P.E.R.C. No. 82-83

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY, DEPARTMENT
OF HUMAN SERVICES (DIVISION OF
PUBLIC WELFARE), AND UNION
COUNTY WELFARE BOARD,

Respondents,

- and -

Docket No. CO-77-201-124

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO,

Charging Party.

SYNOPSIS

The New Jersey Public Employment Relations Commission, modifying the recommendations of a Hearing Examiner, finds that the State of New Jersey, Department of Human Services (Division of Public Welfare) ("State") and the Union County Welfare Board ("Board") violated the New Jersey Employer-Employee Relations Act. In its decision, the Commission finds that it has jurisdiction to consider the extent of the State's authority under the statutes and regulations implementing the New Jersey welfare system, specifically Rulingll, to review and veto clauses in a collective agreement between the Board and the exclusive represntative--the Communications Workers of America, AFL-CIO ("CWA")--of the Board's employees. The Commission holds that the State, through the Division of Public Welfare, did possess the authority to review provisions in the CWA-Board agreement. However, the State violated subsection 5.4(a)(1) of the Act because the manner in which it reviewed the agreement interferred with and restrained employees in the exercise of their rights under the Act. The Commission also finds that the Union County Welfare Board technically violated subsections 5.4(a)(6) and, derivatively, 5.4(a)(1) of the Act when it failed to implement certain non-economic portions of the agreement. The Commission, however, dismisses the allegation of the Complaint asserting that the Board violated subsection 5.4(a)(5) by refusing to negotiate in good faith the CWA.

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Appearances:

For the State of New Jersey, The Honorable John J. Degnan, Attorney General (Melvin E. Mounts, Deputy Attorney General)

For the Union County Welfare Board, Mitzner & Kaczorowski, Esqs. (Stanley Kaczorowski, of Counsel)

For the CWA, AFL-CIO, Kapelsohn, Lerner, Reitman and Maisel, Esqs.

DECISION AND ORDER

This case presents an important and extremely complex question pertaining to the negotiation of collective agreements covering employees of county welfare boards: What was the extent of the State of New Jersey's (the "State") authority, through the Department of Human Services, Division of Public Welfare (the "Division") to review and veto clauses in a collective agreement negotiated by a county welfare board and the employee organization representing the employees of that board?

The resolution of this question requires an analysis of the relationship between the negotiation obligation set forth in the Employer-Employee Relations Act N.J.S.A. 34:13A-1 et seq. (the "Act") and the statutes and regulations which implement the New Jersey welfare system, particulary the administrative enactment of the Department of Human Services known as Ruling 11. Examination of this relationship must take place within the context of the specific factual setting which existed when this case arose, as developed at extensive hearings conducted by a Commission Hearing Examiner.

The Hearing Examiner found that the State, through the actions of the Division of Public Welfare, violated N.J.S.A. 34:13A-5.4(a)(1) when it interfered with, restrained and coerced the employees of the Union County Welfare Board (the "County" or the "Board") in the exercise of their collective negotiation rights by unlawfully exceeding and exercising the authority delegated to it. He also found that the County Welfare Board violated N.J.S.A. 34:13A-5.4(a)(1), (5) and (6) when it failed to negotiate in good faith by refusing to sign and implement the agreement it had reached with the Communications Workers of America, AFL-CIO, ("CWA"), absent Division approval of every clause.

We have modified the Hearing Examiner's recommended decision to hold that the State, through the Division, did possess the authority to review provisions in the CWA-Board agreement, but that the manner in which the Division carried out that review did unnecessarily violate the employees' rights. Based upon our modifications of the Hearing Examiner's legal conclusions, we have also modified his recommended remedy and order, though not

his conclusion that both the State and the Union County Welfare Board committed unfair practices.

Procedural History

On January 27, 1977 CWA filed a charge with the Public Employment Relations Commission ("Commission") alleging that the Board violated subsections 5.4(a)(1), (5), (6) and (7) of the New Jersey Employer-Employee Relations Act,[1/] and that the State of New Jersey, through the Department of Human Services, Division of Public Welfare, violated subsections 5.4(a)(1) and (7), when both Respondents insisted that the Board could not implement a collective negotiations agreement it had reached with CWA covering Board employees unless the Division approved every clause of the agreement, which it refused to do. On May 20, 1977 the Director of Unfair Practices issued a Complaint and Notice of Hearing. On August 22, 1977 the State, claiming that the Commission lacked jurisdiction over allegations which related to the administration of the public welfare system, filed a Motion to Dismiss and Stay Proceedings. The Board joined in this Motion. After the Hearing Examiner, Robert T. Snyder, reserved judgment on this Motion, both the State and the Board filed Answers.

1/ These subsections prohibit 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 reprsentative 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; and "(7) Violating any of the rules and regulations established by the commission."

A hearing, consisting of 16 sessions, was conducted, at which each party was given full opportunity to present evidence, examine and cross-examine witnesses, and make oral argument; the record, consisting of 1,738 pages of testimony and numerous lengthy exhibits, reflects the parties' willingness to take advantage of this opportunity.[2/] The hearing concluded on January 11, 1979.

On April 18, 1980 the Hearing Examiner issued his Recommended Report and Decision, H.E. NO. 80-40, 6 NJPER 229 (¶11116 1980), a copy of which is attached hereto and made a part hereof. In this Report, he made detailed findings of fact. We have carefully reviewed these findings of fact and find that they are solidly grounded in the record and provide an accurate depiction of what occurred in this case.

The Hearing Examiner first ruled that the Commission had jurisdiction over both Respondents. He then concluded that the State, through the Division, had interfered with, restrained and coerced Board employees in violation of subsection 5.4(a)(1), but had not violated subsection 5.4(a)(7). In particular, the Hearing Examiner found that the Division exceeded and abused its lawful authority in reviewing and vetoing certain items in the contract. The Hearing Examiner also concluded that the Board, by refusing to execute and implement its agreement with CWA absent Division approval of all contract terms, violated subsections

2/ We have streamlined the procedural history; a more detailed version may be found in the Hearing Examiner's Recommended Report and Decision.

5.4(a)(1) and (5) and (6), but not subsection (a)(7). As a remedy, the Hearing Examiner recommended an Order requiring both Respondents to cease and desist from their unfair practices, the Board to execute and implement each provision of the agreement it reached with CWA, with one exception,[3/] and the Division to provide the Board with all administrative or other funding necessary to implement the agreement.

On July 18, 1980 the State filed exceptions to the Recommended Report and Decision. These exceptions incorporated the State's post-hearing brief by reference. On September 15, 1980, pursuant to an extension of time it requested, CWA filed a response to the State's exceptions and excepted itself to some of the Hearing Examiner's rulings; CWA also incorporated its post-hearing brief by reference. CWA then rquested oral argument before the Commission. The Commission granted this request, and attorneys representing the State, Board and CWA argued before the Commission.

Legal and Factual Background

The legal setting of this dispute involves the interrelationship of statutes and administrative regulations of both the Federal and State governments which form the framework for the implementation of the welfare system by New Jersey's county welfare boards. The limitation this framework of federal and state law places on the ability of county welfare boards and the representatives of their employees to negotiate labor agreements under the New Jersey Employer-Employee Relations Act has been

3/ The Hearing Examiner did not recommend enforcement of a provision in a side letter requiring the filling of vacancies as soon as possible since he believed such agreement to be illegal. See In re State of New Jersey (State Troopers), P.E.R.C. No. 79-68, 5 NJPER 160 (¶10089 1979).

the subject of litigation in the past. In 1974 the Appellate Division addressed this question in a case involving the State, several county welfare boards and several employee representatives, including the parties to this unfair practice proceeding. Communications Workers of America, et al. v. Union County Welfare Board et al., 126 N.J. Super. 517 (App. Div. 1974).[4/]

In that case, the employee organization appealed from rulings of the Division of Public Welfare, made in the name of the Commissioner of the then Department of Institutions and Agencies (now the Department of Human Services), which disapproved of the salary provisions contained in the labor contracts negotiated between the respective county boards and the employee organizations. The Division rejected these contractual provisions because the negotiated ranges did not correspond to the salary ranges established in the Ruling 11 then in effect. The employee organizations, joined by the county boards, argued that the State, through the Division, did not have the authority to establish salary guidelines for organized board employees or disapprove negotiated salary clauses because N.J.S.A. 34:13A-5.3 of this Act required that the terms and conditions of employment, including compensation, of organized employees be established through collective negotiations.

The Appellate Division rejected these arguments and held that under the controlling Federal law and the implementing State statutes, the Department of Institutions and Agencies was authorized

4/ At the time this case arose, PERC did not have jurisdiction over either unfair practice or scope of negotiations disputes. N.J.S.A. 34:13A-5.4(c) and (d), which respectively grant authority in both these areas, were added to the Act as part of the amendments contained in Chapter 123, P.L. of 1974, which became effective in January 1975.

to establish uniform salary guidelines for county welfare board employees throughout the State (Ruling 11) and could enforce that power by requiring that contract clauses establishing compensation schedules be submitted to the Division for approval. The Court found that the ability of the county boards and the employee representatives to negotiate compensation was limited by the power of the Department of Institutions and Agencies to prescribe salary ranges on a statewide basis.[5/] CWA v. Union County Welfare Bd., supra, at 528 to 531.

The Court, however, was sensitive to the constitutional right of the employees to make known their proposals and grievances through representatives of their own choosing,[6/] and its responsibility to reconcile the statutes pertaining to the administration of the federal welfare assistance program with the employees' constitutional

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5/ The Court also relied on the parties' assumption that the State was not the employer of county board employees and on the language of N.J.S.A. 34:13A-8.1 as it existed at that time. It emphasized the portion of that section stating "nor shall any provision hereof annul or modify any statute or statutes of this State." This portion of section 8.1 was amended by Chapter 123, P.L. of 1974 to insert the word "pension" before "statute or statutes of this State." The legislative history and meaning of this amendment was analyzed in detail by the Supreme Court in State of New Jersey v. State Supervisory Employees Ass'n, 78 N.J. 54 66-83 (1978).

6/ Article I, Paragraph 19 of the New Jersey Constitution states, in pertinent part:

> Persons in public employment shall have the right to organize, present to and make know to the State, or any of its political subdivisions or agencies, their grievances and proposals through representatives of their own choosing.

rights implemented by the provisions of the Act. Thus, the Court stated that the county boards had the ability to negotiate in good faith with the representatives of their employees, even though the negotiations over salary were limited by Ruling 11. Further, in an effort to effectuate the employees' rights even on that subject, the Court ordered the cases remanded to the Commissioner of Institutions and Agencies to hold a public hearing on the salary guidelines of Ruling 11 so that the employees' representatives could have an opportunity to present their positions on what factors were relevant to the establishment of appropriate compensation schedules.

In reaching its primary conclusion that the Department of Institutions and Agencies had the power to establish a statewide compensation schedule, the Appellate Division reviewed the relationship between the federal statutes and regulations establishing the various welfare programs and the State statutes and regulations implementing them in New Jersey. Nothing in the parties' briefs or the Commission's own research has indicated that this framework is still not applicable to the events in this case; and therefore that discussion is controlling in our analysis of the events in this case. See CWA v. Union County, supra, at 126 N.J. Super. 524 to 528.

The federal/state relationship in the administration of welfare assistance programs was originally established by the Federal Social Security Act in 1935. The current system is the result of extensions and amendments to that original legislation.[7/] The

7/ The programs administered under this system include such (continued)

Department of Health and Human Services (HHS, formerly Health, Education and Welfare) is responsible for the administration of these programs at the federal level. In order to qualify for receipt of federal funds under these programs, a state must submit a "state plan" consisting of all the statutes and regulations it has promulgated to administer the programs; this plan must be approved by HHS as conforming to the requirements of the Social Security Act. One of the requirements for a "state plan" is that it be in effect in all political subdivisions of the state. The plan must provide for some financial participation by the state, and for the establishment or designation of a single state agency to either administer the plan, or supervise its administration by local agencies.[8/]

Another requirement for a valid "state plan," and the one the Appellate Division found particularly relevant to the resolution of CWA v. Union County Welfare Board, supra, is that it provide for a merit-based personnel system. This system must include a current plan of compensation for all classes of positions, with salary rates adjusted to the responsibilities and difficulties of the work and the prevailing rates for comparable jobs in the area and in other governmental agencies. The compensation plan is

7/ (continued) federal categorical assistance programs as Old Age Assistance, 42 USCA §301 et seq; Aid to Families with Depdendent Children, 42 USCA §601 et seq.; Aid to the Blind, 42 USCA 1201 et seq.; Aid to the Permanently and Totally Disabled, 42 USCA 1351 et seq., and the Supplementary Security Insurance Program, 42 USCA 1381 et seq.

8/ A federal regulation allows the creation of subordinate local agencies to carry out welfare programs, but provides that the local agencies must abide by the regulations promulgated by the single state agency.
45 C.F.R. §205.100(b)(3).

also to include advancements based upon quality and length of service. 126 N.J. Super. at 525. Although the single state agency may delegate matters of local compensation to the subordinate local agencies, it has the authority to retain control of the local compensation rates if it so elects. However, regardless of how such local compensation rates are established, the single state agency remains responsible to the federal government to insure that the plan conforms to all federal standards.

In 1936 New Jersey enacted a statute to enable its residents to receive the benefits of the Federal Social Security Act. Chapter 31, P.L. of 1936, codified as N.J.S.A. 44:7-1 et seq. 9/ N.J.S.A. 44:7-6 authorized the Division of Old Age Assistance within the Department of Institutions and Agencies to, among other things, promulgate rules and regulations which "shall require adequate personnel standards for the county welfare boards..." Pursuant to this authority, the Department of Institutions and Agencies, as part of its orginal implementation of the federal assistance

9/ As enacted this law was intended to implement the original Federal Old Age Assistance Program. However, the additional federal categorical assistance programs now implemented through the county welfare boards are administered pursuant to this same state statute, as amended. See N.J.S.A. 44:7-1; see also N.J.S.A. 44:10-2 (Aid to Families With Dependent Children); N.J.S.A. 44:7-39 (Aid to the Permanently and Totally Disable); N.J.S.A. 44:7-44 (Assistance For the Blind), all of which require that these programs be administered pursuant to the requirements of N.J.S.A. 44:7-1 et seq. Additionally, N.J.S.A. 44:10-3 provides:

> The Commissioner of Human Services is authorized directed and empowered to issue by the appropriate departmental officers or agencies, all necessary rules and regulations and administrative orders, and to do or cause to be done all other acts and things necessary to secure the State of New Jersey the maximum Federal financial participation that is available with respect to a program of aid to families with dependent children, and otherwise

(continued)

program in 1936, promulgated a document described as "Plan for Personnel Selection Applicable to All County Welfare Boards." This plan later became known simply as Ruling 11. CWA v. Union County Welfare Board, 126 N.J. Super. at 520.

In its present form, this portion of N.J.S.A. 44:7-6, now provides:

> The Division [now the Division of Public Welfare] shall by appropriate rule and regulation, establish and maintain standards appropriate to a modern personnel system on a merit basis for all positions and for the application of correct business principles in the creation and abolition of positions, the classification of authorized positions on the basis of the duties and responsibiilities of the incumbents, the development, adoption and the administration of equitable compensation schedules for each class of positions, the selection, certification, appointment, regulation and tenure of persons holding such positions, and such other standards for a merit system of personnel administration as may lawfully be required by the Federal Social Security Board for approval of a State public assistance plan....All rules and regulations made by the State division under the chapter shall be binding upon the county welfare boards....

The Ruling 11 which the State relied upon to defend its actions to the Appellate Division in CWA v. Union County Welfare Board supra, was promulgated pursuant to this portion of the statute, and was an updated version of the original plan. Similarly, the Ruling 11 which the State puts forth in this unfair practice proceeding is the later version of the plan in effect when the instant dispute arose.[10/]

9/ (continued) to accomplish the purposes of this Act, including specifically the following: (a) to insure that the program shall be in effect in all counties of the State and be mandatory upon them....

10/ As stated earlier, the parties' briefs and oral arguments and the Commission's own research have not indicated that the relevant statutes and regulations discussed by the Appellate Division in CWA v. Union County Welfare Board have changed in any way which would (continued)

It is against this legal background that we must review the facts in this case to determine if the conduct of the State and the County Board violated the rights protected by this Act. The Hearing Examiner made extensive findings of fact in which he set forth the events leading to the filing of this charge. As indicated, we have reviewed the record and we adopt his findings of fact, with one exception discussed at fn. 18, infra, as we have found them to be amply supported by the record. We summarize these findings here because our conclusions in this case rest, to a large extent, on the nature of the State's actions.

On April 18, 1969, CWA was certified as the exclusive collective negotiations representative for certain employees of the Union County Welfare Board. Thereafter, CWA and the County entered into a collective agreement effective from January 1, 1970 to December 31, 1971. From that time until 1976, the parties periodically negotiated "memoranda of agreement" which acted as addenda to update that first contract.

The first contract and each "memorandum of agreement" contained the words "subject to approval by the State". CWA never conceded that the State had the right to review the contracts negotiated by it and the County, and maintained that it permitted this language to go into the contracts "under protest" and only as a way to expedite the implementation of the new terms. The Respondents

10/ (continued) undermine the viability of that decision as controlling precedent for our analysis of the law governing the federal/state relationship in the administration of the welfare programs. Obviously, future changes, if any, in the federal laws regulating the distribution of the governmental responsibility for the provision of assistance to the needy could nullify the Court's analysis of the federal/state interaction in this area. However, that decision would still control our analysis of the events which occurred in this case.

do not dispute these assertions by CWA, nor that CWA objected to the State's review at every opportunity. However, it is also a fact that each agreement was submitted to the Director of the Division of Public Welfare for his approval, and that the Division and the County always maintained that all agreements were subject to the Division's approval, though it appears that the County's assertion of this power in the Division was sometimes less than enthusiastic.

In October 1975 CWA and the County commenced negotiations for a new collective agreement to update the then current agreement which would expire July 1, 1976. After extensive negotiations and mediation, CWA and the County entered a Memorandum of Agreement on May 27, 1976 for a new contract for the period July 1, 1976 to June 30, 1977. The County again insisted that the agreement would have to be approved by the Division, and CWA reiterated its position that the County had the authority to implement the contract without Division approval. Nevertheless, by letter dated June 29, 1976, the County's attorney forwarded a copy of the negotiated contract to G. Thomas Riti, Director of the Division, for his approval. The letter requested an early meeting with Riti so that representatives of the County Board and the CWA could "all participate in responding to whatever your comments may be."

A meeting was set for August 4, 1976. However, in July 1976 a brief meeting took place at which Riti and Henry Nobrega, the Division's Personnel Administrator, discussed the Union County memorandum of agreement. Michael Galuppo, the Director of the

Union County Welfare Board, was present for part of this discussion. While the participants to the meeting did not recall the details of the discussion, both Nobrega and Galuppo testified that salary items in the contract were covered.

The August 4, 1976 meeting was the first one at which representatives of the State, County and CWA were all present to discuss the agreement. Riti was not available to attend this meeting, but the State was represented by 1) Nobrega from the Division, 2) Deputy Commissioner of the Department of Human Services David Einhorn, 3) the liasion between the Division and the Governor's Office of Employee Relations, George Kambis, and 4) a representative from the Governor's Office of Employee Relations. CWA had two representatives present, Edward Schultz and Claire Allen. The County Board was represented by Galuppo and the Board's attorney.

Kambis led the discussion of the economic aspects of the May 27th Memorandum of Agreement. The extent of Kambis' authority to assume this role or to make commitments is unclear. However, the record establishes and Kambis, himself, testified that his purpose in attending the August 4th meeting was to inform the parties what the new Ruling 11 would be like. To this end, according to Schultz, Kambis gave the parties a draft of the proposed Ruling 11 for 1976-1977, and presented himself as an authority on Ruling 11. He told the County's attorney that he knew Ruling 11 as well as Riti and kidded that he had made the guidelines and could tell Riti what was approvable. Kambis did not indicate that his recommendations, if followed, could still be disapproved.

Einhorn and Nobrega testified that Kambis did not speak for the Division, but Einhorn never objected to Kambis conducting the discussion on economic matters, and Nobrega stated that if Kambis had said something incorrect it would have been Norbrega's duty to correct him. Nobrega also stated that anything discussed at the meeting remained subject to Riti's approval. However, the Hearing Examiner, considering the numerous and greatly detailed recommendations and objections made by the State representatives at the meeting, found that CWA and the County were justified in construing this statement as a reference to a pro forma approval by the Director.

The major area of dispute in the economic discussion, and this entire case, concerned the salary "differentials" to be paid clerical employees under the new contract. Under Ruling 11 the county boards and the employee representatives can negotiate salary differentials for various job titles based on special factors pertaining to the particular county. 11/ Differentials enable an employee to earn more money than the salary rate for that position as established by Ruling 11 would otherwise permit.

11/ The special factors referred to are the type of considerations set forth in the federal welfare law, such as cost of living rate and comparable salaries for similar work, in each particular area. These were the type of factors the Appellate Division directed be considered when it remanded CWA v. Union County Welfare Bd, supra, for public hearings.

Paragraph 5 of Part I, "Classification and Compensation Plan," of the 1976-77 Ruling 11 provided for salary differentials and authorized the submission of salary differential agreements to the Division for approval.

They do not alter or otherwise affect the authorized salary range for that position, but are construed as a supplement to the salary level established by Ruling 11. They are effective only for the period approved by the Division. However, given the limitations Ruling 11 places on the employees' ability to negotiate salaries, it is obvious why the negotiation of differentials becomes so significant.[12/]

In the May 27th memorandum, the County and CWA had agreed to differentials of 12.5% based on the employee's actual salary. At the August 4th meeting, Kambis informed the County and CWA representatives that under the proposed Ruling 11, which would control their contract, the differential must be calculated by using the minimum (starting) step of the appropriate salary range. (The salary ranges for each job title include incremental steps based on merit and length of service.) Kambis also told them that if they could agree to a 10% differential calculated on the base step of the range, the Division would approve the agreement.[13/]

12/ A detailed analysis of how the various differentials discussed by the parties in this case impact on the employees' salaries appears in the Hearing Examiner's Report.

13/ In its exceptions, the State maintains that the Hearing Examiner selectively read the record and ignored testimony which belied his conclusions. Although Kambis and other State representatives denied approving a 10% differential at the August 4, 1976 meeting, the Hearing Examiner's factual findings are fully supported by substantial credible evidence in the record. For example, not only did CWA representatives Schultz and Allen testify that Kambis stated that a 10% differential for clerical employees would be approved, Riti testified that Galuppo told him that Kambis had approved the 10% differential. Kambis himself admitted that Galuppo appeared to believe Kambis had approved the differential. Further, Kambis and Nobrega reported to Riti after the August 4, 1976 meeting that the salary package that the County and CWA planned to submit in final form would be acceptable.

Other economic matters were also discussed, but the question of differentials provides the basic area for disagreement.

The May 27th memorandum also contained several non-economic matters. The State's representatives objected to a number of these, including a provision that the County provide the use of a bulletin board for CWA's announcements, and another that would allow CWA reasonable time to address all training classes. 14/ The parties also agreed that the new contract should be a fully integrated document, not just another addendum to the original 1970 contract.

Notwithstanding the numerous objections made to the agreement at the August 4th meeting, both the County and the CWA representatives came away with the feeling that the substantive matters had been resolved and that they would be able to negotiate a final contract which could be approved. Between late August and October 1976, the County and CWA had five or six negotiating sessions at which they worked out a complete contract which they believed complied with Ruling 11 and the State's objections raised at the August 4th meeting.

This contract incorporated Kambis' suggestions that the salary increases be stated in dollars and that the parties adopt a 10% differential for clerical employees calculated on the base of the salary range. Because the change in the differential might mean no raise or even a decrease for some employees,

14/ The Hearing Examiner found that Einhorn had led the discussion on these non-economic items. The State in its exceptions maintains that it was Nobrega who actually led these discussions. While we are satisfied that the Hearing Examiner's finding is based on competent evidence in the record, we find that the question of whether Nobrega or Einhorn led the discussion is of little moment.

CWA and the County included a $300 minimum raise provision in the new agreement. This provision had not been discussed at the August 4, 1976 meeting. The contract also deleted most of the non-economic items to which the State had objected. Instead, CWA and the County executed a side letter of agreement incorporating six non-economic items from their May 27th memorandum. However, they did include the bulletin board and training session provisons in the formal contract. The entire new contract was submitted to Riti on November 8, 1976. It does not appear that the side letter was.

During this period, the State had gone ahead with the promulgation of the new Ruling 11. The public hearings required by CWA v. Union County Welfare Bd., supra, were held on August 16, 1976. Both Riti and Kambis testified that they could recall no discussion of salary differentials during this hearing. The new Ruling 11 was issued in October 1976 and was effective retroactive to July 1, 1976. The Ruling does not set a salary differential figure or range; however, as stated, Paragraph 5 of Part I of the Ruling does provide for salary differentials computed on the minimum step of the applicable salary range, 15/ subject to Division approval. Riti testified that sometime after the public hearing he reached a decision that a differential of 6.5% of the base step would be

15/ Ruling 11 consists of an Introduction and two Parts. Part I is a Classification and Compensation Plan which includes two appendices: one listing each county welfare board job title with the comparable state title and state salary range, and the other setting forth actual compensation schedules, step by step, for each salary range. Part II is "Time and Leave Regulations," providing for such items as vacation, sick leave, leave without pay, disability leave, holidays and overtime.

Nothing in either part actually covers the non-economic items objected to by the State at the August 4th meeeting.

the maximum he would approve for any county welfare board.[16/]

On December 1, 1976 Riti wrote Galuppo suggesting that a meeting be set up between the Division and the County to discuss the many items in the November 8th contract which Riti believed non-approvable. On December 9, 1976 Riti met with County and CWA representatives. At this time, Riti informed the parties that he could not approve a differential greater than 6.5% of the base of an employee's salary range for any county welfare board. CWA's representatives protested that Riti was reneging on the earlier commitment to approve a 10% differential made by Kambis.

Riti also objected to a number of other contract provisions at the December 9, 1976 meeting. These provisions were an if/and/when clause on a dental/eyeglass plan,[17/] a re-employment clause, a clause pertaining to a Social Welfare Research Council, a clause on assignment of presumptive eligibility cases, and a clause on fact-finding by an arbitrator in grievance proceedings. All of these clauses had been approved by Riti in prior agreements and

16/ Riti testified that he reached his decision on a 6.5% differential sometime in August or September. Kambis initially testified that the figure was not arrived at until October or November when he participated in discussions with Riti on what figure was appropriate. Later, Kambis stated that Riti reached his decision in November or December 1976, during the period when the Division was reviewing the Passaic and Mercer County agreements. In any event, there is no dispute that this decision was never communicated to CWA or the County during the period they were re-negotiating their contract to meet the State's objections.

17/ This clause provided for such a plan only if the Union County Board of Freeholders provided it to other County employees and if funds were available.

were before him only because the November 8, 1976 contract integrated all prior addenda and contracts into one comprehensive agreement. Riti did not raise any objections to the two new non-economic items -- the bulletin board and training class provisions -- which had been objected to by the State at the August 4th meeting, but had been put in the contract anyway. Additionally, the CWA representatives testified and the Hearing Examiner found that Riti did not mention the $300 minimum wage provision.[18/]

The parties did explore potential avenues of arriving at a satisfactory agreement, but no final agreements were reached. On December 16, 1976 the County passed a resolution endorsing a 10% differential for clerical employees, stating that it was necessary to help overcome the difficulty of recruiting employees at present salary rates. Four days later, Riti, Einhorn and Kambis again met with CWA and County representatives. When the parties failed to agree on the differential issue, all possibilities of reconciliation ended. CWA then filed the instant unfair practice charge.

During the processing of this charge, the parties stipulated that the employees would be paid pursuant to the July 1, 1976

18/ The State maintains that Riti explicitly disapproved the $300 minimum raise provision. Riti himself did not remember discussing the $300 minimum raise provision. In view of Riti's lack of recall and the competent testimony of witnesses whom the Hearing Examiner found credible, we agree that Riti did not mention the $300 minimum raise provision. However, we do not find that this could constitute or imply an approval of that provision, as we find that the $300 raise is an integral part of the CWA/County differential. The Hearing Examiner found that the 10% differential would mean no raise or only a small one for a significant number of the clerical employees, due to the receipt of larger differentials under the prior contract. Therefore, we find that when Riti indicated he would only approve a 6.5% differential, he was rejecting, implicitly at least, the $300 minimum raise as well as the 10% differential. This is the only modification we make in the Hearing Examiner's findings of fact.

Ruling 11 for the period of the contract and that the clerical employees would receive the 6.5% differential calculated on the base step in their range, pending the outcome of this litigation. Additionally, only the period which would have been covered by the November 8th contract -- July 1, 1976 to June 30, 1977 -- is in issue.

Analysis and Discussion

At all stages of the litigation, the State, joined by the County, has maintained that the Commission does not have jurisdiction of this matter since it involves the legal relationship between the State and the County Board in the administration of the welfare law, an area outside the authority of PERC. The State renews its jurisdictional argument in its exceptions to the Hearing Examiner's Report. We believe that PERC does have jurisdiction to hear the unfair practice charges alleged in this case. However, as will be discussed, we do not believe that our authority is as broad as asserted by the Hearing Examiner.

CWA has charged the State with interfering with the employees in the exercise of rights guaranteed them by the Employer-Employee Relations Act, specifically their right to have their representative negotiate their terms and conditions of employment, and has charged the County Board with refusing to negotiate in good faith by refusing to implement a negotiated agreement. N.J.S.A. 34:13A-5.4(c) provides that:

> The Commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice listed in subsections a. and b. above. Whenever it is charged that anyone has engaged or is engaging in any such unfair practice the commission, or any designated agent thereof, shall have the authority

> to issue and cause to be served upon such party a complaint stating the specific unfair practice charged and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof;...

The State's assertion that the statutes and regulations discussed authorize the issuance of Ruling 11 and the Division's right to review the collective negotiations agreement herein may be a defense to CWA's charge,but it does not revoke the Commission's jurisdiction to adjudicate the question of whether an unfair practice has been committed.[19/]

The Supreme Court has held that PERC is the proper forum for the initial consideration of asserted conflicts between the right to negotiate pursuant to this Act and the mandates of other statutes State of New Jersey v. State Supervisory Employees Assn, 78 N.J. 54 (1978) and Bd. of Education of Bernards Twp. v. Bernards Twp. Ed. Ass'n, 79 N.J. 311, 316-317 (1979). In Bernards, the Court stated:

19/ This is not a situation where there is a potential overlap between PERC's jurisdiction and that of some other tribunal to adjudicate allegations arising from the same events pursuant to some other statute. See, City of Hackensack v. Winner, 82 N.J. 1 (1980). CWA has not attempted to litigate this dispute in any other forum. Nor is our consideration of these charges inconsistent with the litigation in CWA v. Union County Welfare Board, supra. As noted earlier, when that case arose N.J.S.A. 34:13A-5.4 had not yet been enacted and the Supreme Court had held that in the absence of such specific legislation, the Commission did not have unfair practice jurisdiction. Burlington County Evergreen Park Mental Hospital v. Cooper, 56 N.J. 579 (1970). However, after the legislation was passed, the Supreme Court, in another case involving an alleged refusal to negotiate, vacated both a trial court and an Appellate Division decision and remanded the matter to PERC because while the appeal was pending, Chapter 123, P.L. of 1974 became effective. Patrolmen's Benevolent Ass'n v. Town of Montclair, 70 N.J. 131 (1976). In any event, R. 2:2-3(a)(2) and N.J.S.A. 34:13A-5.4(f) provide a right of review by the Appellate Division.

> In carrying out its duties, PERC will at times be required to interpret statutes other than the Employer-Employee Relations Act. Indeed, in no other way could that body implement our holding in State Supervisory Employees that the terms of a collective agreement cannot contravene a specific legislative enactment. To therefore hold that PERC is ousted of jurisdiction in any controversy involving an asserted conflict between a collective agreement and a statute not part of the Employer-Employee Relations Act would deprive our courts of that body's expertise in a large class of scope of negotiations disputes. We cannot believe that the Legislature intended such a result. Consequently, we conclude that PERC's primary jurisdiction does extend to controversies involving asserted conflicts between the Employer-Employee Relations Act and other statutory schemes.

Thus, the fact that the Commission must interpret the statutes and regulations governing the administration of the welfare programs to resolve the allegations of unfair practices in this case does not deprive it of the jurisdiction it would otherwise possess.[20/]

All parties to this case have taken the position that the County Board is the employer of the employees represented by CWA herein. N.J.S.A. 34:13A-5.4(a) prohibits "Public employers, their representatives, or agents" from engaging in the unfair practices listed in that subsection.[21/] Our power to determine

20/ See also, Hunterdon Central H.S. Bd of Ed. v. Hunterdon Central H.S. Teachers Ass'n, 174 N.J. Super. 468 (App. Div. 1980), aff'd o.b. 86 N.J. 43 (1981) which affirmed P.E.R.C. No. 80-4, 5 NJPER 289 (¶10158 1979). The Appellate Division upheld PERC's jurisdiction to consider federal constitutional questions if necessary to a resolution of a matter arising under this Act and rejected the argument that in considering such questions, PERC had usurped the jurisdiction of the courts, and, therefore, should have deferred the ruling on this issue to the Appellate Division.

21/ Up until July 1980, subsections 5.4(a) read "Employers, their representatives, etc." Chapter 477, P.L. of 1979, §1 eff. July 1, 1980 amended it to read "Public Employers."

whether the Board committed the alleged violation of this subsection would therefore not appear to be seriously in dispute. The Board's assertion that Ruling 11 forbade it from implementing the contract without Division approval will be considered as a defense to these allegations.

All parties are also in agreement that the State, or the State acting through the Division, is not the employer of these employees.[22/] However, that position does not deprive the Commission of the power to pass upon the State's, through the Division, alleged interference with the rights guaranteed by this Act. As the quoted portion of N.J.S.A. 34:13A-5.4(c) indicates, PERC has the "exclusive power...to prevent anyone from engaging in any unfair practice listed in subsections a. and b." When "it is charged that anyone has engaged or is engaging in any such unfair practice," the Commission has the authority to adjudicate the alleged violation.

N.J.S.A. 34:13A-3(c) defines the term "employer" as utilized in the Act and provides that:

22/ In a Nebraska case very similar to the instant one, the union representing county welfare employees proved that the state agency charged with administering welfare programs and the county board were joint employers and thus equally subject to a duty to negotiate all terms and conditions of employment. AFSCME v. County of Lancaster, Nebraska Division of Public Welfare, 241 N.W.2d 523, 92 LRRM 3441 (Neb. Sup. Ct. 1976). In this case, none of the parties has raised the question of the State's possible joint employer status. Thus, the record does not permit us to consider this question.

In CWA v. Union County Welfare Board, the Appellate Division appeared to have raised a similar suggestion as a solution to the difficult problem of reconciling the employees rights under this Act and the mandates of the welfare statutes. 126 N.J. at 531. The Court bemoaned the fact that since the State was not "technically the employer," it could not negotiate deviations from the State norm on wages and conditions of employment appropriate to a particular county. The Court suggested legislative action as a possible solution. The issue of possible joint employer status was not presented to or considered by the Court.

> This term shall include "public employers" and shall mean the State of New Jersey, or the several counties and municipalities thereof, or any political subdivision of the State, or a school district, or any special district, or any authority, commission, or board, or any branch or agency of the public service.

In addition, N.J.S.A. 34:13A-3(d) defines the term "employee" and expressly provides that it "shall include any employee, and shall not be limited to the employees of a particular employer unless this Act explicitly states otherwise." N.J.S.A. 34:13A-5.4(a)(1), the subsection the State is alleged to have violated, is not limited, either expressly or by implication, to the employees of a particular employer.[23/]

The above literal reading of the text of our Act complements a common sense reading of its underlying purposes. Our Supreme Court has emphasized that the Act is remedial legislation which should be construed in order to permit the Commission to discharge its statutory responsibilities. Galloway Township Board of Education v. Galloway Township Ass'n of Educational Secretaries, 78 N.J. 1 (1978). Foremost among the purposes which the Act endorses and our Commission seeks to foster is the substitution of productive and peaceful collective negotiations for the

23/ An alternative approach also based on the language of the Act independently demonstrates our jurisdiction, at least to the extent that the Division may lack the all encompassing authority to review contract clauses it claims for itself. The definition of "employer" includes "any person acting, directly or indirectly, on behalf of or in the interest of an employer with the employer's knowledge or ratification." We believe that the Division in effect becomes an agent or representative of the Board when it injects itself into the negotiation process by rejecting contract clauses providing benefits for the employees to be paid by the Board. Compare, e.g., NLRB v. Taylor-Colquitt Co., 13 LRRM 639 (4th Cir. 1943) (NLRB has jurisdiction over foreman's wife who committed unfair labor practices as tacit agent of company).

instability and potential economic and public waste which accompany labor strife. N.J.S.A. 34:13A-2. The Commission's power to prevent anyone from engaging in unfair practices is to be utilized to foster this goal. Thus, when it can be established that a party, even one not technically the employer of the employees in question, engaged in conduct which frustrates that goal, or has caused the employer to engage in such conduct, the Commission's power to prevent violations of the Act must include jurisdiction over that party.[24/]

Our conclusion that the Hearing Examiner was correct in dismissing the State's motion challenging Commission jurisdiction in this case does not mean that we agree with the extent of his assertion of Commission authority to review the validity of Division action.

CWA v. Union County Welfare Board holds that the Division has the power, pursuant to N.J.S.A. 44:7-6, to promulgate Ruling 11 establishing a compensation plan applicable to all county welfare boards through the State. CWA had originally argued that the

24/ The NLRB has held liable, as respondents in unfair practice complaints, employers who caused or directed other employers to violate the rights of employees, even where the directing employer had no contact with the employees. See, e.g., Dewes Construction Corp. and Eastern Star Painting Corp., 231 NLRB 182, 95 LRRM 1574 (1977), enforced 578 F.2d 1374, 99 LRRM 2633 (3rd Cir. 1978) and Georgia-Pacific Corp. and Mack's Welding Service. 221 NLRB 982, 91 LRRM 1159 (1975). In both these cases the technical employer of the employees was performing services for the other employer and was ordered to engage in the conduct constituting the unfair practice under threat of losing the work. Both employers were found to have committed unfair practices. See also "NLRB General Counsel's Quarterly Report," 109 LRRM 61, 65 (1982)

The NLRB argues, as an alternative theory of violation in these cases, that the directing employer and the actual employer are "co-managers".

amendment to N.J.S.A. 34:13A-8.1, made by Chapter 123, P.L. of 1974, undermined the continued viability of this holding because negotiations could, after 1975, annul or modify any statute but a pension statute. However, given the Supreme Court's holding on the meaning of this amendment in State Supervisory Employees Ass'n, supra, it has wisely abandoned this argument.[25/] The Supreme Court's conclusions on the preemptive effect on negotiations of State agency regulations taken together with CWA v. Union County Welfare Board establish that the Department of Human Services has the power to promulgate regulations which impose limits on the freedom of county welfare boards and the representatives of their employees to negotiate terms and conditions of employment, specifically compensation. Ruling 11 is such a regulation.[26/]

The Ruling 11 which governs this case established a comprehensive compensation and classification plan for all county

25/ Even if CWA had not abandoned it, State Supervisory Employees Ass'n holds that employee organizations and county welfare boards cannot negotiate agreements which violate Ruling 11. Additionally, while nothing in the Federal law appears to require a compensation plan as comprehensive or rigid as Ruling 11, CWA v. Union County suggests that the assertion of the right to completely ignore N.J.S.A. 44:7-6 and regulations promulgated pursuant to it, might present an impermissible conflict with Federal law in this area.

26/ In re Bethlehem Township Bd. of Education, P.E.R.C. No. 80-5, 5 NJPER 290 (¶10159 1979), aff'd 177 N.J. Super. 479 (App. Div. 1981), certif. granted 87 N.J. 396 (1981) makes the point that in exercising our jurisdiction to consider potential conflicts between the Act and other statutes and regulations, we do not normally consider challenges to the validity of the regulation adopted by a State agency. As indicated other procedures and forums exist to challenge the wisdom of a regulation, the authority of the agency to promulgate it, or the procedures utilized in adopting it. See, e.g. R. 2:2-3(a)(2) and N.J.S.A. 52:14B-1 et seq.

welfare boards. It listed the job titles for all welfare board positions, the comparable State job title, and the salary range assigned to each title. It also set forth a salary schedule which provided the specific dollar range for the annual salary for each step on the guide. As indicated, paragraph 5 of the Classification and Compensation Plan did permit county welfare boards to consider granting salary differentials computed on the basis of the minimum step of each range through negotiations, but provided that such differentials must be approved by the Division. In addition, the Introduction to Ruling 11 stated:

> Classification, Compensation Plans, and time and leave regulations, or other regulations concerning terms and conditions of employment, heretofore adopted by county welfare boards... which are in effect as of the date of issuance of these revised regulations and which have been specifically authorized and approved by the New Jersey Division of Public Welfare prior to such date, stand approved on the part of such Division as of their respective dates. Any and all revisions or amendments to such plans, to include but not limited to all items specifically enumerated in these regulations, may not be effectuated unless and until such revisions or amendments are formally approved in writing by the New Jersey Division of Public Welfare. Deviations from the compensation and classification plan, time and leave regulations, and other guidelines relating to terms and conditions of employment may be granted at the discretion of the Commissioner of Institutions and Agencies consistent with the administration of amicable labor relations and in the furtherance of the public interest.

We find that this Introduction required the County Board to secure the approval of the Division before it could implement any clause in the collective agreement which was inconsistent with

either the specific terms of Ruling 11 or with the terms of any collective agreements previously approved by the Division.[27/]

The Hearing Examiner found that pursuant to State Supervisory Employees Ass'n, the State did have the authority to set the compensation ranges for county welfare employees through regulations and that CWA and the County Board were bound by that regulation in their negotiations. However, he found that the existence of Ruling 11 did not preclude the implementation of CWA's and the County's agreement to pay the 10% differential or the minimum $300 raise because the regulation itself did not set the amount of the differential. Rather, it authorized the Division to exercise discretion in determining whether to approve differentials negotiated between CWA and the County. He relied on the Supreme Court's language in State Supervisory Employees Ass'n holding that regulations which permit the employer to exercise a certain measure of discretion have only a limited preemptive effect on collective negotiations. 78 N.J. 54 at 80 and 81.[28/]

27/ The parties and the Hearing Examiner felt it necessary to resolve the question of CWA's alleged waiver of its right to contest the Division's authority to review the contracts by virtue of the inclusion of "subject to approval by the State" in each agreement. Our finding that Ruling 11 required Division approval of every change made by the new agreement makes this question irrelevant. Regardless of whether CWA actually consented to this procedure or not, changes made by the new agreement had to be approved by the Division before the County could implement them.
However, nothing in the record suggests that CWA had waived its right to contest the Division's allegedly improper exercise of its approval power.

28/ A typographical error in the Hearing Examiner's Report cites this language as appearing at page 89, not 80.

The State takes exception to this critical conclusion in the Hearing Examiner's Report and we agree. While his findings have some appeal, particularly in light of the Division's conduct in this case, we conclude that he misapplied the reasoning of State Supervisory Employees Ass'n to this aspect of the case.[29/] CWA's concession, joined by all parties, that the State is not the employer of these employees requires that we reject his analysis. State Supervisory Employees Ass'n holds that a State agency regulation which permits the employer to exercise a degree of discretion does not bar collective negotiations on terms and conditions of employment because the employer has the authority to implement any agreements reached, provided they are within the limits established by the regulation. However, the County is the

29/ The Hearing Examiner also based his conclusion on his finding that Riti abused and exceeded his discretion in establishing the 6.5% differential. He found that the public hearing held on August 16 did not comply with the mandate of CWA v. Union County Welfare Board because the Division did not provide notice of, nor was input solicited on, the amount of the differential, and the Division disregarded the special factors pertaining to each particular county as required by paragraph 5 of Ruling 11 and the Appellate Divison's decision. He specifically found that the County did comply with these mandates because it based its agreement to the 10% differentials on problems in recruitment and retention of clerical personnel; whereas the Division based its determination on an across the board desire to reduce any possible disparity between State salaries and those paid by the county boards for the same positions.

However, even assuming the accuracy of these findings, we conclude that the Hearing Examiner exceeded the scope of this proceeding in this conclusion. Ruling 11 grants the Division discretion to approve or reject salary differentials Whether the Division misapplied the factors set forth in Ruling 11, whether it failed to conduct a proper public hearing, or whether Ruling 11 itself does not adequately specify the approvable differentials, are all questions which must be addressed to the courts in an appropriate proceeding, not to this Commission as part of an unfair practice case. In re Bethlehem Twp. Bd. of Education, supra, at fn. 26.

employer of these employees, and the only employer CWA has ever asserted has the responsibility to negotiate in this case. As to the County, Ruling 11 speaks in the imperative on salaries, leaving nothing to its sole discretion. Ruling 11 specifies the salary range to be paid to each employee job title at each step within the compensation schedule, and permits deviation only with the approval of the Division. The discretion referred to in State Supervisory Employees Ass'n means the employer's authority to implement a term and condition of employment. The County possesses no such authority herein and CWA does not seek to negotiate with the Division.

CWA has cited In re Bethlehem Township Board of Education, supra, in support of the Hearing Examiner's conclusions. In that case, we applied State Supervisory Employees Ass'n to hold that a regulation promulgated by the Department of Education in furtherance of its judgment that a uniform policy was required with respect to a given subject would preempt the employee organization's right to negotiate, even though the subject covered is a term and condition of employment. In a footnote in that decision we expressed our concern that a regulation which did not set a term and condition of employment, but instead attempted to preclude negotiations by delegating unilateral authority over terms and conditions to the employer might be invalid. Such a regulation would not establish a uniform statewide policy, but would only defeat the Legislature's mandate that terms and conditions of employment be established through negotiations, rather than the unilateral fiat of the employer of the affected employees. Ruling 11's reservation of discretion in the Division to approve

deviations from its specific terms, does not offend this concept. It binds both the County and CWA equally, and delegates no unilateral authority over terms and conditions of employment to the County.

The application of State Supervisory Employees Ass'n to this case leaves us no choice but to reject the Hearing Examiner's recommendation that the 10% differential or minimum $300.00 raise be sustained and implemented. While we certainly do not condone the manner in which the Division considered the differential question, we do not believe that we can substitute our judgment or even CWA's and the County's agreement for the decision which Ruling 11 has clearly delegated to the Division. The record establishes that either the 10% differential or the minimum $300.00 raise would constitute a deviation from the past agreements and from the salary ranges set in the appendices to the compensation plan, as well as Paragraph 5 of Ruling 11. As such, they would violate the terms of the regulation and would be illegal unless approved. They were not approved.[31/]

Our determination that we must reject the Hearing Examiner's recommendation to implement the negotiated differential does not mean that we also reject his conclusion that the State violated N.J.S.A. 34:13A-5.4(a)(1) by improperly interfering with the employees' right to have CWA negotiate their terms and conditions

31/ Even if we were to find that the action of the State's representative at the August 4th meeting constituted a final and binding approval of a 10% differential, a conclusion we specifically do not reach, we could not adopt the Hearing Examiner's recommendation. CWA and the County did not submit a 10% differential within the terms discussed at the meeting. Instead they negotiated a new differential proposal which consisted of a 10% differential or a $300.00 raise, whichever was more. As the Hearing Examiner found, a 10% differential alone would have resulted in either no raise or only a small one for a significant number of employees. See fn. 18, supra. As such we do not find that the November 8, 1976 agreement between the CWA and the County conforms to the discussions of differentials which occurred at the August 4th meeting.

of employment with the County. We find that the totality of the State's conduct herein does constitute an unfair practice,[32/] and we adopt the Hearing Examiner's conclusions that the manner in which the State, through the Division, conducted its review of the agreements unnecessary and improperly interfered with the employees' right under the Act.

Ruling 11 placed severe limitations on the negotiations which could take place between the County Board and the CWA; however, it did not preempt or prohibit all negotiations. The Appellate Division in CWA v. Union County Welfare Bd. specifically found that the county boards have the duty to negotiate in good faith with the representatives of their employees. 126 N.J. Super. at 530. As discussed earlier, the Court was sensitive to its obligation and the Division's to try to preserve as much of the employees' rights under this Act as could reasonably be accomplished without conflicting with the welfare law. The Court stated:

> ...we are obliged to continue to make a conscientious effort to effectuate the constitutional and legislative objective of the Employer-Employee Relations Act without frustrating the legislative goals of the welfare statutes. * * * The mere fact that the State has chosen to adopt a hybrid system of administration under which it retains supervisory control, but leaves the local agency the direct responsibility for administration, should not be a reason for depriving the welfare board employees of rights which would otherwise obtain.
> Id. at 531.

32/ The Hearing Examiner cited In re Council of N.J. State College Locals, E.D. No. 79, 1 NJPER 39 (1975), aff'd sub nom, State v. Council of N.J. State College Locals, 141 N.J. Super. 470 (App. Div. 1976) to support his conclusion. That case applied the totality of conduct standard in assessing a party's actions to determine if it had violated N.J.S.A. 34:13A-5.4(a)(5) by failing to negotiate in good faith. While the State is not charged with negotiating in bad faith, we believe that the totality of conduct analysis is an appropriate standard to utilize in evaluating its conduct in this case.

Paragraph 5 of Ruling 11 itself provided that no extensions beyond the period originally approved by the Division for the payment of differentials would be granted unless "formally requested by both negotiating parties." We therefore agree with the Hearing Examiner that the State, through the Division, had an obligation to exercise its power in a manner which did not unduly thwart the limited opportunity for meaningful negotiations which did exist. Without repeating the facts set forth at length earlier, the Division's conduct led to exactly the opposite result.

CWA and the County had engaged in lengthy negotiations which enabled them to submit a memorandum of agreement to the Division well before their existing agreement was due to expire. The Division was aware of the County's obligation to negotiate, the employees' right to have CWA negotiate on their behalf, and both CWA's and the County's apparent desire to cooperate with the Division and each other to achieve a new negotiated agreement which conformed to Ruling 11, and would be approved. Yet the inevitable consequence of the Division's actions was to obstruct every one of these objectives, and turn the negotiations between CWA and the County into a purposeless charade.[33/] We perceive no justification for such a disregard of the employees' rights to

33/ In referring to the Division's conduct, we are not judging the substantive merits of its positions, but rather the manner in which it acted. For example, in In re East Brunswick Board of Education, P.E.R.C. No. 77-6, 2 NJPER 279 (1976), appeal dismissed as moot App. Div. Docket No. A-250-76 (1977), we held that a public employer negotiated in bad faith when its actions and those of its representative created the impression that its negotiating team had been given the authority to conclude agreements and it then attempted to rescind the agreements reached. While we have found that (continued)

be represented, even given the limits placed on these rights by Ruling 11.

We also find that Riti's disapproval of the five non-economic items at the December 9, meeting, items which he had specifically approved in prior agreements, was indicative of the Division's disregard of the employees' rights. These five clauses were in effect as of the date of the issuance of the new Ruling 11, all had been specifically approved by the Division in prior agreements, and all were on subjects not covered in Ruling 11.

33/ (continued)
no final agreements were reached at the August 4 meeting, it is well established in the record that the State permitted its representatives to create the impression that a 10% differential would be approved. Certainly CWA and the County relied on this impression in their subsequent negotiations. Notwithstanding the Division's awareness that they were negotiating based on this perception, it did nothing to advise them that this was no longer the case.

As cogently observed by the Hearing Examiner, if Kambis had no authority to speak meaningfully for the State at the August 4 meeting, the State was, at least, obligated to acknowledge that to CWA and the County. More importantly, given the fact that the Division Director had already reviewed the salary items in the May 27 agreement, and that the County's letter requesting the meeting indicated that it was seeking final approval of the agreement, the Division owed the parties a responsible presentation which would give them the means to secure approval of their contract. Instead, it failed even to notify them when it became known that the direction it had given them was erroneous. Such conduct is compelling evidence of interference with the employees' rights to have CWA negotiate on their behalf.

Pursuant to the Introduction to Ruling 11 itself, these clauses "stand approved on the part of such Division as of their respective dates." These items came to Riti's attention solely because CWA and the County submitted the fully integrated version of the contract rather than only the matters which were inconsistent with either the prior agreements or Ruling 11. Similarly, the two clauses initially objected to at the August 4 meeting pertaining to the use of a bulletin board and reasonable time to address all training classes, were not inconsistent with any specific provision of Ruling 11.[34/] We therefore adopt the Hearing Examiner's recommendation that CWA's and the County's agreement to include these items in their contract should be implemented.

Based upon the totality of the Division's conduct herein, we find that the State, through the Division, did interfere with and restrain the employees represented by CWA in the exercise of rights guaranteed to them by this Act by the manner in which it exercised its authority, all of which constituted a violation of

34/ These two clauses were included in the November 8 contract notwithstanding the original objection. Riti did not object to them at the December 9 meeting. Again, while we do not pass upon the merits of the Division's position, we note that it is difficult to imagine how either of these provisions could interfere with the objectives of the welfare system. However, the fact that they were initially objected to and that Riti was later apparently not aware of that objection are further evidence of the Division's unwarranted assertion of its authority to the detriment of the employees' rights to be represented by CWA.

N.J.S.A. 34:13A-5.4(a)(1).[35/]

It now only remains to resolve the charges against the County Board. Even a cursory review of the facts reveals the untenable position in which the County found itself. It was under a legal obligation to negotiate with CWA and to seek the Division's approval of any changes in the terms and conditions of employment of its employees. If it breached its duty to the one it might be guilty of an unfair practice, but if it failed to fully comply with the directions of the other, it could suffer sanctions, including loss of funds to meet its administrative costs.[36/] In the face of this Hobson's choice, the County behaved admirably. It attempted to negotiate with CWA to the full limits of Ruling 11, and yet sought direction and approval from the Division. Therefore, even though we find that the non-economic

35/ The Hearing Examiner in his Report admonished the Division to make its position on differentials and other terms and conditions of employment known to the negotiating parties early in the process. While this would appear to be good advice, we realize it may not always be possible. We cannot dictate to the Division how it should accomplish its objectives for the administration of the welfare system without interfering with the rights of employees guaranteed by this Act in the future. However, we would suggest that closer cooperation between the Division and the County boards during the negotiating process would reduce the likelihood of a recurrence of the events in this case. As noted earlier, some jurisdictions have found that the State and county boards are co-employers.

36/ Paragraph 17 of Part I of Ruling 11 provides:

> Any deviation from all or any part of these regulations on the part of any County welfare board or its individual employee(s) shall, at the discretion of the New Jersey Division of Public Welfare, result in the imposition of fiscal sanctions with respect to federal and state participation in administrative costs.

provisions of the November 8 agreement should have been implemented, we do not find that the County negotiated in bad faith, and dismiss the allegations of the Complaint asserting a violation of N.J.S.A. 34:13A-5.4(a)(5). However, we have no choice but to find that the Board did violate N.J.S.A. 34:13A-5.4(a)(6) and derivatively N.J.S.A. 34:13A-5.4 (a)(1) when it failed to implement the non-economic portions of the November 8 agreement. Even though its conduct was dictated by the Division, we must find the violation in order to effectuate the rights of the employees, and the policies of the Act. See, N.J.S.A. 34:13A-5.4(c). 38/

ORDER

Upon the entire record in this proceeding, IT IS HEREBY ORDERED that the State of New Jersey, Department of Human Services Division of Public Welfare, its officers, agents, successors and assignees shall:

1. Cease and desist from:

a. Interfering with, restraining or coercing employees employed by the Union County Welfare Board in the

38/ Normally, as correctly found by the Hearing Examiner, a refusal to implement a negotiated agreement will constitute both a violation of N.J.S.A. 34:13A-5.4(a)(5) and N.J.S.A. 34:13A-5.4 (a)(6). See, In re East Brunswick Board of Education, supra. However, based on the unique facts of this case, we do not believe it would be appropriate to find that the Board failed to negotiate in good faith and we have therefore limited our finding of an unfair practice as a tacit recognition of the Board's dilemma and its attempt to meet its obligations under this Act.

exercise of the rights guaranteed to them by this Act by exercising its authority in such a manner as to improperly and unlawfully interfere with the negotiations by and between the Union County Welfare Board and the Communication Workers of America, AFL-CIO.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

a. Post at all places where notices to employees of the Union County Welfare Board are customarily posted, copies of the attached Notice marked as Appendix "A." Copies of such notice, on forms to be provided by the Commission, shall be posted immediately upon the receipt thereof, and after being signed by the authorized representative, shall be maintained by it for a period of at least sixty (60) consecutive days thereof. Reasonable steps shall be taken by the Division of Public Welfare to make sure that such notices are not altered, defaced or covered by other material.

b. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Division has taken to comply herewith.

IT IS FURTHER ORDERED that the Union County Welfare Board, its officers, agents, successors and assignees shall:

1. Cease and desist from:

a. Failing or refusing to reduce to writing, sign and implement the renewal collective negotiations agree-

ment for July 1, 1976 to June 30, 1977 which agreement shall incorporate all of the terms and conditions of employment agreed to with the Communications Workers of America, AFL-CIO in a certain written agreement dated November 8, 1976, with the exception of the salary differential proposals which were not approved by the State of New Jersey, Department of Human Services, Division of Public Welfare.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

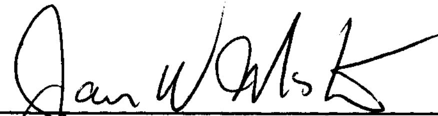
a. Sign and implement the renewal collective negotiations agreement described in subparagraph 1a above.

b. Post at all places where notices to employees are customarily posted, copies of the attached Notice marked as Appendix "B." Copies of such notice, on forms to be provided by the Commission, shall be posted immediately upon receipt thereof, and after being signed by the Board's authorized representative, shall be maintained by it for a period of at least sixty (60) consecutive days thereof. Reasonable steps shall be taken by the Union County Welfare Board to make sure that such notices are not altered, defaced or covered by other material.

c. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Board has taken to comply herewith.

AND, IT IS FURTHER ORDERED that those allegations of the Complaint asserting a violation of N.J.S.A. 34:13A-5.4(a)(7) against both Respondents and those alleging a violation of N.J.S.A. 34:13A-5.4(a)(5) against the Union County Welfare Board are hereby dismissed.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Hipp, Newbaker and Suskin voted in favor of this decision. None opposed. Commissioners Graves and Hartnett abstained.

DATED: March 9, 1982
Trenton, New Jersey
ISSUED: March 10, 1982

APPENDIX "A"

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL NOT interfere with, restrain or coerce employees employed by the Union County Welfare Board in the exercise of the rights guaranteed to them by this Act by exercising our authority in such a manner as to improperly and unlawfully interfere with the negotiations by and between the Union County Welfare Board and the Communications Workers of America, AFL-CIO.

STATE OF NEW JERSEY, DEPARTMENT OF HUMAN SERVICES, DIVISION OF PUBLIC WELFARE
(Public Employer)

Dated ____________ By ____________________
(Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.

APPENDIX "B"

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL reduce to writing, sign and implement a renewal collective negotiations agreement dated November 8, 1976 with the Communications Workers of America, AFL-CIO, with the exception of the salary differential clauses not approved by the State of New Jersey, Department of Human Services, Division of Public Welfare.

WE WILL give retroactive effect to the terms and conditions of said agreements.

UNION COUNTY WELFARE BOARD
(Public Employer)

Dated ____________ By ____________
(Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.

H.E. NO. 80-40

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY, DEPARTMENT OF
HUMAN SERVICES, DIVISION OF PUBLIC
WELFARE and UNION COUNTY WELFARE BOARD,

Respondents,

- and -

Docket No. CO-77-201-124

COMMUNICATIONS WORKERS OF AMERICA,
AFL-CIO,

Charging Party.

SYNOPSIS

A Public Employment Relations Commission Hearing Examiner sustains the major elements of an unfair practice charge filed by the Communications Workers of America, AFL-CIO against the State of New Jersey and the Union County Welfare Board. The Union had charged that the State interfered with its collective bargaining relationship with the County by asserting authority to determine all terms and conditions of employment contained in a collective negotiations agreement with the County. The Union represents County social workers and clerical employees. The Union also charged that the County, in reliance upon State authority to fix the terms and conditions of the contract, had refused to unconditionally sign and implement the agreement without prior State approval.

The Examiner concludes that by virtue of statutory and regulatory authority, the State had power to determine compensation schedules and related economic terms of the collective agreement between the County and Union. However, the Examiner also concludes that neither the statute nor regulations provides the State with authority to determine a salary differential which the County and Union agreed should be received by the clerical employees. The Examiner also concludes that the State lacked authority to fix various non-economic terms of the parties' agreement as the Statute and Regulation failed to specify and fix them as well. Alternatively, assuming full State authority to fix all terms and conditions of employment of County employees, the Examiner found that the State's representatives and agents who participated in meetings with the parties had acted irresponsibly by permitting them to rely on a commitment regarding a permissable salary differential which was later revoked by the State's Director of the Division of Public Welfare.

As remedy for the violations found, the Examiner recommends to the Commission that the State cease and desist from interfering with employees rights by withholding its approval of the salary differential which it had disapproved and requiring it to pay all administrative costs necessary to the implementation of the contract. With respect to the County, the Examiner recommends that the Commission order it to unconditionally sign and implement the agreement it had entered with the Union.

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.

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY, DEPARTMENT OF HUMAN SERVICES, DIVISION OF PUBLIC WELFARE and UNION COUNTY WELFARE BOARD,

Respondents,

- and -

Docket No. CO-77-201-124

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO,

Charging Party.

Appearances:

For the Respondent, State of New Jersey, John J. Degnan, Attorney General (Mr. Melvin E. Mounts, Of Counsel)

For the Respondent, Union County Welfare Board, Weiner & Mirabelli, Esqs. (Mr. Dominick A. Mirabelli, Of Counsel), succeeded by Mitzner & Kaczorowski, P.A. (Mr. Stanley J. Kaczorowski, Of Counsel)

For the Charging Party, Kapelsohn, Lerner, Reitman & Maisel, Esqs. (Mr. Sidney Reitman, Of Counsel)

HEARING EXAMINER'S RECOMMENDED REPORT AND DECISION

On January 27, 1977, the Communications Workers of America, AFL-CIO, Local 1080 [1] filed a charge with the Public Employment Relations Commission ("Commission") alleging that the State of New Jersey, Department of Human Services, Division of Public Welfare ("State" or "Division" where appropriate) and Union County Welfare Board ("County") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act (the "Act").

Specifically, it is alleged that the State, although not the employer of certain employees of the County represented for purposes of collective nego-

[1] Upon motion granted early in the hearing the identity of the Charging Party was changed from the named party appearing on the charge, to that now appearing in the caption, Communications Workers of America, AFL-CIO ("Charging Party", "Union" or "CWA").

tiations by the Charging Party, exercised a veto power over the terms of a collective agreement between the County and Charging Party, by withholding its approval of certain terms and rejecting others and that the County, by refusing to implement the agreement absent State approval has thereby refused to negotiate, refused to sign and implement a negotiated agreement and violated the rules and regulations of the Commission in violation of N.J.S.A. 34:13A-5.4(a)(1), (5), (6) and (7) [2/] and the State by so interfering with the contractual relations between County and Charging Party has violated N.J.S.A. 34:13A-5.4(a)(1) and (7). The Charging Party further alleges, assuming *arguendo* that the State relied on certain valid statutory and regulatory authority in asserting power to determine the salary and related economic terms of the County - Charging Party collective agreement, it had no such authority to review or reject non-economic terms of the agreement. By exercising authority over non-economic terms, the State thus has violated N.J.S.A. 34:13A-5.4(a)(1). Finally, the Charging Party alleges that apart from the foregoing, the State, by its conduct at certain meetings it conducted with the County and CWA in August and December 1976, initially approving and then reneging on its approval of certain economic terms and belatedly objecting to other, primarily non-economic, terms approved in a series of prior agreements, thereby interfered with the establishment by the County and CWA of terms and conditions of employment for inclusion in a successor collective agreement in further violation of N.J.S.A. 34:13A-5.4(a)(1).

It appearing that the allegations of the charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on May 20, 1977. At first the State, in lieu of answer, by letter dated June 3, 1977, filed its statement of position previously submitted in response to the charge. In reliance on various statutory authority, the State therein argued that the Commission lacked jurisdiction to rule upon the legal relationship between the State and County and that the charge should be dismissed. That response was followed by a Motion to Dismiss and Stay Proceedings filed with the

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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; (7) Violating any of the rules and regulations established by the commission."

Commission's Chairman on August 22, 1977 and accompanied by a supporting brief. 3/ Upon receipt of answering brief from Charging Party and letter reply thereto filed by the State, by letter dated September 9, 1977, reaffirmed by further letter dated September 15, 1977 after receipt of response from the County joining the State's Motion, the Chairman referred the Motion to the undersigned Examiner pursuant to N.J.A.C. 19:14-4.8(a). By written ruling dated September 12, 1977, the undersigned Examiner reserved decision on the State's Motion, with leave to renew the same at the close of Charging Party's case or hearing. Final ruling on the Motion will be incorporated in this Report. The State had accompanied its Motion with an appendix containing a proposed answer to the Complaint. By letter dated September 15, 1977 this was adopted by the State as an amendment to its submission in lieu of answer previously filed and, together with the earlier submission, constitutes its amended answer to the Complaint. In it, the State denied the material allegations of the Complaint, except it did admit that at no time during the negotiations culminating in a memorandum of agreement executed by the County and CWA on May 27, 1976, constituting a final agreement on all matters affecting wages, hours and other terms and conditions of employment between the parties, did any representative of the Division of Public Welfare or the State participate or attempt to participate in such negotiations (CO-1, paras. 2 and 6; CO-2, Appendix A; CO-12). The County by answer filed August 26, 1977 incorporated the position of the State as its position in answer to the Complaint, thereby denying the material allegations of the Complaint, except it averred that the County shall be empowered to negotiate a contract concerning basic local conditions which do not affect salaries, and as an affirmative defense, asserted that the series of agreements it has entered with the Charging Party call for the contract to be reviewed and approved by the State Department of Human Services, Division of Public Welfare and its predecessors.

Hearings were held on September 16, October 6, 11 and 13, November 1,

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3/ This filing, literally on the eve of hearing which had been scheduled to commence on August 23, 1977 in the original Notice of Hearing, forced a postponement of the opening of hearing by the Examiner to September 16, 1977 to provide the other parties an opportunity to respond to the Motion and the Chairman an opportunity to rule or otherwise dispose of the Motion. See N.J.A.C. 19:14-4.8. The Chairman treated the Motion as one for summary judgment (CO-4).

1977, March 13, [4/] 15 and 16, May 19, [5/] August 10, [6/] 11, 16, 17 and 18 and December 4, [7/] 1978. The record did not close until January 11, 1979, when counsel were advised by the undersigned Examiner that Charging Party had determined not to call further rebuttal witnesses and following a post-hearing conference convened on January 8, 1979 to review the issues to be briefed and to establish a briefing schedule (CO-13). Unfortunately, counsel were unable to maintain that schedule, in part because of the complexity of the issues and the length of the record, consisting of 1738 pages of testimony and many lengthy exhibits, and in part because in the interests of not impeding efforts underway among the parties to amicably resolve the underlying dispute, joint requests to extend the briefing schedule were granted from time-to-time. That effort proved unsuccessful. Main post-hearing briefs were filed by the County on August 23, the State on August 28, and the CWA on September 19, 1979, and reply briefs were filed by the CWA on October 25 and the State on October 30, 1979. Each of these briefs has been duly considered.

Upon the entire record in the case and from my observation of the witnesses and their demeanor I make the following:

FINDINGS OF FACT

Negotiations between the County and the CWA originated in 1970 when the

4/ This 4½ month delay in hearing was occasioned by the resignation of the County's law firm which had theretofore represented it, retention of successor counsel and the necessity of the successor firm retained by the County becoming familiar with the proceeding as well as the illness and hospitalization of Charging Party counsel (Tr. 612).

5/ The difficulty in clearing dates for three counsel and various witnesses in view of other actual engagements, particularly an actual engagement of Charging Party counsel in another Commission proceeding on dates tentatively scheduled, caused this delay (Tr. 957).

6/ Substituted County counsel's actual prior engagement as defense counsel in a Superior Court criminal trial and Charging Party counsel's unavailability in anticipation that the matter would have been completed without the delays caused by substitution of County representation resulted in this delay (Tr. 1104-08).

7/ The last delay was caused by the unavailability of G. Thomas Riti, Director of the State Division of Public Welfare, Department of Human Services, who was still on the witness stand undergoing cross-examination at close of hearing on August 18 and whose presence State counsel required to assist in preparing to meet anticipated rebuttal testimony (Tr. 1596).

first labor agreement between the parties, CP-1, was signed. 8/ CP-1 was the only full, formal agreement set out until 1976. Until that time the original agreement was merely updated by addenda or "memoranda of agreement." The words "subject to approval by the state" appeared in the original agreement and in each of the subsequent addenda. The Division of Public Welfare, by its Director, G. Thomas Riti (since November 1972) or his predecessor, in fact, approved each agreement, includ- the original.

At no time did the CWA concede the Division's right to review the contract terms reached by it and the County. Respondents agree that at every relevant moment the CWA objected to the State's actual or anticipated participation in the relationship between the Union and the County. Neither, for that matter, did the State ever suggest that its authority over the contract was less than complete, or that anything agreed upon by the CWA and the County was not subject to its approval.

The CWA described the submission of the agreements to the State as an effort made to have the contracts implemented expeditiously;all submissions were made "under protest" by the CWA. The CWA did concede that the submissions to the State of all contracts with other county welfare boards were "standard practice." (Tr.334).

The Union had confronted the authority of the State once before when the matter of a disapproved contract reached the Appellate Division. The case, CWA v. Union County Welfare Board, 126 N.J. Super. 517 (1974) settled the authority of the State over economic items particularly salary ranges in contracts negotiated by the county welfare board. 9/ The Court in Union County did not rule that

8/ In accordance with a certification of the American Arbitration Association of April 18, 1969, the County recognized the Union as exclusive collective negotiations agent for employees in two separate classifications. Without describing these classifications in detail, for present purposes it should suffice that the present description of the unit in which the Union currently serves as exclusive representative in accordance with that certification includes: Income Maintenance Specialist, Income Maintenance Technician, Investigator, Social Worker, Social Worker Specialist, Clerk, Addressograph Machine Operator, Clerk Typist, Receptionist, Teletype Operator, Clerk Transcriber, Clerk Bookkeeper, Clerk Stenographer Sr., Key Punch Operator, Office Appliance Operator, Messenger, Sr. Clerk Bookkeeper, Senior Clerk Stenographer. The parties stipulated and I find that the CWA is a representative of public employees and the County is a public employer within the meaning of the Act. I further find, despite the County's refusal to stipulate, that the State Department of Human Services is a public employer within the meaning of the Act.

9/ Certification was not sought to review the final judgment of the Appellate Division. The Court relied in reaching its result upon N.J.S.A. 44:7-6 and as effectuated by administrative regulation. The Statute, enacted in 1936 shortly

(Continued next page)

county employees were without rights regarding economic items, [10/] nor were allegations of unfair practices made of the kind presented in the present matter.

9/ (continued)
after the inception of the original Federal Old Age Assistance Program, directs the Commissioner [of the then Department of Institution and Agencies, since November 1, 1976, Department of Human Services] to establish a modern personnel system on a merit basis by developing equitable compensation schedules for each class of positions, and evinces a clear intention that this responsibility includes the regulation of salaries of local welfare boards which administer the public assistance programs in New Jersey. In 1936 a document was promulgated by the Department which included standard classifications for various personnel positions, standard methods for examining and certifying candidates for positions and approving appointments to them. This plan was later promulgated as an administrative release known simply as "Ruling 11." From time to time changes to the plan have been made in the form of amendments or revisions of the ruling. The standard compensation plan sets forth the position titles applicable to the various classifications of employees of the county welfare boards, the position title of employees of state governmental agencies whose duties are deemed comparable, and the applicable salary ranges for both county and state employees. The state salary range sets a minimum and maximum salary for each position. CWA v. Union County Welfare Board, supra, 126 N.J. Super. at 527, 520-521.

10/The Appellate Division stated in 1974:

> "The employees assert specifically that the regulation fails to give recognition to the difference in the cost of living in various geographical areas throughout the State, the difference in work loads in various counties, the differences in monetary resources at the disposal of certain counties, and the differences in problems of recruiting and retaining personnel experienced by some boards - particularly Essex and Union - because their salaries had fallen below those of other counties' employees who perform comparable work.
>
> We observe that recognition of such factors in the state compensation plan is entirely consistent with the requirements in HEW's directive that such plans shall "include salary rates adjusted to the responsibility and difficulty of the work and will take into account the prevailing compensation for comparable positions in the recruiting areas and in other agencies of the government and in other factors ***." 45 CFR 70.8
>
> We are persuaded that the substance of the constitutional rights granted public employees can be secured to county welfare board employees in the situation before us and without any significant interference with the exercise of the Commissioner's responsibilities under the welfare program, i.e., by requiring that a hearing be conducted before the compensation schedules contained in the state plan shall become effective. Such hearing will afford the representatives of these employees an opportunity to present their grievances and to establish their claim that the compensation schedules contained in the regulation already promulgated are unreasonable or arbitrary for failure to take into consideration factors which should have received recognition." 126 N.J. Super. at 532.

The agreement which gave rise to the instant dispute was reached by the County and CWA only after impasse was declared and a mediator called in. The impasse did not concern the County insistence on submission of the agreement to the State. The CWA representatives testifying explained that the issue never came to a head during negotiations with the County since the CWA believed that the County would side with it in any contest with the State. Seven months later on May 27, 1976 a memorandum of agreement, CP-8, was signed. The County reiterated that the State would then have to ratify the contract 11/ and the CWA held to its position that the County could implement the contract without consulting the State. Nonetheless the CWA and the County planned to meet with representatives of the State on August 4, 1976 to discuss the agreement that had been reached. Without State approval of the contract it had fully negotiated with the Union, the County was subject to the imposition of fiscal sanctions grounded upon alleged deviations from Ruling 11. Such sanctions involve the withholding of State financial participation in the administrative costs of the County (Tr. 1100-1101).

Before this meeting took place, in July 1976 Riti had had a meeting with Henry Nobrega, Division Personnel Administrator, on the Memorandum of Agreement. The entire memorandum was not covered in what was apparently only a brief discussion, but Nobrega does recall going over the salary items (Tr. 894). Michael C. Galuppo, Director of Union County Welfare Board, was present for a few minutes and discussed the exclusion of new employees from the planned salary increment (Tr. 897). Nobrega had no recollection of the substance of his discussion of salaries with Riti that July. Riti was not available to attend the August 4 meeting and this absence was more significant than the parties apparently envisioned at that time. The August 4, 1976 meeting was the State's first input on the agreement between the County and the CWA. The character of the State's participation in this meeting is central to this case. Present on August 4 were: (1) CWA - Edward Schultz, International Representative and Claire Allen, New Jersey Director; (2) County Welfare Board - Galuppo and Mirabelli; (3) Division of Public Welfare - Nobrega; (4) Department of Human Services - David Einhorn, Deputy Commissioner; (5) Liason between Division of Public Welfare and Governor's Office of Employee Relations - George Kambis; (6) Governor's Office of Employee Relations - Wesley Merrit.

11/ By letter dated June 29, 1976, directed to G. Thomas Riti, Director of the Division, Dominick A. Mirabelli, County attorney, forwarded a copy of the memorandum for Riti's approval and requested an early meeting between Riti, representatives of the County and Union "...so that we may all participate in responding to whatever your comments may be." (RUC-2). By its terms, the memorandum of agreement provided that the contract which expires on July 1, 1976, shall be amended as set forth and the memorandum shall be incorporated in a new agreement which shall expire on July 1, 1977.

August 4 - Discussion of Economic (salary) Terms

The CWA alleges that Kambis informed it and the County on August 4 that the salary increases that had been agreed upon should be expressed in dollars rather than percents. (Ruling 11, while not specifying differentials by either percentages or dollars, sets out salary ranges in dollars. The salary ranges in the new Ruling 11 - effective July 1, 1976 - represented a 7% increase over the salary ranges promulgated in the previous Ruling 11). He also told them that the agreed upon differential, 12/ i.e., a percentage of the regular salary negotiated and paid in addition to the increases negotiated, must be calculated on the base of the salary range rather than on the actual employee salary. This is specified in Ruling 11. This change would have a negative impact on the amount of the differential actually received since many employees had salaries above the base of their range. In fact, Schultz testified without contradiction that 19 of 70 clericals would receive no increment under this plan (Tr. 506). 13/ Some employees could have their salaries reduced under this scheme (Tr. 1458), but the Division representatives agreed to "red circle" these employees. The CWA agreed to revise the salary calculations, despite the effect on actual dollars this would have. Both the CWA and the State representative, Nobrega, appeared to think that compliance would result in approximately the same dollar amount for the clerical employees. Strangely, at no point before or during this litigation did any of the parties attempt to cost out their proposals (Tr. 811-12).

At the hearing, Kambis insisted that he was only presenting options at the August 4 meeting. But under heavy cross examination, he admitted that he had described only one option likely to be approved. He agreed that only one figure --10%--had been discussed at length on August 4, and that 10% was in reference to the salary differential for clericals, the figure agreed upon by the County and CWA.

Allen had stated at the start of the August 4 meeting that the CWA was not in attendance to negotiate-but the CWA was there to get their contract implemented. The CWA clearly understood that if it complied with Kambis' recommendation, the

12/ The differential at issue here was for clerical employees only. Other non-clerical employees had received a differential in an earlier agreement.

13/ To illustrate: an employee in a $5000-$7500 salary range earning the maximum of the range would have received $750 if a 10% differential had been approved. Under the new Ruling 11, the employee would receive 10% of the base of the range, or $500.

contract would be approved. Accordingly, the CWA changed the salary items to conform to the presentation made by Kambis. At the very least, Kambis gave the impression that a contract revised to his formula would be approved. When the meeting ended, the parties left with the understanding that all substantive issues had been resolved. Riti testified that he was later informed of the resolution of all significant matters. Riti further testified that when the issue arose before him, both Schultz and Galuppo told him that Kambis had approved a 10% differential on August 4. [14/]

The extent of any authority invested in Kambis to make such a commitment is unclear. Kambis testified that by attending the August 4 meeting, he intended to indicate to the parties what the new Ruling 11 would be like (Tr. 1118; 1130). The State representatives also claimed that their purpose at that meeting was to get clarification of the proposed agreement (rather than to make specific objections). Only Kambis discussed salaries at any length on August 4. Einhorn testified that Kambis had not been empowered to speak for the State and further that no one spoke for the State on August 4. Einhorn said that he himself would not have been prepared to discuss economic matters without Riti being present, but apparently he had no objection to Kambis making a presentation on economic matters. Nobrega agreed that Kambis did not speak for the State, but further testified that if Kambis had said something incorrect during the meeting, he, Nobrega, would have been obliged to set the meeting straight. Kambis did present himself as an authority on Ruling 11, if not more. Kambis told the County's attorney, Mirabelli, that he knew the new Ruling 11 almost as well as Riti and kidded him that he, Kambis, had made the guidelines and could tell Riti what was approvable. Kambis did not indicate that his recommendation was subject to further approval. The only caveat was supplied by Nobrega who stated at the August 4 meeting that anything discussed was still subject to Riti's approval. In the context of the entire meeting, particularly the greatly detailed recommendations and objections made by State representatives, this statement by Nobrega could only be taken as a reference to a pro forma approval by the Director. I conclude therefore that Kambis gave every indication that if the CWA complied with his recommendation by calculating the 10% differential on the base of the salary range, the resulting

14/Galuppo testified that Kambis had merely said that consideration would be given to a 10% differential. His version is contradicted by Riti's report of what he had been told by Galuppo, and by Kambis' admission that Galuppo appeared to agree with Schultz's claim that Kambis had made a commitment on approval of the 10% differential.

salary terms would be approvable by the Division.

August 4 - Non-Economic Discussion

The Division claims to have authority over all terms and conditions of employment, including non-economic items by virtue of the introductory paragraph to Ruling 11:

> "State of New Jersey
> Department of Institutions and Agencies
> Division of Public Welfare
>
> RULING NO. 11
>
> INTRODUCTION
>
> Classification, Compensation Plans, and time and leave regulations, or other regulations concerning terms and conditions of employment, heretofore adopted by county welfare boards, or successor agencies, both of which are hereafter referred to as county welfare boards, which are in effect as to the date of issuance of these revised regulations and which have been specifically authorized and approved by the New Jersey Division of Public Welfare prior to such date, stand approved on the part of such Division as of their respective dates. Any and all revisions or amendments to such plans, to include but not limited to all items specifically enumerated in these regulations, may not be effectuated unless and until such revisions or amendments are formally approved in writing by the New Jersey Division of Public Welfare. Deviations from the compensation and classification plan, time and leave regulations, and other guidelines relating to terms and conditions of employment may be granted at the discretion of the Commissioner of Institutions and Agencies consistent with the administration of amicable labor relations and in the furtherance of the public interest." (Revised Ruling 11, effective July 1, 1976 (RS-1)).

Neither this introduction nor any of the following provisions of Ruling 11 fix non-economic [15/] terms or conditions of employment. Participants at the August 4 meeting went over each item with Einhorn leading the discussion on the non-salary items, as Kambis had led on the salary discussion. Einhorn had testified that he was not prepared to discuss economic matters outside of Riti's presence. Einhorn was prepared, however, not only to discuss non-economic items, but to pass on each of them as approvable or not approvable (Tr. 323-29). Einhorn objected to most of the non-economic items in the memorandum of agreement. [16/]

15/ Non-economic items may be defined for present purposes as having no direct relation to employee income. See N.J.S.A. 34:13A-16(f)(2) and e.g. In re City of Elizabeth, P.E.R.C. No. 80-102.

16/ Two items to which Einhorn objected on August 4 were not deleted by the CWA and were not objected to by Riti when he reviewed the contract. The two items which the CWA refused to delete were item #10, that "bulletin boards shall be provided for the use of Union announcements;" and item #11, "The Union shall be allowed reasonable time to address all training classes." (CP-8).

Despite the numerous objections made to the agreement at the August 4th meeting, both on salary differential for clerical employees and on non-economic provisions, representatives of the County and State left the meeting with the sense that substantive matters had been resolved and only the final "wording" of the agreement remained to work out (Tr. 1607, 1630). The parties also agreed that the series of addenda to the original contract should not be extended, and a full length contract should be created. Riti testified that he was told that the salary package, when revised in accordance with the August 4 exchange, would be acceptable. (Recall that no figure other than a 10% differential had been discussed at that meeting.) The CWA was equally clear about the changes it would have to make to get the contract approved, and was willing to accommodate to almost all objections and recommendations made on August 4 subject to the condition that the parties would concur on the final agreement. The CWA refused to change only the two "non-economic" items later approved by Riti (see f.n. 16, supra) and added one provision not discussed on August 4, a $300 minimum raise that would mitigate the effect of calculating the differential on the base of the range rather than on actual salary.

Events Subsequent to August 4

On August 16, 1976, a public hearing was held on the new Ruling 11. 17/ Riti had no recollection of any discussion of differentials on salaries during this hearing. This should not be surprising since no specific differentials or the possibility of any limitations being placed on differentials are mentioned in either the new Ruling 11 or its predecessor. 18/ Kambis was firm in his recollection that no formal hearing was held on differentials for inclusion in the new Ruling 11 (Tr. 1340). Riti testified that sometime in August or September he reached a decision that a 6.5% differential would be the maximum for any county

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17/ The public hearing was required by the Appellate Division in CWA v. Union Cty., supra at 532 as part of the right reserved for public employees affected by Ruling 11. See f.n. 10, supra.

18/ Salary differentials as a concept had appeared in at least the 1975 revised Ruling 11. The same language is contained in the new July 1, 1976 Ruling 11. It provides in relevant part that "The salary ranges authorized alone may not be exceeded by the county welfare agencies. Such welfare agencies may, however, consider the granting of salary differentials...based exclusively on the minimum step of the applicable salary ranges as set forth in Appendix II...; provided, however, that they are based on clearly identifiable special factors pertaining to the particular county. If such salary differentials... are approved...they shall not be construed as altering or otherwise effecting authorized salary ranges..." (RS-1 #5). /Emphasis supplied/.

welfare board. This was after his July review of the memorandum of agreement, after the August 4 meeting with the State representatives, and very likely after the August 16 public hearing on the new Ruling 11. 19/ At no time did the 6.5% figure appear in Ruling 11, which had never specified any limitation on differentials.

Riti testified that this decision was arrived at in consultation with a member of the Commissioner's office. The purpose of the 6.5% limit on the differential was to reduce the disparity in salaries between state and county employees in similar classifications. Riti not only testified that the prevention of escalation of disparity in salaries was the goal of the limitation on differential, he also testified that other factors such as difficulty of work or a comparision of salaries among counties were not considered. How this could be reconciled with the language of Ruling 11 or the Appellate Division decision in Union County upon which this language is presumably based was not brought up by either party. The new Ruling 11 stated that salary differentials must be based on special factors pertaining to the particular county (RS-1 #5) (see f.n. 18, supra.) The court's recognition of these factors appear at f.n. 10, supra. Riti stated that in order to achieve his goal, he had taken the highest differential previously approved, 13.5% (for Middlesex County) and subtracted the 7% increase in salaries set out in the new Ruling 11, thus leaving 6.5% (Tr. 1540). I understand these figures to mean that a 6.5% differential would result in virtually no increase in actual dollars, despite Schultz's calculation that only 19 of 70 clericals would receive no salary increase. At one point Riti's testimony appears to support my interpretation: Riti recalled that the parties wanted a 10% differential because that would give them "more money, total money than they had gotten the year before." (Tr. 1549).

Here I feel obliged to set out my understanding of the various contract proposals, despite the parties willingness to do without a comparison of actual dollars (see, e.g., Tr. 811-12). Although I base this on a salary range of $100-$200 for arithmatical convenience, if these are construed as weekly figures

19/ Kambis first recalled that the 6.5% figure was not arrived at until the end of September, October or November when he participated in the discussions of a figure thought to be appropriate (Tr. 1334). Later Kambis more firmly fixed the time when Riti reached the 6.5% limit as November or December 1976, when the Passaic and Mercer County agreements were being reviewed (Tr. 1336).

they will correspond roughly to the clerical salaries in issue, i.e., $5200-$10,400 per annum. 20/

DIFFERENTIAL ON SALARY

	Ruling 11 salary ranges	Total with differential
CWA-County Contract Under Prior Ruling 11	$X to $XX*	$X to $XX plus (up to 13.5%.No specified upper limit, 12.5% for Union County
	$100 to $200	Up to $113.50 to $227 (in Middlesex County) $112.50 to $225 for Union County
	New Ruling 11-7/1/76	
CP-8 memo of agreement, May 1976	$X to $XX + 7%	$X to $XX + 7% plus 10% of actual salary
	$107 to $214	$117.70 to $235.40
Kambis' proposal August 4 agreed to by parties and submitted to Riti November 1976	$X to $XX + 7%	$X to $XX + 7% plus 10% of Base of Salary range ($107)
	$107 to $214	$107 + $10.70 to $214 + $10.70, i.e.
		$117.70 to $224.70
Contract with Riti's limit on differential	$X to $XX + 7%	$X to $XX + 7% plus (up to) 6.5% of Base of Salary range (Union County to get 6.5%)
	$107 to $214	$113.95 to $220.95

*For all purposes, $X = $100, $XX = $200.

20/ For example, included in the clerical category is Senior Clerk Stenographer, with a salary range of $6,979 to $9,422. Several clerical positions are in the $5,200-$7,500 range. (RS-1).

Note that in these hypothetical salary ranges the most significant difference between the proposed formulas is in the effect on the upper end of the range. Comparing the old contract under the prior Ruling 11 with Riti's proposal, employees earning the base salary would receive a very slight increase, that is, of course, if any employees were earning only the base salary, a situation less likely since hiring need not be at base salary. Only CP-8 provided for increases for clerical employees earning at or near the maximum of their range. Both Kambis' and Riti's proposals made these employees subject to a reduction in wages. Riti never suggested, however, that he would cut wages, but clearly many employees would receive at best a negligible salary increase, and this is precisely what Riti intended. Galuppo's letter to Schultz, CP-14, shows that the County not only understood this, but was gravely concerned and attempted to provide some alternative protections for clericals.

Unaware of the 6.5% limitation to be imposed by Riti, the CWA made the accommodations it thought necessary to gain approval. Between late August and October the County and the CWA had five or six negotiating sessions, taking the State's comments into account and focusing on "money." The parties agreed that social workers[20a/] would be moved up two salary ranges. Each salary range represented a 5% increase. Since they understood that the Division felt it could not permit clerical employees to move up by salary range, they wanted to give the clericals a 10% differential in order to grant them an equitable increase.

The resulting contract, CP-9, incorporates the latest contract terms as understood after the August 4 meeting, plus the $300 minimum raise provision which had not been discussed along with the provisions contained in the basic agreement and later amendments as to which there had been no objections or any discussion other than the agreement to create a full length contract rather than another addenda to the original. Along with CP-9 the parties also entered a side letter of agreement incorporating six non-economic items from the May 27, 1976 memo of agreement representing issues discussed and agreed upon during their 1976 negotiations but expressly not included in the contract language (CP-10; Tr. 113-114).[21/] CP-9 was submitted to Riti on November 8, 1976.

At this point, Riti had before him a full agreement incorporating all

20a/ Characterized in the unit description as Income Maintenance Specialists and Technicians.

21/ Item #3 should read "work load," instead of "work clothes" (Tr. 120). Two of the items from the original memo of agreement were incorporated in the full agreement (see f.n. 16).

prior amendments and revisions for the first time since 1970. By letter to Galuppo dated December 1, 1976, [22/] Riti responded with a request to schedule a meeting between the State and County to discuss items that were not approvable. "It would be very difficult to try and list each of these items" he wrote. (RS-4; CP-11). Riti met with the County and CWA on December 9, 1976. This was the first discussion among the parties of the 6.5% limitation on differentials. Riti informed them that 6.5% was the maximum for any county. Schultz declared that there had already been agreement on a 10% differential and that Riti's position constituted an unfair practice.

Riti objected to several of the provisions incorporated from earlier contracts despite the fact that they had been approved when the earlier contracts had been submitted. Among the items Riti objected to for the first time were:

- Assignment of presumptive eligibility cases as contrary to Title 44.
- Fact Finding by an arbitrator in grievance procedure. Riti wanted this subject to State review, and available only at Union, not individual request.
- Re-employment - Riti said former employees were not part of the bargaining unit. No mention was made of the rights of those currently employed to demand such provision.
- Dental-eyeglass plan - Riti said this was not spelled out enough to approve (Tr. 1439).
- Social Welfare Research Council - Riti said this was contrary to Ruling 11 despite its prior approval (Tr. 1571).

Riti did not mention the $300 minimum raise provision. He did want several changes in wording for the sake of clarity and to update certain captions and titles. The CWA objected to this on the grounds that the State's authority did not extend to the wording of a contract which would not affect the "plan" of a merit system. Riti was willing to "negotiate" certain salary consequences. He suggested making the permissible hiring rate which was above the base salary, the minimum hiring rate. Schultz, countered, according to Riti, by asking that the differential be calculated on the minimum hiring rate instead of the base. Schultz denied any possible agreement on less than a 10% differential. No

22/ Note that RS-4 invites only the County to a meeting to discuss the unapprovable items of the contract between the County and CWA. Similarly, Kambis had testified that he expected to meet with only the County on August 4 and thought the County responsible for inviting the CWA.

agreement was reached on any matters and all potential concessions by the CWA were still conditioned on reaching a satisfactory agreement.

On December 16, 1976, the County Welfare Board passed a resolution expressing its support for the 10% differential for clericals and enumerating reasons why it was necessary and equitable in this particular county (CP-13). Another meeting was held with Riti on December 20, 1976. Schultz testified that he was still trying to reach an agreement, although he had stated his intention to file unfair practice charges with the Commission. At the December 20th meeting, Schultz continued to insist that a commitment had been made by the State to a 10% differential (although it would be calculated on the base salary rather than actual salary). At the December 20th meeting both Einhorn and Kambis were present and denied having made any commitment to the 10% differential. The unfair practice charge described in the introduction was subsequently filed. The parties stipulated that county employees would be paid at the rate determined by Riti, i.e., with a 6.5% differential pending the outcome of this litigation. (CP-17).

Only the period which would have been covered by the 1976 contract is currently in dispute, with, of course, whatever impact the resolution of the 1976 figures may have on subsequent agreements. The authority of the State, and the manner in which it exercises this authority is also in issue.

DISCUSSION AND CONCLUSIONS

The State's Motion to Dismiss shall be dealt with first. Its argument in support has been renewed in the post-hearing brief. The State argues that the parameters of the legal relationship of the Division with county welfare boards for administering a system of public welfare has been legally determined in CWA v. Union County Welfare Board, supra and other more recent cases, [23/] including the legal authority of the Division to approve or disapprove collective labor agreements between county boards and various employee organizations. As there is no provision in the Act granting the Commission jurisdiction to review the Division's exercise of this authority, its authority under federal and state law and regulations must supercede the Act. This argument is buttressed by reference to R 2:2-3(a)(2) of the Rules of Court which provides for judicial review by the Appellate Division

23/ State v. County of Hudson, 161 N.J. Super. 29 (Superior Ct. Chancery Div. 1978); County of Hudson v. State of New Jersey, unreported decision of the Superior Court, App. Div. (3/6/79); Essex Cty. Welfare Board v. Dept. of Inst. and Agencies, 75 N.J. 232 (1978), cert. den. 98 S. Ct. 3103 (1978)

of decisions or actions of any State administrative agency or officer or to review the validity of any rule promulgated by such agency or officer, and by State v. State Supervisory Employees Assn., 78 N.J. 54, 79 (1978) which held, inter alia, that negotiations with respect to matters beyond the lawful authority of the public employer are impermissible. The State here notes that in In re Bethlehem Twp. Bd. of Ed., P.E.R.C. No. 80-5, 5 NJPER par. 10159 p. 298 (1979) the Commission declined to assert jurisdiction in a scope of negotiation proceeding to determine a challenge to State authority to adopt regulations dealing with the subject matter at issue, in reliance on the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and R. 2:2-3(a).

The State's Motion to Dismiss must be denied. The relationship between the State and County is not an issue in this proceeding. However, the authority of the State to approve terms of a collective negotiations agreement is an issue because of the defense asserted by the County and State that the exercise of such authority insulates each from a finding of violation. None of the cases cited by the State except for CWA v. Union Cty. examined the issue of the limitations imposed on State authority by virtue of the obligations to negotiate enforceable under the Act. In fact, CWA v. Union Cty. Welfare Board represents litigation of claims of unfair labor practice against the County and State, albeit without a factual record, at a time, in 1974, before the grant of exclusive jurisdiction over such matters to the Commission in Chapter 123, Laws of 1974 (eff. January 20, 1975).

Neither does either the cited portion of the Court Rule or Bethelehem Twp. Bd. of Ed., supra, aid the State's cause. R. 2:2-3(a)(3) provides in relevant part that "unless the interest of justice requires otherwise, review pursuant to R. 2:2-3(a)(2) shall not be maintainable so long as there is available a right to review before any administrative agency or officer." The Commission's review of the State and County's conduct is clearly administrative review contemplated by this Rule and is consistent with the recognized principle requiring exhaustion of administrative remedies as a condition of institution of litigation. As noted, the Commission's authority to determine whether unfair practices have been committed by these public employers is exclusive in this proceeding pursuant to N.J.S.A. 34:13A-5.4(c). No question of conflict with the authority of any other administrative agency is here presented. See City of Hackensack v. Winner, et al, ___ N.J. ___ (Jan. 1980). In light of Bethlehem Twp. Bd. of Ed., supra, the Union in its post hearing briefs has dropped its contention earlier asserted that Ruling 11 is ultra

vires the State's authority to establish a modern personnel system for employees of county welfare agencies based upon federal legislative requisites under the various programs of the Social Security Act. [24/] Finally, in citing State Supervisory Employees Assn., supra, the State misconstrues the nature of the issue posed with respect to the State's authority. I am required by the Supreme Court determination to examine whether the legislature in adopting N.J.S.A. 44:7-6 and the State in promulgating Ruling 11 have placed any of the subject matters contained in the County-Union agreement beyond County authority to determine. The Commission (and its Hearing Examiners) have full authority to make that examination and conclude whether the County's negotiating authority has been unlawfully circumscribed. Thus, as exclusive jurisdiction to determine this and related issues resides in the Commission, the State's Motion to Dismiss is denied.

The next issue posed is whether State authority derived from N.J.S.A. 44:7-6 and implementing Ruling 11 is sufficient, generally, to preclude county negotiations as to any of the terms of the agreement it entered with the Union in the Fall of 1976 (CP-9). The Union has consistently argued that the Court's holding in CWA v. Union Cty. Welfare Board, supra, has been superceded by provisions of Chapter 123 which manifest a legislative intent to broaden the scope of subject matter which public employers such as the County are compelled to negotiate in spite of State authority to the contrary and which bestow exclusive unfair practice authority upon the Commission. I conclude that, contrary to the Union's claim, the Appellate Division determination in Union County, supra, has been affirmed by the Supreme Court in State Supervisory Employees, supra, at least to the extent of the State's authority, exercised by the Division, to prescribe minimum and maximum salary ranges for County employees beyond the power of the County to fix such compensation. "The New Jersey Supreme Court in State v. State Supervisory Employees, 78 N.J. 54 (1978), stated that a specific term and condition of employment which is expressly set or established by statute and/or regulation cannot be contravened by an inconsistent provision of a negotiated agreement, and any negotiations over such a set term of employment are precluded, having been preempted by the specific statute or regulation." [25/] To the extent

24/ See State v. County of Hudson, 161 N.J. Super. 29, supra, for a full discussion of the history of the federal and state legislative components only touched upon briefly in footnote 9, supra.

25/ In re County of Hudson, P.E.R.C. No. 80-103 at 4.

therefore that Ruling 11 fixes salary ranges and any other terms and conditions of employment 26/ it precludes County - CWA agreement to the contrary. However, the facts show that the parties to the collective bargaining relationship did not deviate from the claimed salary terms of Ruling 11 with respect to any categories of employees other than clerical employees and with respect to clericals, only as to the differential.

With respect to the keenly disputed subject of differential for clerical employees, guidance must be sought from State Supervisory Employees, supra, as to whether negotiations between the parties over that item has been precluded. 27/ In State Supervisory Employees the Supreme Court dealt with this question in the following language:

> "...we affirm PERC's determination that specific statutes or regulations which expressly set particular terms and conditions of employment, as defined in Dunellen for public employees may not be contravened by negotiated agreement. For that reason, negotiation over matters so set by statutes or regulations is not permissible. We use the word 'set' to refer to statutory or regulatory provisions which speak in the imperative and leave nothing to the discretion of the public employer..." 78 N.J. 54 at 89. /Emphasis supplied/.

The important operative phrase here is 'discretion' of the public employer. As we have seen, while Ruling 11 provides for the granting of salary differentials based on the minimum step of the applicable salary range, the regulation itself fails to specify the amount of such differential, either absolutely or by percentages, or even a maximum and minimum range for the granting of such differentials, and fails in either case to specify the clearly identifiable special factors pertaining to the particular county which the State in Ruling 11 itself is enjoined to examine and determine. 28/

26/ Recall that Ruling 11 fixes only economic terms and conditions, and, then not all of the economic terms included in the November 1976 agreement.

27/ CWA v. Union County Welfare Board, 126 N.J. Super. 517, supra, does not resolve the matter since the case did not involve differentials and thus the Court at no point considered State authority to fix a particular salary differential contrary to the agreement of the parties. The Appellate Division did provide general guidelines to which reference shall shortly be made.

28/ See footnote 18, supra. These factors are set forth at length in CWA v. Union County Welfare Board (see footnote 10, supra).

Furthermore, the Court in CWA v. Union County Welfare Board required the State to conduct a public hearing before the compensation schedules contained in the State plan could become effective. It is inconceivable that the State can comply with the condition precedent of a hearing without also providing notice of the differentials being considered and giving interested persons, including this Union and others, an opportunity to be heard on the proposed differential or range of differentials as affected by the special factors in the counties under consideration. Yet, the record shows that neither the proposed Ruling 11 nor the published notice nor any other form of notice brought home to these clerical employees or their representative, nor did they have an opportunity to comment at the hearing on, the limitation on differential which was ultimately orally recommended by Riti and approved by the Commissioner within her "discretion." It was only some months after the formal hearing, indeed as late as November or December 1976, that a maximum differential of 6.5% was approved. That approval was made not on the basis of the special factors which the Appellate Division and Ruling 11 itself required the State to examine but solely on the basis of an intention of reducing a claimed disparity between State and County employees in similar classifications and by using a formula which had to be perceived as eliminating any real increase in salary so as to reduce that disparity. Riti's willingness knowingly to select a percentage differential which ignored the very criteria necessary to its final calculation is particularly significant. The chart which portrays the result of Riti's insensitivity to the County's needs and Galuppo's anguish at the problem of recruitment and retention of clericals in the County are poignant reminders of this. Under these circumstances 29/ I am constrained to conclude that the State's attempt to regulate the differential agreed to by the parties is not supported by precedent or any rational interpretation of the negotiations obligation of the County under the Act. As noted by the Commission, "The decision [State Supervisory Employees, supra], also emphasizes that a public employer is required to comply with such statutes or regulations [which set terms of employment] and to act consistent with their prescriptions." 30/ This the State has failed to do. After all, the negotiations obligation is fairly broad at

29/ Even if one could interpret State Supervisory Employees as precluding the parties from limiting the State's exercise of discretion in granting differentials on an individual case by case basis it is clear that the State failed here to exercise that authority in accordance with Ruling 11 itself or the Appellate Division mandate binding on the State as well as all the other parties to the proceeding under the principles of res judicata and collateral estoppel.

30/ In re County of Hudson, P.E.R.C. No. 80-103, supra, at 4.

least with respect to wages, the item in dispute is unquestionably a term and condition of employment, and any attempt to preclude agreement here must be grounded on the exercise of lawful authority. The terribly belated and insufficiently grounded determination by Riti fails to satisfy the standards which I must apply. Accordingly, I conclude that the 10% differential above the base to which the parties agreed in November 1976 is sustained and the County shall be required to implement that agreement. The County's failure and refusal to implement it without prior State approval constitutes both a refusal to negotiate in good faith and a refusal to reduce a negotiated agreement to writing (unconditionally) in violation of N.J.S.A. 34:13A-5.4(a)(5) and (6), respectively. And the State's interference with the County's negotiation and related obligations under the Act by unlawfully restraining the County in signing and implementing the differential agreement is in violation of N.J.S.A. 34:13A-5.4(a)(1) 31/

With respect to the other items in the parties' agreement in dispute between the State and the Union, they must also be examined initially by applying the standard adopted by the Supreme Court in State Supervisory Employees. While Ruling 11 appears to give the State complete authority to determine all terms and conditions of employment of county welfare board employees by virtue of its introductory language, even those economic and non-economic terms not specified therein, a closer analysis would seem to be in order. In the course of its opinion, the Court examined the State's contention that the 1974 amendment to the Act did not change the law with respect to scope of bargaining first explicated in the Dunellen trilogy. 32/ Under this most restrictive view, the addition of the word "pension" in N.J.S.A. 34:13A-8.1 had little significance. The only conclusion to be drawn is that the legislature agreed pension statutes were not proper subjects of negotiation and as to all other matters, there was no agreement. The Court rejected the State's interpretation, reasoning that his would ultimately render the Act meaningless, since "general statutes" would preclude negotiation of any subject governed by those statutes. The Court provided an example of such an absurd result:

31/ The State is not the employer of these employees, see State v. Prof. Assn. of N.J. Dept. of Ed., 64 N.J. 231, 259 (1974), yet, it is an employer under the Act. As such, it is responsible for any conduct on its part which interferes with, and restrains these employees in the exercise of their right to freely negotiate through their representative. Cf. Amalgamated Transit Union Div. 819 v. Byrne, 568 F.2d 1025 (1977)

32/ Dunellen Bd. of Ed. v. Dunellen Ed. Assn., 64 N.J. 17, 311 A.2d 737 (1973); Bd. of Ed. v. Englewood Teachers Assn., 64 N.J. 1, 311 A.2d 729 (1973); Burlington Cty. College Faculty Assn. v. Bd. of Trustees, 64 N.J. 10, 311 A.2d 733 (1973).

"For example, a literal application of N.J.S.A. 11:5-1(f) would all but emasculate the Employer-Employee Relations Act. That section directs the Civil Service Commission to

> Establish procedures for maintaining adequate employer-employee relations, and for the orderly consideration of disputes, grievances, complaints and proposals relating to the employer-employee relationship, in the classified service of the State; and make investigations, conduct hearings and make rulings with respect thereto. Such rulings shall not be interpreted to compel or require the expenditure of moneys which are not available or the incurring of obligations not otherwise authorized by law.

We cannot accept the proposition that the Legislature went through the trouble of establishing PERC through L. 1968, c. 303 and then decided that a general statute such as N.J.S.A. 11:5-1(f) would automatically preclude the negotiability of all items within its scope. If that were the case, there would be no need for PERC or for for collective negotiations concerning the terms and conditions of employment in the classified State service. Attributing such an intent to the Legislature is at best unrealistic."
78 N.J. 54 at 76.

Applying the Court's reasoning to the introductory language of Ruling 11 leads inescapably to the same result.[33/] That language (see p. 10, supra) merely adds the words "terms and conditions of employment" to a general statutory provision. It does not specify the particular terms and conditions which if adopted by county welfare agencies must conform to the regulation, other than compensation and classification plans and time and leave regulations. In no sense can the addition of the phrase "terms and conditions of employment" convert a general statute into a specific statute or regulation which sets a particular term or condition of employment, thereby precluding negotiations as to any term or condition of employment. It would be the most serious abridgement of the negotiation process to conclude that economic terms or non-economic terms and conditions of employment contained in the parties' final agreement not fixed by Ruling 11 itself are preempted because they may be dis-

33/ See 76 Rutgers Law Review, 62, 76, Public Sector Labor Relations: The New Jersey Supreme Court Interprets the 1974 Amendments to the Employer-Employee Relations Act.

approved by a Commissioner whose authority is not derived from the implementing regulation but from an oral interpretation not specified in the regulation itself. Put another way, the inclusion in Ruling 11 of the phrase "terms and conditions of employment" cannot give the State and the Division license to reject terms and conditions of the parties' agreement where the detailed regulation is silent and fails to set the particular term or condition embodied in the agreement. Yet, this is the result of the State's action and was precisely Nobrega's response as to the scope of the State's authority to fix all terms and conditions of employment of County employees. There is no inconsistency with statute or regulation which justifies such a result and the State cannot rely on the general language of Ruling 11's introduction to achieve it.

There is also another reason for limiting the State's authority of approval to those terms and conditions of employment actually fixed in Ruling 11. This has to do with the purpose served by Ruling 11 in the overall statutory scheme. As noted in State v. County of Hudson, 161 N.J. Super. 29, 35 (1978), one of the main prerequisites to receipt of federal grants-in-aid is the formulation and submission of a state plan for implementing the Aid to Families with Dependent Children (AFDC). "A 'state plan' consists of all the statutes and regulations which create and provide for the administration of public assistance," CWA v. Union Cty. Welf. Bd., 126 N.J. Super. 517, 525. And this plan must also be consistent with the goals and mandates of the federal statutes and regulations. However, the State has failed to show by statute or rule that granting Union use of a bulletin board, furnishing a Board resolution concerning organization of the workforce, or agreeing to reasonable time for the Union to address all training classes for example, would in any way undermine or interfere with the goals or mandates of the federal statutes, i.e., with the statutory scheme pursuant to which the County administers the federally and state funded and State supervised program of public assistance in the State. In the absence of a showing by the State that its interpretation of Ruling 11 disallowing such relatively innocuous provisions of the parties' agreement as the foregoing bears a rational relationship to the State's legitimate interests in securing maximum Federal financial participation,in complying with the applicable Federal law,and establishing and maintaining a modern personnel system and standard compensation plan, its objection to the provisions ought not to be allowed. Accordingly, the State's disapproval of those items comprising economic terms of agreement,and non-economic terms of agreement in the November 1976 contract which Riti reviewed and rejected in December 1976, listed in series at page 15, supra, was an act of interference with employee rights in violation of subd. (a)(1) and the County's refusal to implement them with-

out State approval has violated subd. (a)(1) and (5).

I turn now to a more detailed examination of the State's conduct in the negotiations process to determine whether, regardless of the degree of its authority over differentials and other economic and non-economic terms, it nonetheless violated employee rights by actions for which it may be held accountable.

Assuming, arguendo, full State authority emanating from Ruling 11 to fix all terms and conditions of employment in the parties' agreement, did the State exercise its authority in a sufficiently responsible and rational manner which should shield it from a finding of interference, restraint or coercion of employee rights under the Act?

The starting point for this analysis must be the conduct of Kambis and other State officials at the meeting of August 4, 1976. Even prior to this meeting Riti had knowledge of the nature of the Union/County salary agreement from his meeting with Nobrega and Galuppo. On August 4 Nobrega by his silence permits Kambis to become chief spokesman for the discussion of approval economic terms. Kambis holds himself out as knowledgeable in this area, reasonably leading Schultz to conclude that Kambis' discussion of a 10% differential for clericals would meet easily with final State approval provided the parties' figures were converted from percentage to dollars. The various factors which enter into this conclusion are discussed at pp. 8 and 9, supra.

Assuming the State's power of broad based approval, I conclude it has an obligation to exercise that power rationally and responsibly with respect to those terms and conditions of employment not fixed in the statute or regulation but rather determined by the exercise of oral administrative discretion. If Kambis had no authority to bind the State by his comments on August 4, the State was obliged to say so, particularly where the Division Director had advance knowledge of the nature of the salary package to which the County and CWA had agreed. 34/ Given the reason for the meeting, including the County and CWA request for approval of their tentative agreement, the State should have known that the parties' were expecting a responsible direction in order to secure approval of the economic heart

34/ See In re Bergenfield Board of Education, P.E.R.C. No. 90, 1 NJPER 44 (1975); In re East Brunswick Bd. of Ed., P.E.R.C. No. 77-6, 2 NJPER 279. Since the State asserts authority of approval, its conduct in exercising that authority may legitimately be judged in accordance with the standard governing the conduct of public employers in collective negotiation relationships who control the terms and conditions of employment of their employees. See Amalgamated Transit Union v. Byrne, 568 F.2d 1025 (1977).

of a contract whose effective date was more than a month prior to the meeting.

Even State participation on August 4 appears untimely. Recall that a number of non-economic terms were objected to by Einhorn after negotiation sessions at which they had been discussed and finally agreed. The parties should not be forced to reexamine their settlements where the third party exercising veto power fails to provide early guide lines or fails to provide a responsible agent at the negotiating table for ongoing guidance and consultation with the principals. The negotiating process should not be a futile endeavor in which time is spent, compromises are made, quid pro quos are arrived at, all without benefit of the referee who has final authority to disallow the whole or any part thereof even though none of the agreed terms are governed by the written provisions of the State regulation.

The further conduct of the State bears scrutiny. The parties with State knowledge and tacit approval continued to negotiate to revise their initial agreement in the light of stated objections. [35] During this time they continued to rely on Kambis' discussion of an approved differential. It was only the very belated State determination on differential contrary to the August 4 discussion and arrived at on the limited and inadequate basis already discussed which continues to defeat County implementation. Furthermore, although Riti was aware (or should have been aware) of a number of the terms agreed to from their inclusion in the initial agreement, he nonetheless rejected them as late as December 9, 1976 for the first time. Recall also that Riti approved the two contract items previously rejected by Einhorn and did not object to the $300 minimum raise provision the parties included in their final agreement (f.n. 16 and p. 11, supra). Responsible State conduct should preclude such a result, particularly where the items, as recounted at p. 15, supra, either were advisory in nature, could be reasonably interpreted to relate to present work force only, or did not involve expenditure of State

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35/ It should be apparent that the State's defense of waiver on the part of the Union has been rejected. The CWA's consistent oral reservation of rights in the face of County intention to seek State approval, particularly the Union's stated reservations of right to litigate the justification for inclusion of the subject to State approval clause in the agreement has preserved the Union's objections. Its practical approach to making its agreement with the County effective is in no sense the equivalent of a waiver of rights. The clear and convincing proof of a relinquishment of rights necessary to support the State's position is thus lacking.

or Federal funds. None of these items were either prohibited or fixed by Ruling 11. 36/

In the final analysis one should not lose sight of the fact that the agreement at issue here is between the County as employer and the CWA as exclusive employee representative. The State, just because it may have the power of final approval, has an awesome responsibility which calls for the most rigorous attention to the parties' rights and responsibilities. This requires that objections to terms of agreements be made known early in the negotiations process before deals have been made and reliance has been placed on settlements and compromises reached. In particular, approvable salary ranges, including differential limits, must be provided to counties and their negotiating counterparts as early as is feasibly possible, certainly not months after negotiations have taken place and months after the provisions of a revised Ruling 11 have been determined. Irresponsible exercise of such authority as the State presumes to possess in the context of the facts disclosed in this proceeding is the equivalent of unfair conduct. It interferes with employee rights under the Act just as surely as if the State itself had been the employer of these employees. 37/

There is a certain arrogance in the State's position that it may stay above the battle and yet determine its outcome. It should not be permitted to have it both ways, i.e., finally determining all contract terms and conditions of employment and making those determinations six months after the effective date of an

36/ One item only, of all the items comprising CP-9, the final agreement between the County and Union, and CP-10, the side letter agreement of six additional items, appears to be a non-term or condition of employment. That is item 4 in the side agreement, requiring vacancies to be filled as soon as possible. See In re State of New Jersey (State Troopers), P.E.R.C. No. 79-68, 5 NJPER 160 (par. 10089 1979); In re City of Paterson, P.E.R.C. No. 80-16, 5 NJPER 369 (par. 10189 1979), appeal pending App. Div. Docket No. A-257-79 and In re City of Paterson, P.E.R.C. No. 80-99, 6 NJPER ___ (par. ___ 1980). Riti's objections to the technical names of certain organizations and revisions of certain captions and titles need not disturb us. The substantive meanings are clear and should not cause a misinterpretation or misunderstanding of the parties' intent or indeed of the State's understanding of that intent.

37/ See In re Board of Education, Englewood Public Schools, P.E.R.C. No. 76-18, 2 NJPER 53. (Employer engaged in a pattern of conduct which manifested a lack of good faith in its response to the negotiating process). See also In re Council of N.J. State College Locals, E.D. No. 79, 1 NJPER 39, 1975, aff'd. sub nom. State v. Council of N.J. State College Locals, 141 N.J. Super. 470, App. Div. 1976. (Court approves Commission adoption of standard of totality of conduct in judging compliance with the negotiations obligation).

agreement which the parties have negotiated and renegotiated in light of known State guidelines. The State may have laudable objectives, for example in bringing county salary scales in line with State compensation schedules, but it cannot achieve them without notice and an opportunity to be heard and participate at a much earlier stage in the process when it has reason to believe that the parties' understandings cannot be fulfilled. Neither can the State disregard the criteria which Ruling 11 and the Appellate Division have required it to weigh and consider.

Upon the foregoing and upon the entire record in this case, the Hearing Examiner makes the following recommended:

CONCLUSIONS OF LAW

1. By its conduct in unlawfully exercising its authority and by exceeding its lawful exercise of authority to determine the salary differential included in the agreement between the County and CWA and other terms and conditions of employment not specifically fixed by statute or regulation, the State has interfered with, restrained and coerced and continues to interfere with, restrain and coerce employees employed by the County in the exercise of the rights guaranteed to them by the Act, in violation of N.J.S.A. 34:13A-5.4(a)(1).

2. Alternatively, by its conduct in irresponsibly exercising its lawful authority to regulate and fix all terms and conditions of employment of the employees of the County in the appropriate unit represented for purposes of collective negotiations by the CWA, the State has interfered with, restrained and coerced and continues to interfere with, restrain and coerce employees employed by the County in the exercise of rights guaranteed to them by the Act, in violation of N.J.S.A. 34:13A-5.4(a)(1).

3. By the foregoing conduct the State has not committed any unfair practices in violation of N.J.S.A. 34:13A-5.4(a)(7).

4. By failing and refusing to execute, unconditionally, and implement the collective negotiations agreement dated November 8, 1976 and the side letter of agreement arrived at during the course of the same 1976 negotiations without prior State approval of all of the terms and conditions of employment contained in the agreements, the County has refused to negotiate in good faith with the CWA as majority representative of its employees in an appropriate unit concerning their terms and conditions of employment, and has refused to reduce a negotiated agreement to writing and to sign such agreement, in violation of N.J.S.A. 34:13A-5.4(a)(5),(6), and derivatively (1).

5. By the foregoing conduct the State has not committeed any unfair practices in violation of N.J.S.A. 34:13A-5.4(a)(7).

THE REMEDY

Having found that the State and County have engaged in, and are engaging in unfair practices within the meaning of the Act, I will recommend that they each cease and desist therefrom and take certain affirmative action necessary to remedy and remove the effects of the unfair practices and to effectuate the policies of the Act.

Affirmatively, I shall recommend that the County execute the November 8, 1976 agreement without reservation and implement each and every provision for the full term of the agreement, July 1, 1976 through June 30, 1977, with the exception of item 4 contained in the side agreement. 38/ I shall also recommend that the State provide the County with all administrative and other funding if any be necessary to implementation of the said agreement without penalty or hold-back in any form.

RECOMMENDED ORDER

Upon the entire record in this proceeding, IT IS HEREBY ORDERED that the State of New Jersey, Department of Human Services, Division of Public Welfare, its officers, agents, successors and assigns:

1. Cease and desist from:

a. Interfering with, restraining or coercing employees employed by the Union County Welfare Board in the exercise of the rights guaranteed to them by this Act, by unlawfully exercising its authority and by exceeding its lawful exercise of authority to determine the salary differential included in the collective negotiations agreement dated November 8, 1976 by and between the Union County Welfare Board and the Communications Workers of America, AFL-CIO, and other terms and conditions of employment not specifically fixed by statute or regulation, and, alternatively, by exercising its lawful authority to regulate and fix all terms and conditions of employment of the aforesaid employees in an irresponsible manner.

2. Take the following affirmative action which is deemed necessary

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38/ See In re Hoboken Board of Education, P.E.R.C. No. 77-5, 2 NJPER 267 (1976), aff'd. App. Div. Docket No. A-4624-75 (6/29/77) (unpublished opinion), motion for leave to appeal to Supreme Court denied, ___ N.J. ___ (1977). Compliance with this proposed order will require in particular and at least that the County make retroactive payment of 3.5% of base salary for the term of the agreement to each and every clerical employee whose differential has been limited to date to the 6.5% paid to them pursuant to stipulation (see p. 16, supra).

to effectuate the policies of the Act:

a. Provide the Union County Welfare Board with all administrative and other funding if any be necessary for County implementation of all terms and conditions of employment agreed to by and between the Board and Communications Workers of America, AFL-CIO and set forth in a collective negotiations agreement between the said Board and Communications Workers dated November 8, 1976 without any penalty whatsoever.

b. Post copies of the attached notice marked Appendix "A". Copies of such notice on forms to be provided by the Commission shall, after being duly signed by the State's representative, be posted by the State immediately upon receipt thereof, and maintained by it for a period of at least sixty (60) consecutive days thereafter in conspicuous places including all places where notices to employees employed by the Union County Welfare Board are customarily posted. Reasonable steps shall be taken by the State to insure that such notices are not altered, defaced or covered by any other material.

c. Notify the Chairman of the Public Employment Relations Commission, in writing, within twenty (20) days of receipt of this order what steps it has taken to comply therewith.

It is FURTHER ORDERED that the Union County Welfare Board, its officers, agents, successors and assigns:

1. Cease and desist from:

a. Failing or refusing to reduce to writing, unconditionally, and to sign and to implement the renewal collective negotiations agreement incorporating all of the terms and conditions of employment of its employees agreed to in a certain written agreement dated November 8, 1976 and a certain side agreement entered into during the course of the 1976 negotiations, with the Communications Workers of America, AFL-CIO, with the exception of item 4 contained in said side agreement.

b. Unlawfully conditioning final agreement and implementation of the terms and conditions of employment contained in the agreements described in paragraph 1a. above upon prior approval by the State of New Jersey, Department of Human Services, Division of Public Welfare.

c. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act by failing or refusing to negotiate collectively in good faith with the Communications Workers of America, AFL-CIO as the majority representative of its employees in the appropriate unit described below concerning their terms and conditions of employment:

Income Maintenance Specialist, Income Maintenance Technician, Investigator, Social Worker, Social Worker Specialist, Clerk, Addressograph Machine Operator, Clerk Typist, Receptionist, Teletype Operator, Clerk Transcriber, Clerk Bookkeeper, Clerk Stenographer Sr., Key Punch Operator, Office Appliance Operator, Messenger, Sr. Clerk Bookkeeper, Senior Clerk Stenographer.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

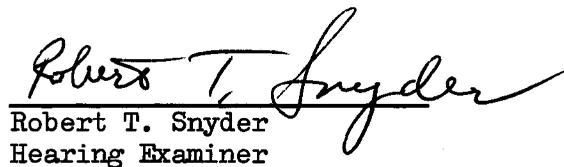
a. Sign, unconditionally, and implement the renewal collective negotiations agreement and side agreement described in sub-paragraph 1a. above.

b. Upon the unconditional execution of the agreements described, gain retroactive effect to the provisions thereof.

c. Post copies of the attached notice marked Appendix "B." Copies of such notice on forms to be provided by the Commission shall, after being duly signed by the State's representative, be posted by the State immediately upon receipt thereof, and maintained by it for a period of at least sixty (60) consecutive days thereafter in conspicuous places including all places where notices to employees employed by the Union County Welfare Board are customarily posted. Reasonable steps shall be taken by the State to insure that such notices are not altered, defaced or covered by any other material.

d. Notify the Chairman of the Public Employment Relations Commission, in writing, within twenty (20) days of receipt of this order what steps it has taken to comply therewith.

And it is FURTHER ORDERED that those allegations in the Complaint alleging violations of N.J.S.A. 34:13A-5.4(a)(7) are hereby dismissed.



Robert T. Snyder
Hearing Examiner

Dated: Newark, New Jersey
April 18, 1980

APPENDIX "A"

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify you that:

WE WILL NOT interfere with, restrain or coerce employees employed by the Union County Welfare Board by unlawfully exercising our authority and by exceeding our lawful exercise of authority to determine salary differential and other terms and conditions of employment not specifically fixed by statute or regulation which the Union County Welfare Board and Communications Workers of America, AFL-CIO, have fully negotiated and included in a collective negotiations agreement.

WE WILL NOT exercise our lawful authority to regulate and fix terms and conditions of employment of employees of the Union County Welfare Board in an irresponsible manner.

WE WILL provide the Union County Welfare Board with all administrative and other funding if any be necessary for County implementation of all terms and conditions of employment contained in a collective negotiations agreement between the County and Communications Workers of America, AFL-CIO, dated November 8, 1976 without any penalty whatsoever.

STATE OF NEW JERSEY, DEPARTMENT OF HUMAN SERVICES, DIVISION OF PUBLIC WELFARE
(Public Employer)

Dated ______________________ By ______________________
(Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with Jeffrey B. Tener, Chairman, Public Employment Relations Commission, P.O. Box 2209, Trenton, New Jersey 08625 Telephone (609) 292-6780

APPENDIX "B"

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL reduce to writing, unconditionally, sign and implement a renewal collective negotiations agreement dated November 8, 1976 and a certain side agreement entered into during the 1976 negotiations with the Communications Workers of America, AFL-CIO, with the exception of item 4 contained in said side agreement.

WE WILL give retroactive effect to the terms and conditions of said agreements.

WE WILL NOT fail or refuse to negotiate in good faith with the Communications Workers of America, AFL-CIO, as majority representative of our employees in the appropriate unit described below concerning their terms and conditions of employment:

> Income Maintenance Specialist, Income Maintenance Technician, Investigator, Social Worker, Social Worker Specialist, Clerk, Addressograph Machine Operator, Clerk Typist, Receptionist, Teletype Operator, Clerk Transcriber, Clerk Bookkeeper, Clerk Stenographer Sr., Key Punch Operator, Office Appliance Operator, Messenger, Sr. Clerk Bookkeeper, Senior Clerk Stenographer.

UNION COUNTY WELFARE BOARD
(Public Employer)

Dated ______________ By ______________________________
(Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with Jeffrey B. Tener, Chairman, Public Employment Relations Commission, P.O. Box 2209, Trenton, New Jersey 08625 Telephone (609) 292-6780