

I.R. NO. 91-1

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Respondent,

-and-

Docket No. CO-90-354

IFPTE, LOCAL 195, AFL-CIO,

Charging Party.

SYNOPSIS

A Commission Designee declines to order the State to provide information to Local 195, IFPTE. The contract between the parties states "the State will discuss with the Union any decision to subcontract work based on solely fiscal reasons when it is apparent that employees will be laid off". Although the contract does not require providing economic data regarding subcontracting, meaningful discussion can only take place if economic data is provided to the union. However, the contract provision could be read as limiting discussion to those times when employees will be laid off. Here, no employees were laid off. Accordingly, Local 195 failed to show it has a substantial likelihood of prevailing on the facts in this matter.

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Appearances:

For the Respondent

Robert J. Del Tufo, Attorney General
(Stephan M. Schwartz, Deputy Attorney General)

For the Charging Party

Balk, Oxfeld, Mandell & Cohen, attorneys
(Arnold S. Cohen, of counsel)

INTERLOCUTORY DECISION

On June 11, 1990, IFPTE, Local 195, AFL-CIO, ("Local 195" of "Union") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") alleging that the State of New Jersey, Department of Transportation ("State" or "DOT") violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (3) and (7)^{1/} when, on June 16, 1990, it discontinued various landscaping

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the

operations and transferred approximately 100 DOT employees into the road maintenance section of DOT. DOT told Local 195 it would subcontract work formerly performed in its landscaping operation.

Local 195 requested that DOT provide it with any financial analysis reports prepared by DOT in contemplation of subcontracting. The charge alleges that DOT has refused to produce financial analysis reports or proposals and Local 195 has not received any of the documents necessary for it to make a logical presentation regarding subcontracting.

The unfair practice charge was accompanied by a request for an order seeking to have DOT show cause why the Commission should not restrain DOT from 1) sub-contracting landscaping work, 2) displacing landscaping employees and 3) ordering respondent to provide Local 195 with all pertinent fiscal information regarding the subcontracting, pending the final disposition by the Commission of this unfair practice charge.

The order was executed and a hearing was conducted on June 15, 1990. The State argued against the imposition of an injunction. I denied, on the record, the application to restrain as to both the reassignment of personnel and the subcontracting of

1/ Footnote Continued From Previous Page

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. (7) Violating any of the rules and regulations established by the commission."

landscaping work, for these acts are managerial prerogatives. I reserved rendering a decision on that portion of the application seeking to have DOT provide all pertinent fiscal information concerning its decision to subcontract.

The State was granted additional time to submit affidavits in support of its position that pertinent fiscal information should not be released.

In IFPTE, Local 195 vs. State of New Jersey, 88 N.J. 393, 409-410 (1982), the New Jersey Supreme Court stated that:

...we hold that a public employment contract may include a provision reciting an agreement by the state to discuss decisions to contract or subcontract whenever it becomes apparent that a layoff or job displacement will result, if the proposed subcontracting is based on solely fiscal considerations. In such situations, the public would clearly benefit from suggestions by public employees directed toward improving economy or efficiency. While the public employees have no right to negotiate on the ultimate decision to subcontract they may have a procedural right to present their position on the economic issue. Thus, for example, they could seek to show the employer that the employees are willing to perform the same job at a price competitive with the private replacements....

Article XLII of the agreement, entitled "Subcontracting of Work," states in pertinent part, as follows:

The State will discuss with the Union any decision to subcontract work based on solely fiscal reasons when it is apparent that employees will be laid off as a direct result of the subcontracting.

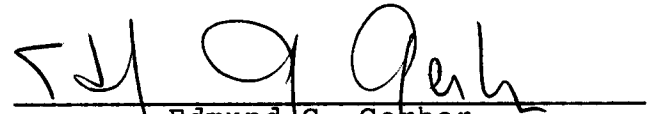
Although the contract provision does not specifically require providing economic data regarding subcontracting, it is apparent that meaningful discussion can only take place if economic data is provided to the union. However, this contract provision could be read as limiting discussion concerning subcontracting to those situations where employees will be laid off as a direct result of subcontracting. Here, although employees were transferred, no employees have been laid off.

Accordingly, there is a question as to whether the State has to supply financial information pursuant to the agreement between the parties.

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/}

^{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).

Here, there is a substantial question of facts as to whether the contract requires economic information. Accordingly the Application for Interim Relief is denied.


Edmund G. Gerber
Commission Designee

DATED: July 6, 1990
Trenton, New Jersey