

1.R. NO. 99-13

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,  
OFFICE OF EMPLOYEE RELATIONS,  
(DEPARTMENT OF HUMAN SERVICES),

Respondent,

-and-

Docket No. CO-99-243

COMMUNICATIONS WORKERS OF AMERICA,  
AFL-CIO,

Charging Party.

**SYNOPSIS**

The CWA sought to restrain the State from: changing where and when it normally scheduled union meetings; removing certain information from union bulletin boards and engaging in other actions which it alleged interfered with the Union's ability to represent employees. The Commission Designee denied the application concluding that the CWA did not establish a substantial likelihood of success, one of the requirements of the interim relief standard.

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Appearances:

For the Respondent, Peter Verniero, Attorney General  
(Michael L. Diller, Senior Deputy Attorney General)

For the Charging Party, Weissman & Mintz, attorneys  
(Judianne Chartier, of counsel)

INTERLOCUTORY DECISION

On January 26, 1999, the Communications Workers of America, AFL-CIO (CWA) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the State of New Jersey, Office of Employee Relations (State), committed an unfair practice within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act). The CWA alleged the State, through the Department of Human Services, Division of Medical Assistance (DMA) and Division of Family

Development (DFD), violated N.J.S.A. 34:13A-5.4a(1), (2), (3), (4) and (5).<sup>1/</sup>

The unfair practice charge was accompanied by an application for interim relief. On January 29, 1999, an order to show cause was executed and a return date was scheduled for February 19, 1999, but then rescheduled for February 26, 1999. An amended charge was filed on February 4, 1999. The parties submitted briefs, affidavits and exhibits in accordance with Commission rules, and argued orally on the return date.

The CWA alleges that Ronald Stock, the Employee Relations Officer for the DMA and DFD, has restricted CWA's ability to meet with and represent its members at the DMA and DFD facilities in Mercerville, New Jersey, by: changing the site for CWA meetings from lunch and conference rooms in buildings 3, 5, 6 & 7 to one of two small rooms in building 5 which is allegedly too far for some

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<sup>1/</sup> These provisions 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. (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. (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."

employees to travel on their 15 minute break and too small to accommodate enough members; cancelling scheduled CWA meetings in the small rooms because they were occupied even though other meeting rooms were available; denying CWA's request to discuss the meeting sites; and restricting CWA Staff Representative, Mike Finley, to the small room in building 5 and denying him access to other locations even to investigate grievances or safety complaints.

The CWA further alleges that Stock has prohibited it from conducting more than one meeting every six weeks; removed meeting announcements and other information from CWA bulletin boards and employee cubicles; refused to allow Finley to place notices on union bulletin boards; and that Finley's movements have been monitored in the buildings and in a restaurant in one building causing some CWA members to decline speaking with him.

The CWA asserts that its collective agreement with the State provides for access to buildings and use of meeting facilities, that contract negotiations are about to begin and informational meetings with members are necessary for the CWA to provide proper representation. The CWA did not allege, however, that the State repudiated the parties collective agreement. The CWA concludes that the State's actions if allowed to continue will significantly interfere with protected rights.

The State disputed several factual assertions presented by the CWA, and argued primarily that Mr. Stock acted consistent with the parties collective agreement in designating the place for union

meetings and in removing certain information from areas not considered union bulletin boards. The State denied that a security guard interfered with Mr. Finley, and noted it cancelled a room once, but offered to reschedule it for the following day. Finally, the State argued that the CWA failed to avail itself of the procedure established by Side Letter Agreement #1<sup>2/</sup> designed to deal with problems over access to premises, and argued that the access and bulletin board issues, in particular, should be deferred to the parties grievance procedure.

To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. Crowe v. De Gioia, 90 N.J. 126, 132, 134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35, (1971); State of New Jersey (Stockton State College), P.E.R.C. No.

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2/ Side Letter of Agreement #1 provides:

Access to Premises

The State and the Union agree that both parties will abide by the access to premises provision in the Union Rights and Representatives contract article. If problems develop as to access to premises a representative from the Office of Employee Relations and the Communications Workers of America will meet to seek an amicable resolution to the problems. If no resolution is achieved both parties reserve their rights to exercise legal and contractual options available.

76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975).

N.J.S.A. 34:13A-5.3 states in relevant part:

Proposed new rules or modification of existing rules governing working conditions shall be negotiated with the majority representative before they are established. In addition, the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances, disciplinary disputes, and other terms and conditions of employment.

Thus, under the Act, before an employer can change a term or condition of employment, it must negotiate with the majority representative.

The parties have negotiated an access provision and a bulletin board provision into Article 25 of their collective agreement. Article 25 provides:

A. Access to Premises

1. Union officials and duly authorized Union representatives, whose names and identification have been previously submitted to and acknowledged by the State, shall be admitted to the premises of the State on Union business. Requests for such visits shall be directed with reasonable advance notice to State officials who shall be designated by the State and shall include the purpose of the visit, proposed time and date and specific work areas involved. Permission for such visits shall not be unreasonably withheld. Provided that requests have been made pursuant to this paragraph, such Union officials shall have the opportunity to consult with employees in the unit before the start of the work shift, during lunch or breaks, or after completion of the work shift. The State will designate appropriate places for such meetings at its facilities. Access to the

premises as set forth in this paragraph shall not be given by the State to any employee organization other than to the Union set forth herein or to any officer or representative of such other employee organization for the purpose of communicating with employees in this unit.

2. The Union shall be allowed to conduct normal business meetings on State properties, provided that space is available during hours when the facilities are open; requests are made and approved at least one (1) week in advance of the proposed date of use and that liability for the damages, care and maintenance, and any costs which are attendant thereto are borne by the Union. Employees may attend such meetings only during off duty hours. Less notice may be acceptable to the State.

3. The above is not intended to restrict Union officials and Representatives from exercising their ordinary right as citizens as regards access to the public premises of the State.

#### C. Bulletin Boards

1. In central locations and in work areas where there are large numbers of employees covered by this Agreement, the State will make space available on existing bulletin boards which space will be for the exclusive use of the Union. The space provided on each bulletin board will minimally approximate 30" by 30" or an equivalent. If the Union desires bulletin boards at other locations, then it may request permission to provide its own bulletin boards. Approval of such requests shall conform to State standards and will not be unreasonably withheld by the State.

2. Appropriate material on such bulletin boards shall be posted and removed by representatives of the Union. The material shall not contain any profane, obscene or defamatory of the State or its representatives and employees, nor anything constituting election campaign material. Materials which violate provisions of this Article shall not be posted. Material to be posted will consist of the following:

- a. Union elections and results thereof;
- b. Union appointments;
- c. Union meetings;
- d. Social and recreational events of the Union.
- e. Reports of official Union business and achievements.

3. The Union will be permitted to post notices on designated bulletin boards where available in field locations not within institutions or offices of the State provided such postings are consistent with the conditions agreed to above. Requests for permission for such postings shall be granted by the departmental or appropriate subordinate level of management.

4. The State may, upon request of the Union undertake to make specific postings of authorized materials on behalf of the Union.

5. The State will provide space in central locations and areas frequented by employees in the unit where Union newspapers, circulars and literature may be placed so that employees may pick up copies during non-work time provided that such material for distribution is consistent with Item 2 of this provision. It is further agreed that the Union will assure that all undistributed literature is removed from the distribution points after a reasonable time.

The access provision provides that the State will designate appropriate places for union meetings. Side Letter Agreement #1 provides that the parties will attempt to amicably resolve access problems, otherwise access problems can be grieved to binding arbitration. The bulletin board provision provides that the Union is allowed to post specific types of information on designated bulletin boards. That provision is silent with respect to the posting of notices on employee cubicles.



With respect to the access issue, the CWA maintained that for some time the State approved larger and more convenient rooms for Union meetings. The CWA argued that the State's approval of those rooms became the practice, and that the State could not unilaterally designate other rooms thereafter. The State relied upon the language of Article 25 Section A(1) of the agreement arguing it had the right to designate places for union meetings.

On the access issue the CWA has not demonstrated a substantial likelihood of success. A practice inconsistent with the terms of a collective agreement does not prevail and a public employer meets its negotiations obligation when it acts pursuant to the terms of the collective agreement. Sussex-Wantage Reg. B/E, P.E.R.C. No. 86-57, 11 NJPER 711 (¶16247 1985); Randolph Twp. B/E, P.E.R.C. No. 83-41, 8 NJPER 600 (¶13282 1982); Bound Brook B/E, P.E.R.C. No. 83-11, 8 NJPER 439 (¶13207 1982); Pasack Valley B/E, P.E.R.C. No. 81-61, 6 NJPER 554, 555 (¶11280 1980). Arguably, here any practice of assigning specific meeting rooms is inconsistent with the parties collective agreement. Article 25 Section A(1) of that agreement appears to give the State the right to designate the meeting place for Union meetings. See, New Jersey Department of Labor, I.R. No. 89-20, 15 NJPER 319 (¶20142 1989).

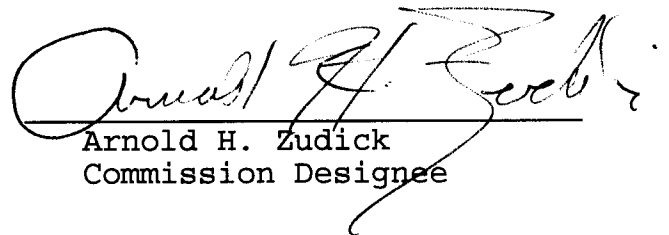
The result is the same on the bulletin board, security guard and other issues, there is no substantial likelihood of success. While the CWA alleges that notices were removed from a union bulletin board, the State argues that certain information was

only removed from employee cubicles which is not mentioned in Article 25 Section C. The evidence is vague about whether a guard interfered with Mr. Finley's conduct, and the CWA's submissions are otherwise insufficient to establish a substantial likelihood of success on the other allegations.

Since the CWA did not prove a substantial likelihood of success, a requisite requirement for interim relief has not been met. Accordingly, I issue the following:

ORDER

The CWA's application for interim relief is denied. This case will be referred to the Director of Unfair Practices for further processing.<sup>3/</sup>

  
Arnold H. Zudick  
Commission Designee

Dated: March 3, 1999  
Trenton, New Jersey

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<sup>3/</sup> Having denied the application I will not address the State's request for deferral. That claim can be raised with the Director.