

D.U.P. NO. 97-11

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

In the Matter of

STATE OF NEW JERSEY  
(DEPARTMENT OF HUMAN SERVICES),

Respondent,

-and-

Docket No. CO-96-5

C.W.A., LOCAL 1040,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint based on an unfair practice charge that the Communications Workers of America Local 1040, filed against the State of New Jersey, Department of Human Services. The charge alleged the State violated the Act when it changed the work schedule of certain employees represented by CWA. The Director finds, however, that the change did not violate the Act because it was authorized by the parties' collective negotiations agreement.

The Director also dismisses the charge alleging the State failed to negotiate in good faith with the certified majority representative. The Director finds that only the majority representative, the CWA National Union, and not Local 1040, has standing to allege that the employer refused to negotiate.

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Appearances:

For the Respondent,  
Peter Verniero, Attorney General  
(Stephan M. Schwartz, Deputy Attorney General)

For the Charging Party,  
Robert O. Yaeger, Principal Staff Representative

REFUSAL TO ISSUE COMPLAINT

On July 6, 1995, Local 1040 of the Communications Workers of America, AFL-CIO, filed an Unfair Practice Charge against the State of New Jersey, Department of Human Services. The charge alleges that on June 8, 1995, the State advised members of CWA's higher level and primary level supervisory units employed at the Forensic Psychiatric Hospital that the scheduled hours of work for all three shifts would be changed. The State did not notify Local 1040 of the change or seek to negotiate the change with Local 1040. By these actions, the State is alleged to have violated subsections

5.4(a)(5) and (7)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. CWA also asserts that the State failed to abide by Article 40, ¶B., "Effect of Agreement" by failing to notify and negotiate with CWA over its intended changes. The State denies that it violated the Act and argues that under the parties' agreement, it is permitted to change the schedule and is not required to notify CWA. The State argues that because the substance of this charge is both an allegation that the contract was violated and that an unfair labor practice was committed, the charge should be deferred to the parties' grievance procedure for resolution.

The parties agreement provides:

**Article VIII**

**A. Hours of Work**

1. The number of hours in the workweek for each job classification within the unit shall be consistent with its present designation in the State Compensation Plan.

2. Hours of work for "NL" employees may be adjusted by the responsible agency official in keeping with existing regulations and procedures.

3. Where practicable the normal workweek shall consist of five (5) consecutive work days.

4. For fixed workweek employees, when schedule changes are made the maximum possible notice, which shall not be less than seven (7) working days except

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<sup>1/</sup> These subsections prohibit public employers, their representatives or agents from: (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, and (7) Violating any of the rules and regulations established by the commission.

for unforeseen circumstances, shall be given to the affected employee.

5. For fixed workweek employees, when such employees' shift is changed, adequate advance notice which normally will be at least seven (7) working days and which shall not be less than forty-eight (48) hours, except in the case of an emergency, will be given to the affected employee. (emphasis added)

**Article XL**

**Maintenance of Benefits, Effect of Agreement and Complete Agreement**

**B. Effect of Agreement**

Regulatory policies initiated by the various institutions and agencies where these employees are working which have the effect of work rules governing the conditions of employment within the institution or agency and which conflict with any provision of this Agreement shall be considered to be modified consistent with the terms of this Agreement, provided that if the State changes or intends to make changes which have the effect of elimination in part or in whole such terms and conditions of employment, the State will notify the Union and, if requested by the Union within ten (10) days of such notice or of such change or of the date on which the change would reasonably have become known to the employees affected, the State shall within twenty (20) days of such request enter negotiations with the Union on the matter involved, providing the matter is within the scope of issues which are mandatorily negotiable under the Employer-Employee Relations Act as amended and further, if a dispute arises as to the negotiability of such matters, that the procedures of the Public Employment Relations Commission shall be utilized to resolve such dispute.

\* \* \* \* \*

This case presents substantially the same issue as that presented in State of New Jersey, P.E.R.C. No. 86-64, 11 NJPER 723 (¶16254 1985), where the Commission interpreted contract language, similar to that contained in Article VIII above, in the context of

the parties' bargaining history and found that the union had waived its right to negotiate over the issue of changing the work schedule. It held that the State's actions in changing the starting and stopping times there were authorized by the agreement and, therefore, did not violate the Act. It is a well-settled principal that, except where specifically restricted by the contract, management generally is held to have the right to change the work week and work shifts.

"where the contract contains no express restriction on the employer's right to determine the starting time for work shifts, the employer has been permitted unilaterally to change the starting and stopping time."<sup>2/</sup>

For the reasons expressed in the above-cited decision, we find this charge without merit and dismiss the charge. It appears that CWA waived its right both to negotiate over schedule changes and to advance notice by agreeing to Article VIII, A.4, as written, which specifically requires the State to notify employees in advance of making a schedule change but is silent as to notice to CWA.

Finally, Local 1040 does not have standing to bring this charge. The right to initiate a charge over a refusal to negotiate in good faith belongs solely to the exclusive majority representative. The exclusive majority representative for these employees is the CWA International and not Local 1040. Nothing contained in the charge or any correspondence indicates that the CWA

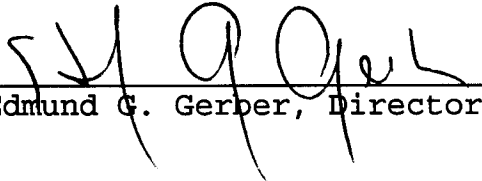
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<sup>2/</sup> How Arbitration Works, Elkouri and Elkouri, at 483.

International joins in or supports the filing of this charge. See State of New Jersey, (D.E.P.E.), D.U.P. No. 93-43, 19 NJPER 389 (¶24171 1993) and State of New Jersey, (Human Services), D.U.P. No. 95-21, 21 NJPER 52 (¶26036 1994).

Accordingly, based on all the above, I decline to issue a Complaint and dismiss the charge in its entirety.<sup>3/</sup>

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: August 19, 1996  
Trenton, New Jersey

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<sup>3/</sup> As a matter of law and policy, the Commission favors voluntary dispute resolution efforts. See N.J.S.A. 34:13A-2. and N.J.S.A. 34:13A-5.3. and, N.J. Department of Human Services, P.E.R.C. 84-148, 10 NJPER 419 (¶15191 1984) Since both parties herein argue that the contract supports their position, it appears this matter may be appropriate for resolution under their negotiated grievance and arbitration procedure.