

P.E.R.C. NO. 81-95

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Petitioner,

-and-

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO,

Intervenor,

-and-

AMERICAN FEDERATION OF STATE,
COUNTY, AND MUNICIPAL EMPLOYEES,
AFL-CIO,

Intervenor,

-and-

NEW JERSEY STATE EMPLOYEES
ASSOCIATION, a/w AMERICAN
FEDERATION OF TEACHERS, AFL-CIO,

Intervenor,

-and-

NEW JERSEY CIVIL SERVICE
ASSOCIATION,

Employee Organization.

Docket Nos. RE-81-2
RE-81-3
RE-81-4
RE-81-5

P.E.R.C. NO. 81-95

In the Matter of

STATE OF NEW JERSEY,

Public Employer,

-and-

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO,

Petitioner,

-and-

AMERICAN FEDERATION OF STATE,
COUNTY, AND MUNICIPAL EMPLOYEES,
AFL-CIO,

Docket Nos. RO-81-126
RO-81-127
RO-81-128
RO-81-129

Intervenor,

-and-

NEW JERSEY STATE EMPLOYEES
ASSOCIATION, a/w AMERICAN
FEDERATION OF TEACHERS, AFL-CIO,

Intervenor,

-and-

NEW JERSEY CIVIL SERVICE
ASSOCIATION,

Employee Organization.

SYNOPSIS

The Commission denies a motion for reconsideration of a previous decision which affirmed a decision of the Director of Representation to direct an election in four statewide negotiating units. The motion for reconsideration was based on events which transpired subsequent to the Commission decision, but denied inasmuch as the events were within the contemplation of the parties and also considered by the Commission in its prior decision.

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Employee Organization.

Appearances:

For the State of New Jersey, Frank A. Mason, Director
Office of Employee Relations

For Communications Workers of America, AFL-CIO,
Kapelsohn, Lerner, Reitman & Maisel, Esqs.
(Sidney Reitman, of Counsel)

For the American Federation of State, County and
Municipal Employees, AFL-CIO,
Sterns, Herbert & Weinroth, Esqs.
(John M. Donnelly, of Counsel)

For the New Jersey State Employees Association, AFT,
Fox and Fox, Esqs.
(David I. Fox, of Counsel)
Miller, Cohen, Martens & Sugarman, Esqs.
(Nancy Schiffer, of Counsel)

DECISION ON MOTION FOR RECONSIDERATION

On February 6, 1981 the New Jersey State Employees Association, Local 4089, a/w American Federation of Teachers, AFL-CIO ("NJSEA a/w AFT"), filed a Motion for Reconsideration, pursuant to N.J.A.C. 19:11-8.9, of a decision rendered by the Commission on January 23, 1981. Statements in opposition to this motion have been filed by the State of New Jersey (the "State"), the Communications Workers of America, AFL-CIO (the "CWA") and the American Federation of State, County and Municipal Employees, AFL-CIO ("AFSCME").

The decision, was on a request for review, filed by NJSEA a/w AFT, of a decision of the Director of Representation issued on December 16, 1980. We affirmed his decision to direct mail ballot elections in four statewide units to commence on February 17, 1981, in which the aforementioned employee representatives would participate. In our decision we rejected various challenges to the Director's decision made by NJSEA a/w AFT which included requests to delay the conduct of the election until pending unfair practice charges were fully litigated and also to delay the election until such time that AFL-CIO Article XX proceedings were terminated, or in the alternative, at least until March 3, 1981.

In essence, the NJSEA again seeks the postponement of the election until the AFL-CIO Executive Council can rule upon its appeal of the umpire's decision in the Article XX proceeding. The basis for this renewed request to delay the conduct of the

election are two events which have transpired subsequent to the Commission decision, which relate to that proceeding.

The first event was the dismissal of the Superior Court actions challenging the validity of NJSEA's affiliation with the American Federation of Teachers (AFT/AFL-CIO), as a matter of internal organization procedure. These actions were pending at the time of the Commission decision. The second event was that the NJSEA a/w AFT's appeal of the AFL-CIO's umpire's decisions holding that NJSEA was not entitled to Article XX no-raid protection against CWA and AFSCME was referred to the Executive Council of the AFL-CIO for consideration. At the time of the Commission decision, a subcommittee of the AFL-CIO Executive Council had not yet decided whether to refer the matter to the higher body. Such referral is a condition precedent for the appeal. CWA, AFSCME and the State have all indicated that it is their position that the elections should proceed as scheduled.

In his decision, the Director ordered that the ballots would all be mailed by the Commission on February 17, 1981 and the period for their return would end with the close of business on March 9, 1981. Thus, the parties and all voters have been aware of that schedule since the issuance of the Director's decision on December 16, 1980.

We do not find that these two events constitute sufficient cause to warrant the reversal of our decision to proceed with the elections as scheduled. Both of them, while not yet

fact, were in the contemplation of the parties and the Commission when the prior request to delay the elections for this reason was denied. With respect to the dismissal of the Superior Court actions, we refer the parties to our prior decision where we found that for the purpose of PERC jurisdiction, NJSEA a/w AFT Local 4089, AFL-CIO was an employee organization within the meaning of the Act. Thus, the termination of the lawsuits in favor of NJSEA a/w AFT does not alter the status of any of the parties to the election as they appeared before PERC on January 23, 1981 or December 16, 1980.

Nor does the referral of NJSEA's appeal of an AFL-CIO's umpire's decision to the Executive Council for consideration convince us to stay the election. The fact that this appeal will be placed on the AFL-CIO Executive Council agenda for consideration at its February 16-20th meeting does not constitute a fact beyond the contemplation of the Commission at the time of its decision. To the contrary, the Commission specifically addressed this issue at some length and decided not to "upset the status quo of the February 17, 1981 date for the election as set by the Director on December 16, 1980." For these reasons, we hereby deny this motion for reconsideration, including the application for a stay of the period for the mail ballot election

We reiterate today what we stated in our previous decision:

Ample provisions in the Commission's representation rules exist to provide protection against the negative effects which NJSEA argues are possible from a future decision in the Article XX proceeding. Under any circumstances which could take place as a result of this election, there will be a new exclusive representative of the employees involved if they so choose inasmuch as the previously certified joint representative is not an intervenor in these proceedings. (footnote omitted)

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Newbaker, Parcels and Hartnett voted for this decision. None opposed. Commissioners Graves and Hipp did not participate.

DATED: February 12, 1981