and further, the CWA argues that the State's conduct herein has had a chilling effect upon the exercise of protected rights by these employees. CWA notes that while hourly employees have always been concerned with job security, after the layoffs, hourly employees were more fearful than ever about losing their jobs and thus are now reluctant to join the CWA or assist it with the processing of the aforementioned case filings.

In its affidavits and brief, the State denies that it furloughed the 18 ICTs due to any protected activity of the employees or the Charging Party. The state proffered the following explanation for the furloughs. It asserted that the U.S. Department of Labor funds the administrative cost of the State's unemployment insurance program. The federal funds for staffing are allocated based upon economic forecasts which are generated one year in advance. Regular, full-time staffing is kept at a level which is less than 100% of the anticipated yearly low level of personnel needs. In order to provide adequate staffing to properly process claims, the Division of Unemployment and Disability Insurance (the "Division") develops an employee roster to supplement its regular full-time employees. Staffing needs are thus adjusted up or down in accordance with workload levels. The work schedules (number of hours worked) of these intermittent employees vary from day to day and week to week. The State contends that ICTs and ICEs are Special Service employees and that Civil Service has determined that such intermittent employees may work up to 1258 hours in any one fiscal year without requiring that the employer file an application to convert the intermittent positions to permanent ones.

The State submits that projected workload and funding trends have cause the Division to reduce staff levels. Accordingly, because there is no projected long-term need for increased staffing levels, as intermittent employees have approached the allowable administrative maximum of hours worked (i.e. the number of hours which would necessitate the conversion of intermittent positions to permanent ones), they have been furloughed. The State also notes that layoffs

among intermittent employees are not an unusual occurrence -- 180 intermittent employees had been laid off prior to the April 1984 layoffs. Finally, the State argues that any harm to employees may be remedied through a back pay order and that Charging Party has failed to show that these actions have affected its employee support.

Accordingly, the State argues that the Charging Party has neither demonstrated that there is a substantial likelihood of success upon the legal and factual allegations of the case, nor that there would be irreparable harm should the requested interim relief be denied.

The CWA has based its claim of discriminatory layoffs essentially upon the timing of the events, the assertion that the number of unemployment insurance claims has remained the same and the relatively infrequent occurrence of intermittent employee layoffs. The State, which denied that there were any discriminatory motivations for the layoffs, proffered a legitimate business justification for the layoffs and disputed the Charging Party's contentions concerning the number of unemployment insurance claims and the occurrence of layoffs among intermittent employees.

Based upon the foregoing, the undersigned is unable to conclude that the Charging Party has demonstrated a substantial likelihood of success upon the merits of this case. Accordingly, the Charging Party's request for interim relief is hereby denied.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Charles A. Tadduni
Commission Designee

Dated: June 12, 1984
Trenton, New Jersey