

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matters of

STATE OF NEW JERSEY,

Respondent,

-and-

Docket No. CO-84-296

COMMUNICATIONS WORKERS OF  
AMERICA, AFL-CIO,

Charging Party.

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SYNOPSIS

Upon application for Interim Relief brought by the Charging Party, a designee of the Commission denies the request by the Charging Party that the Respondent be directed to recognize that all Special Services (hourly) employees who are employed for 20 or more hours per week, in positions which have existed for six or more months and who are performing the same work as CWA unit members, are members of appropriate CWA negotiations units; and that the Respondent be directed to apply the terms and conditions of employment contained in the applicable collective negotiations agreement to said employees.

Having observed that the instant matter presents the Commission with issues of first impression, the Commission's designee concluded that the Charging Party was thus unable to demonstrate a substantial likelihood of success upon the merits herein. Accordingly, Charging Party's application for Interim Relief has been denied.

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Appearances:

For the Respondent

Irwin I. Kimmelman, Attorney General  
(Michael L. Diller, Deputy Attorney General)

For the Charging Party

Steven P. Weissman, Associate Counsel, CWA

INTERLOCUTORY DECISION

On April 26, 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"). More specifically, it is alleged that the State violated subsections 5.4(a)(1) and (5) of the Act by refusing to negotiate with the CWA concerning

the terms and conditions of employment of certain employees (denominated "hourlies") whom the CWA asserts are covered under one of its various collective negotiations agreements with the State. <sup>1/</sup>

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 Special Services (hourly) employees who are employed for 20 or more hours per week, in positions which have existed for six or more months and who are performing the same work as CWA unit members, are members of appropriate CWA negotiations units; and that the Respondent be directed to apply the terms and conditions of employment contained in the applicable collective negotiations agreement to said employees.

The Order to Show Cause was executed and made returnable on May 9, 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

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<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; (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."

irreparable nature of the harm that will occur if the requested relief is not granted. <sup>2/</sup> Both standards must be satisfied before the requested relief will be granted.

The CWA has set forth the following contentions: that the CWA is the certified majority representative of the employees in the statewide Administrative and Clerical Services unit; that the CWA is also the certified majority representative of the employees in the statewide Professional unit; that the recognition clauses of the current collective negotiations agreements between the State and the CWA covering both the Administrative and Clerical unit and the Professional unit each contain the following provision:

Included are all full-time permanent, classified, unclassified and provisional employees and all permanent full-time ten (10) month employees (classified, unclassified and provisional) and permanent part-time employees (classified, unclassified and provisional) who are employed a minimum of twenty (20) hours per week and who are included in the classifications listed in Appendix II.

That the State employs many employees whose status is denominated Special Services employee; that many of the above-referred Special Services employees perform duties identical to those duties performed by members of CWA's Administrative and Clerical and Professional units; that many of these Special Services employees are in positions which have existed for more than six months; that many of these Special Services employees are employed for 20 or more hours per week. The CWA indicates that certain employees fall within all three of the categories set forth hereinabove.

<sup>2/</sup> 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).

The CWA further contends that the State has refused to apply the terms and conditions of employment of the applicable CWA collective negotiations agreements to Special Services employees who work 20 or more hours per week in positions which have existed for longer than six months and who perform work identical to that performed by other CWA negotiations unit members. CWA contends that the State has also refused to negotiate with the CWA concerning the terms and conditions of employment of such employees.

In its brief and oral argument herein, the CWA has contended that as the result of a decision recently issued by a Commission Hearing Examiner, "...the legal aspects of this controversy have been largely resolved." <sup>3/</sup> In a decision issued on April 16, 1984, In re State of New Jersey, H.E. No. 84-54,     NJPER     (¶      1984), Commission Hearing Examiner Edmund G. Gerber found that certain employees who were originally hired by the State as Special Services employees became provisional employees pursuant to N.J.A.C. 4:1-14.5, because (a) they occupied positions which existed longer than six months and (b) they regularly worked 20 or more hours per week. <sup>4/</sup> Further, the Hearing Examiner found that these employees were performing tasks which matched the job descriptions of several titles listed in the title appendices of the CWA's contracts covering the Administrative and Clerical unit and the Professional unit. Accordingly, once the employees became provisional, then pursuant to the contract recognition clauses, the Hearing Examiner concluded that these employees fell within the unit descriptions set forth therein.

<sup>3/</sup> Charging Party's brief at 2.

<sup>4/</sup> In re State of New Jersey, supra, at 20, 21 and 22.

The CWA argues herein that the State's conduct -- its refusal to negotiate or to apply the terms of appropriate collective negotiations agreements to hourly employees -- has caused and continues to cause irreparable harm to employees and the CWA by denying employees the right to union representation and denying the CWA the right to function as the exclusive representative for employees properly included in its Professional and Administrative and Clerical units.

The State contends that the requested interim relief should not be granted because the Charging Party has failed to demonstrate a substantial likelihood of success on the merits or any irreparable harm.

The State emphasizes that the case upon which CWA bases its legal arguments is a decision of a Commission Hearing Examiner, issued on April 16, 1984, and not a final administrative determination. In its answering brief herein, the State indicates that it is filing exceptions to the Hearing Examiner's decision and will seek to have the Commission modify various findings of fact and conclusions of law reached by the Hearing Examiner. The State outlined those points in its brief herein. The State argues that to grant interim relief based upon such a decision would be premature. The State further argues that there was no irreparable harm to the Charging Party in the instant circumstances and that the Commission lacks jurisdiction to rule upon such issues.

In the instant matter, the legal arguments made by the Charging Party urging the issuance of the requested interim relief order are premised upon a decision of a Commission Hearing Examiner, In re State of New Jersey, supra. The Commission has been informed

that exceptions will be filed therein by the Respondent in the near future.

N.J.A.C. 19:14-7.1 states:

After the hearing for the purpose of taking evidence upon a complaint, or upon the consent of the parties prior to the conclusion of the hearing, the hearing examiner shall prepare a recommended report and decision which shall contain findings of fact, conclusions of law, and recommendations as to what disposition of the case should be made, including, where appropriate, a recommendation for such affirmative action by the respondent as will effectuate the policies of the act. The hearing examiner shall file the original thereof with the commission, and shall cause a copy to be served upon the parties. Upon service thereof upon the parties, which shall be complete upon mailing, the case shall be deemed transferred to the commission.

N.J.A.C. 19:14-8.1 states:

Upon receipt of the record, the commission shall adopt, reject or modify the hearing examiner's recommended report and decision. The commission may decide the matter forthwith upon the record, or after oral argument, or may reopen the record and receive further evidence before the entire commission, a member or members thereof, or other designated officer. 5/

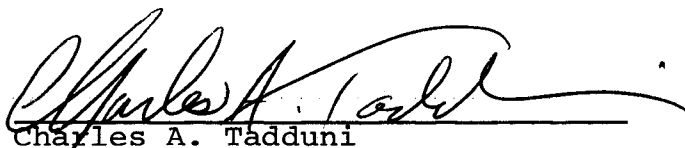
In In re State of New Jersey, H.E. No. 84-54, the Hearing Examiner dealt with an extensive, complicated and issue-laden record. The disposition of some of those issues involved the interpretation of the New Jersey Employer-Employee Relations Act and some collateral interpretations of certain statutes, regulations and decisions of the Civil Service Commission. The issues therein

5/ The undersigned would further note that it is the Commission's policy to place in the synopsis of each Hearing Examiner decision the following statement: "A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law."

are somewhat novel -- they have not yet been addressed by the Public Employment Relations Commission. <sup>6/</sup> While the undersigned is cognizant of Hearing Examiner Gerber's decision therein, it is a Hearing Examiner's recommended decision, not a final administrative determination, which in this context may be rendered only by the full Commission.

The undersigned is mindful of the heavy burden placed upon a Charging Party seeking interim relief. The instant matter presents the Commission with some complex and novel legal issues. Because neither the Commission nor any other appropriate tribunal has yet considered and decided such issues, the undersigned is unable to conclude that the Charging Party has demonstrated a substantial likelihood of success upon the legal and factual issues of this case. Accordingly, Charging Party's request for interim relief is hereby denied.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
Charles A. Tadduni  
Commission Designee

Dated: May 23, 1984  
Trenton, New Jersey

<sup>6/</sup> Other than the Bus Drivers decision cited by Hearing Examiner Gerber in In re State of New Jersey, H.E. No. 84-54, supra, the undersigned is not currently aware of any court or Civil Service Commission decisions which have addressed and clearly resolved such issues as those raised in In re State of New Jersey.