

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY, DIVISION OF
PUBLIC WELFARE, DEPARTMENT OF
HUMAN SERVICES; BERGEN COUNTY
WELFARE BOARD; BURLINGTON COUNTY
WELFARE BOARD; CAMDEN COUNTY BOARD
OF SOCIAL SERVICES; ESSEX COUNTY
WELFARE BOARD; GLOUCESTER COUNTY
WELFARE BOARD; HUNTERDON COUNTY
BOARD OF SOCIAL SERVICES; MIDDLESEX
COUNTY BOARD OF SOCIAL SERVICES;
MONMOUTH COUNTY BOARD OF SOCIAL
SERVICES; MORRIS COUNTY BOARD OF
SOCIAL SERVICES; OCEAN COUNTY BOARD
OF SOCIAL SERVICES; SUSSEX COUNTY
WELFARE BOARD; UNION COUNTY BOARD
OF SOCIAL SERVICES; and WARREN
COUNTY WELFARE BOARD,

Docket No. CO-83-228

Respondents,

-and-

COMMUNICATIONS WORKERS OF AMERICA,

Charging Party.

INTERLOCUTORY DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (Commission) on March 2, 1983 by the Communications Workers of America, AFL-CIO alleging that the State of New Jersey, through the Division of Public Welfare in the New Jersey Department of Human Services (DPW) is the co-employer of

all personnel employed by 13 County Welfare Boards named in the Charge. ^{1/} It is claimed that the DPW refuses to negotiate on employment-related issues with the Communications Workers of America (CWA), the duly certified representative of the employees of the 13 County Welfare Boards.

The CWA further alleges that the DPW unilaterally imposed its will upon the County Welfare Board employees and interfered with the employer-employee relationship with respect to wages and other terms and conditions of employment. This interference extends to its frequent refusal to permit agreements that have been reached by the CWA and County Welfare Boards to be reduced to writing and be signed in the agreed-upon form.

It is claimed that this conduct constitutes unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the Act), specifically §5.4(a)(1), (5) and (6). ^{2/}

On April 12, 1983, on behalf of the Communications Workers of America an Order to Show Cause was executed by the Commission's

1 The 13 Boards are the Bergen County Welfare Board, Burlington County Welfare Board, Camden County Board of Social Services, Essex County Welfare Board, Gloucester County Welfare Board, Hunterdon County Board of Social Services, Middlesex County Board of Social Services, Monmouth County Board of Social Services, Morris County Board of Social Services, Ocean County Board of Social Services, Sussex County Welfare Board, Union County Board of Social Services, Warren County Welfare Board.

2 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; (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

Designee and made returnable on May 3, 1983. At the request of the parties the return date was adjourned to May 6, 1983.

The certification which accompanied the Order states that the collective bargaining agreement will expire on June 30, 1983 with the Burlington, Camden, Essex, Gloucester, Middlesex, Monmouth and Union County Welfare Boards. In addition, in Bergen and Hunterdon Counties the current contracts have reopener provisions which will be effective on July 1, 1983.

It is further certified that the DPW has refused to sit in on negotiations as a co-employer yet its review of the County Welfare Boards' contracts is so extensive that the DPW is involved in every aspect of the employment relationships. Further, the manner in which the DPW reviews a contract after a proposed settlement occurs so far after the negotiations process that it interferes with the parties' ability to negotiate.

The CWA has asked that the undersigned in the interim relief proceeding make a determination that the State through the DPW is a co-employer for the several County Welfare Boards.

The Commission has adopted a twofold test in making determinations in interim relief matters: 1) The moving party must demonstrate a substantial likelihood of success on both the law and the facts and 2) the moving party must demonstrate that the irreparable harm will occur if the requested relief is not granted.

N.J. Dept. of Law and Public Safety, I.R. No. 83-2, 8 NJPER 425
(1982).

Nothing in the certification of the Charging Party in its application for interim relief relates to any conduct in the current

negotiations by the DPW other than its refusal to sit at the negotiations table.

The facts relied upon in the certification refer to the conduct of the DPW in prior negotiations. The DPW's conduct was found to constitute an unfair practice in prior negotiations by the Commission. See, In re State of New Jersey, Department of Human Services (Div. of Public Welfare) and Union County Welfare Board and C.W.A., AFL-CIO, P.E.R.C. No. 82-83, 8 NJPER 209 (¶13088 1982).


Although the Commission might well find that the DPW is a co-employer if it conducts itself as it did at the prior negotiations, it is an unwarranted speculation to assume that having received guidance from the Commission in In re State of New Jersey, supra, the DPW will ignore said guidelines and improperly interfere with the current negotiations. At best, the instant application for interim relief is not ripe. Moreover, the issue of the co-employer status of the State through the DPW is one of first impression ^{3/} and the legal consequences of making such a finding extend far beyond the bargaining table. The issue is of such a nature that the undersigned cannot say that there is a substantial likelihood of success that absent a full factual record the Commission will find the State through the DPW is a co-employer.

^{3/} As pointed out by the CWA the Commission did mention in the footnote in the State of New Jersey, Dept. of Human Services, supra, that in Nebraska it was found that a state agency charged with administering welfare programs was a co-employer with county welfare Boards. The Commission expressly stated that it was not considering the question of joint employer status between the instant parties and, accordingly, the undersigned cannot rely on the existence of the footnote to predict that the Commission will in fact find that the DPW is a co-employer.

Based upon the foregoing the Commission Designee enters the following

ORDER

The request of the Charging Party for interim relief during the pendency of the Unfair Practice Charge before the Commission is denied and no restraints are issued at this time.



Edmund G. Gerber
Commission Designee

Dated: June 1, 1983
Trenton, New Jersey