

I.R. NO. 83-2

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Respondent,

-and-

Docket No. CO-82-302

COMMUNICATIONS WORKERS OF  
AMERICA, AFL-CIO,

Charging Party.

SYNOPSIS

In an interim relief proceeding, the Chairman orders representatives of the State of New Jersey, Division of Motor Vehicles, to cease and desist from meeting with representatives of the "Employees' Council," a departmental employee organization, for the purposes of permitting the Council to present grievances concerning terms and conditions of employment on behalf of employees in negotiating units represented by CWA, during the pendency of an unfair practice proceeding. The Chairman finds that a portion of the activities of the Employees' Council have involved the presentation of grievances concerning terms and conditions of employment for purposes of management adjustment and that such activity may contravene CWA's exclusive representative status.

The Chairman denies CWA's request to disestablish the Council and also denies relief with respect to CWA's allegation that the State had rendered unlawful assistance to a rival labor organization.

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Appearances:

For the Respondent, Irwin Kimmelman, Attorney General of New Jersey (Michael L. Diller, of Counsel and On the Brief)

For the Charging Party, Kapelsohn, Lerner, Reitman and Maisel, Esqs. (Sidney Reitman, of Counsel and Bennet D. Zurofsky, On the Brief)

INTERLOCUTORY DECISION

On June 8, 1982, the Communications Workers of America, AFL-CIO ("CWA") filed an unfair practice charge against the State of New Jersey (the "State") with the Public Employment Relations Commission. The charge alleges that representatives of the State's Division of Motor Vehicles ("Division") and Department of Law and Public Safety violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), specifically subsections 5.4(a)(1), (2) and (5),<sup>1/</sup> by undermining CWA's status as a majority representative of certain Division employees and by

<sup>1/</sup> 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: (2) Dominating or interfering with the formation, existence or administration of any employee organization; 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."

dealing with a minority organization of Division employees -- the "Employees' Council" ("Council") -- over terms and conditions of employment. More specifically, the multi-faceted charge alleges, inter alia, that State representatives have met and conferred monthly with the Council with respect to terms and conditions of employment; that the State has refused to meet monthly with CWA shop stewards and has cancelled a May 1982 meeting; that the State knows that Council members are organizing a rival labor organization -- the United Public Employees -- which seeks to replace CWA as exclusive representative; that State representatives have assisted, encouraged, and dominated the Council; and that State representatives have interfered with CWA's majority representative rights and have refused to negotiate in good faith by meeting with the Council on matters which have not been discussed with CWA.

CWA coupled its filing of the unfair practice charge with an application for interim relief and a supporting brief. It requested that the State, pending the completion of both the proceedings on the interim relief application and the proceedings on the underlying charge, be enjoined from meeting with the Council and be ordered to disestablish the Council, terminate all agreements reached with the Council, and negotiate solely with CWA over all matters discussed with the Council.

On the same day CWA filed its charge, I conducted an informal conference at which the parties argued over CWA's request for temporary restraints pending the completion of interim relief proceedings. At the end of the conference, CWA's request for

temporary restraints was denied, but an Order to Show Cause was executed, returnable June 18, 1982.

On June 14, 1982, the State filed a brief and accompanying affidavits and exhibits in opposition to CWA's request for interim relief. On June 17, 1982, CWA submitted a reply brief and accompanying affidavits and exhibits.

The parties have waived a further hearing on the interim relief application and have agreed to have the instant application decided on the basis of their submissions. Based on my review of these submissions, and pursuant to N.J.A.C. 19:14-9.5(a), I hereby enter my written decision on the interim relief application.

The standards the Commission uses to evaluate the appropriateness of interim relief are similar to those the courts apply. The test is twofold: the applicant must establish both a substantial likelihood of final success on its legal and factual allegations and irreparable harm if the requested relief is not granted.<sup>2/</sup>

The submissions set forth the following facts. CWA is the exclusive representative of State employees in four negotiating units: Administrative and Clerical employees, Higher Level supervisors, Primary Level supervisors, and Professional employees. A number of these employees work for the Division. As the exclusive

<sup>2/</sup> See In re Township 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); In re Township of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); and In re Communications Workers of America, AFL-CIO, I.R. No. 82-2, 7 NJPER 532 (¶12235 1981).

representative of these employees, CWA is entitled to act on behalf of such employees for purposes of collective negotiations, and the public employer must meet at reasonable times and negotiate in good faith with CWA with respect to grievances and terms and conditions of employment.<sup>3/</sup>

The Council is a body of Division employees which has apparently been in existence since the early 1970's. The Council is a structured organization with a chairperson, a secretary, and representatives selected by each section of the Division (e.g., office services, vehicle inspection, and mail room).<sup>4/</sup>

The Council meets every month during working hours. Representatives of management have, in the past, attended these meetings. In 1981, the former Division Director directed that management representatives no longer attend Council meetings, but the State acknowledges, and minutes of Council meetings confirm, that management representatives have occasionally attended such meetings despite this directive. Further, management representatives receive copies of the minutes of each monthly meeting.

The Council organizes social programs such as Division picnics and outings during non-working time. The minutes of its meetings demonstrate, however, that a substantial amount of the

<sup>3/</sup> N.J.S.A. 34:13A-5.3.

<sup>4/</sup> Inasmuch as all of the employees in the Division appear to be represented by the Council, some of the employees represented fall outside CWA's negotiating units and are exclusively represented under the Act by other labor organizations certified to represent such employees. These other units include employees represented by Local No. 195, International Federation of Professional and Technical Engineers, and Local No. 518, New Jersey State Motor Vehicle Employees Union.

Council's business is devoted to the improvement of building maintenance and employee working conditions -- for example, building temperature, conditions of rest rooms and working areas, ventilation, and security -- and discussion of personnel matters -- for example, early dismissals, promotional postings, and the charging of vacation time.

It cannot be seriously disputed that the objective of Council discussions concerning building maintenance problems, employee working conditions, and personnel matters was to present these problems to management for adjustment. The minutes of Council meetings demonstrate the problem-solving nature of the dialogue between the Council and Division management. Further, the State acknowledges that the Council acts as a "conduit through which employees' concerns can be made known to the administrative arm of the Division" (Brief, p. 3) and that it will attempt to adjust many of these concerns. The State, however, asserts that when a "substantial" concern is raised, it refers such a concern to CWA rather than attempting to resolve it through the Council.

The State denies any knowledge that Council members may be organizing a competing organization. The parties' submissions do not contain any substantial evidence that Council members are affiliated with any other labor organization or are deliberately using Council meetings and activities to challenge CWA's exclusive representative status.

The State and CWA have met periodically to discuss employee concerns and grievances during the past year. The minutes of those meetings reflect that issues similar to those

discussed by the Council -- for example, building maintenance concerns -- were discussed.

During negotiations for the 1981-1983 collective agreement, the State rejected a demand for regularly scheduled meetings of management representatives and CWA shop stewards. The State, claiming that neither the contract nor the Act requires regularly scheduled meetings for general discussions, has repeated this rejection recently. The State, however, has stated that it will meet with shop stewards at any time to discuss a particular problem or grievance. Management representatives and shop stewards have periodically met during the past year to discuss such problems although the State did cancel a May 1982 meeting with CWA shop <sup>5/</sup>stewards.

N.J.S.A. 34:13A-5.3 provides, in part:

Representatives designated or selected by public employees for the purposes of collective negotiation by the majority of the employees in a unit appropriate for such purposes or by the majority of the employees voting in an election conducted by the commission as authorized by this act shall be the exclusive representatives for collective negotiations concerning the terms and conditions of employment of the employees in such unit. (emphasis added)

The exclusivity principle is a cornerstone of the Act's structure for regulating the relationship between public employers and public employees. In Lullo v. Intern. Assoc. of Fire Fighters, 55 N.J. 409, 426 (1970) ("Lullo"), the New Jersey Supreme Court explained why:

However, the major aim [the equitable balance of bargaining power] could not be accomplished if numerous individual employees wished to represent themselves or groups of employees chose different

<sup>5/</sup> This decision does not involve the question of whether the State is obligated to hold monthly meetings with CWA.

unions or organizations for the purpose. Such absence of solidarity and diffusion of collective strength would promote rivalries, would serve disparate rather than uniform overall objectives, and in many situations would frustrate the employees' community interests. See Chamberlain, Labor, 197 (1958). Obviously parity of bargaining power between employers and employees could not be reached in such a framework. So the democratic principle of majority control was introduced on the national scene, and the representative freely chosen by a majority of the employees in an appropriate unit to represent their collective interests in bargaining with the employer was given the exclusive right to do so. 29 U.S.C.A. §159(a). Thus this policy was built on the premise that by pooling their economic strength and acting through a single representative freely chosen by the majority, the employees in such a unit achieve the most effective means of bargaining with an employer respecting conditions of employment. NLRB v. Allis-Chalmers Mfg. Co., 388 U.S. 175, 18 L.ed. 2d 1123 (1967); Medo Photo Supply Corp. v. NLRB, 321 U.S. 678, 684, 88 L. ed. 1007, 1101 (1944); J.I. Case Co. v. NLRB, 321 U.S. 332, 338, 88 L. ed. 761, 678 (1944). Experience in the private employment sector has established that investment of the bargaining representative of the majority with the exclusive right to represent all the employees in the unit is a sound and salutary prerequisite to effective bargaining. Beyond doubt such exclusivity -- the majority rule concept -- is now at the core of our national labor policy. NLRB v. Allis-Chalmers Mfg. Co., supra, 388 U.S. at 180.

In short, exclusivity promotes labor stability by discouraging rivalries among individual employees and employee groups and by avoiding the diffusion of negotiating strength which results from multiple representation. Id. at p. 429. See also, Red Bank Regional Ed. Assn. v. Red Bank Reg. High School Bd. of Ed., 78 N.J. 122 (1978).

Given Lullo's recognition of the fundamental importance of the exclusivity principle in public sector labor relations and the debilitating effects of departure from this principle, it is clear that a majority representative such as CWA suffers harm when the employer permits a separate, uncertified organization to act on behalf of employees for purposes exclusively reserved



to the certified employee representative. See also United Steel-Workers of America, AFL-CIO v. NLRB, and The Dow Chemical Co., 536 F.2d 550 (1976); Dade County PBA v. Metropolitan Dade County, 8 Fla. PERC #13153 (1982); Genesee Community College, 9 N.Y. PERB #3005 (1976).

Our Act does contain a narrow limitation on the exclusivity principle. N.J.S.A. 34:13A-5.3 provides, in part:

Nothing herein shall be construed to prevent any official from meeting with an employee organization for the purpose of hearing the views and requests of its members in such unit so long as (a) the majority representative is informed of the meeting; (b) any changes or modifications are made only through negotiation with the majority representative; and (c) a minority organization shall not present or process grievances.

My task for purposes of deciding this interim relief application is to determine whether there is a substantial likelihood that the exclusivity principle has been breached or whether the Council meetings fall within the limitation on this principle. My review of the record persuades me, at a minimum, that there is a substantial likelihood that these meetings have involved the presentation of a minority organization's grievances concerning terms and conditions of employment<sup>5/</sup> for purposes of management adjustment. Such activity does contravene CWA's exclusive representative status and is not sheltered by the statutory limitation on the exclusivity principle, particularly since none of the three

<sup>5/</sup> Bryam Township Bd. of Ed. and Byram Township Ed. Assn., P.E.R.C. No. 76-27, 2 NJPER 143 (1976) (physical facilities and conveniences, employee safety), affd, 152 N.J. Super. 12, 27-30 (App. Div. 1977); In the Matter of Township of Hillside, P.E.R.C. No. 78-50, 4 NJPER 4076 (1978) (locker room maintenance and cleanliness); In the Matter of Township of Saddle Brook, P.E.R.C. No. 79-72, 4 NJPER 192 (¶4097 1978) (equipment maintenance; In re Town of Kearny, P.E.R.C. No. 87-70, 7 NJPER 14 (¶12006 1982) (coffee and lunch room facilities); In re Town of Weehawken, P.E.R.C. No. 81-147, 7 NJPER 361 (¶12163 1982) (lighting, heat, sanitation facilities.)

conditions have apparently been met.

It may be true that the motivation of management to participate in meetings with the Council may only involve promoting employee morale and access to administration officials. Such access and communication may indeed not be unlawful when directed towards enhancing the mission of management or the promotion of the social needs of departmental employees. However, when over the objection of an exclusive representative, management allows a minority organization to use such access and communication in order to press and adjust grievances concerning terms and conditions of employment, I am convinced that the Commission would find a violation of N.J.S.A. 34:13A-5.4(a)(5).

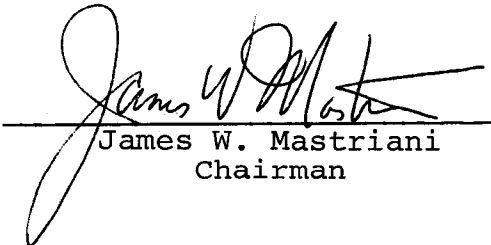
I am also convinced that CWA does suffer some harm for which interim relief is appropriate. As the cases cited above, especially Lullo, establish, relief provided at the terminal point of an unfair practice proceeding cannot remedy the loss of prestige and power the exclusive representative suffers during the time another organization is permitted to act on behalf of unit employees concerning terms and conditions of employment.

While some interim relief is warranted, I am also persuaded that the scope of relief CWA requests is overly broad. In particular, I find no basis on this record to disestablish the Council or to preclude its ability to operate in areas --such as social activities -- where it has functioned for a long time and which are outside the statutory responsibility of the majority representative. In addition, I deny CWA's request for interim relief with respect to its allegation that the State has violated N.J.S.A. 34:13A-5.4(a)(2) by rendering assistance to the United

Public Employees; CWA has not demonstrated a sufficient likelihood of success on this contention. Instead, I limit the grant of interim relief to the problem this record presents: continued meetings between Council and State representatives which involve the presentation of employee grievances concerning terms and conditions of employment for the purpose of management adjustment.

ORDER

For the reasons set forth above, IT IS ORDERED that the State of New Jersey, Division of Motor Vehicles cease and desist from meeting with the "Employees' Council" for the purposes of permitting the Council to present grievances concerning terms and conditions of employment on behalf of employees in the negotiating units represented by the Communications Workers of America, AFL-CIO until further order of this Commission made in the course of this proceeding.

  
James W. Mastriani  
Chairman

DATED: Trenton, New Jersey  
July 2, 1982