

D.R. NO. 97-1

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF REPRESENTATION

In the Matter of

STATE OF NEW JERSEY,

Public Employer/Petitioner,

-and-

Docket No. CU-96-25

COMMUNICATIONS WORKERS OF AMERICA,

Employee Organization.

SYNOPSIS

The Director of Representation clarifies CWA's Administrative and Clerical Services, Professionals, Primary Level Supervisors and Higher Level Supervisors units to exclude all employees in the Department of Personnel Human Resources Development Institute.

N.J.S.A. 11A-1.1 et seq. provides that "all employees [of the Department of Personnel] shall be confidential employees for purposes of the New Jersey Employer-Employee Relations Act." Accordingly, those employees are confidential by statute and are not entitled to the protections of the Act.

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Appearances:

For the Public Employer/Petitioner,
Deborah T. Poritz, Attorney General
(Michael L. Diller, Senior Deputy Attorney General)

For the Employee Organization,
Weissman & Mintz, attorneys
(Steven P. Weissman, of counsel)

DECISION

On January 10, 1996, the State of New Jersey filed a Petition for Clarification of Unit with the Public Employment Relations Commission. The State seeks to remove all employees in the Department of Personnel Human Resources Development Institute from four bargaining units represented by the Communications Workers of America.^{1/} The State filed a position statement in support of

^{1/} The petitioned-for employees are included in the following bargaining units: Administrative and Clerical Services, Professionals, Primary Level Supervisors and Higher Level Supervisors.

its petition on January 29, 1996.^{2/}

In August 1990, then Governor Florio promulgated Executive Order No. 12, establishing a Human Resources Development Institute within the Department of Personnel. HRDI is staffed by employees transferred from other State departments. The State asserts that the HRDI employees are therefore employees of the Department of Personnel. The New Jersey Civil Service Act, N.J.S.A. 11A-1-1 et seq. provides in pertinent part that "all employees [of the Department of Personnel] shall be confidential employees for purposes of the New Jersey Employer-Employee Relations Act, L. 1941, c. 100 (C 34:13A-1 et seq.)." N.J.S.A. 11A:2-11(b). The State relies upon this statutory language in support of its petition.

CWA opposes the State's petition. It cites a 1991 Memorandum of Understanding between CWA and then Acting Personnel Commissioner William Schuer. The memorandum provided that CWA would continue to represent HRDI titles assigned to its bargaining units after those titles were transferred to the Department of Personnel.^{3/} CWA also argues the State's consolidation and transfer of training functions to the Department of Personnel was illegal because it failed to adhere to the requirements of the

^{2/} After several extensions of time, CWA filed a position statement opposing the petition on June 11, 1996. The State filed a reply to CWA's position statement on June 20, 1996. The following facts appear.

^{3/} The agreement provides that if any aspect of the agreement requires regulatory or other action, Department of Personnel and CWA will jointly undertake such action.

Executive Reorganization Act, N.J.S.A. 52:14C et seq. Finally, CWA contends that removal of the HRDI employees from its negotiations units denies them equal protection of the law under the New Jersey and United States Constitutions.

N.J.S.A. 34:13A-5.3 provides, in part, that the protections of the Act shall not extend to confidential employees. N.J.S.A. 11A:2-11(b) provides that "all employees [of the Department of Personnel] shall be confidential employees for purposes of the New Jersey Employer-Employee Relations Act, L. 1941, c. 100 (C 34:13A-1 et seq.)." Reading these two statutory provisions together, I conclude that the Legislature intended that the protections of the Act not extend to the petitioned-for employees. Accordingly, this agency has no jurisdiction to consider the validity of the Memorandum of Understanding executed by Commissioner Schuer.^{4/} It is also unnecessary to address CWA's argument that the State's consolidation and transfer of training functions to the Department of Personnel was illegal because it failed to adhere to the requirements of the Executive Reorganization Act, N.J.S.A. 52:14C et seq. The Commission has no jurisdiction to enforce this statute.

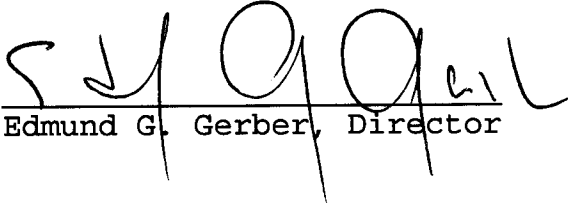
Finally, CWA raises constitutional arguments in opposition to the petition. The Commission is an administrative agency, and therefore we cannot consider the merits of CWA's constitutional

^{4/} In the context of a clarification of unit petition, I have no authority to enforce the agreement that the State and CWA jointly undertake regulatory or other action. (see fn. 3).

arguments. But see, Division of Criminal Justice (State Investigators), P.E.R.C. No. 94-113, 20 NJPER 256 (¶25127 1994), aff'd 22 NJPER 158, (¶27085 App. Div. 1996), pet. for certif. pending, where the Appellate Division held that investigators in the State's Division of Criminal Justice are without statutory rights under the Act because N.J.S.A. 52:17B-100(b) deems all division employees other than clericals to be confidential employees under our Act. The court held that the statutory exclusion did not violate the New Jersey and United States Constitutions and the right of public employees under N.J. Const. Art. I, ¶19 "to organize, present to and make known...their grievances and proposals through representatives of their choosing" entitles public employees to join a union, but not to negotiate over their employment conditions.

Accordingly, CWA's Administrative and Clerical Services, Professionals, Primary Level Supervisors and Higher Level Supervisors units are clarified to exclude all employees in the Department of Personnel Human Resources Development Institute.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Edmund G. Gerber, Director

DATED: July 1, 1996
Trenton, New Jersey