P.E.R.C. NO. 94-42

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY
(DEPARTMENT OF LABOR),

Respondent,

-and-

Docket No. CO-H-93-354
CO-H-93-355

COMMUNICATIONS WORKERS
OF AMERICA, AFL/CIO,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission reverses the decision to issue Complaints based on two unfair practice charges filed by the Communications Workers of America, AFL/CIO against the State of New Jersey (Department of Labor). One charge alleges that the Employer violated the New Jersey Employer-Employee Relations Act when it hired part-time, intermittant and temporary workers to perform duties which should have been assigned to full-time unit members and thus allegedly repudiated provisions of the parties' collective negotiations agreement entitling full-time permanent employees to health benefits. The second charge alleges that the Employer violated the Act when it transferred unit work to non-unit employees. As to the first charge, the Commission finds that the factual allegations concerning the transfer of unit work, even if true, would not constitute a repudiation of the health benefits provision. As to the second charge, the Commission finds the allegations untimely.

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Appearances:

For the Respondent, Fred De Vesa, Acting Attorney General (Michael L. Diller, Senior Deputy Attorney General)

For the Charging Party, Weissman & Mintz, attorneys (Steven P. Weissman, of counsel)

DECISION AND ORDER

On July 9, 1993, the State of New Jersey (Department of Labor) moved for special permission to appeal the issuance of a Complaint based on two unfair practice charges filed by the Communications Workers of America, AFL/CIO ("CWA"). One charge alleges that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (3) and (5),[1/] when it hired part-time, intermittent

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1/ 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. (3) Discriminating in

Footnote Continued on Next Page

and temporary workers to perform duties which should have been assigned to full-time unit members and thus allegedly repudiated provisions of the parties' collective negotiations agreement entitling full-time permanent employees to health benefits (CO-93-354). The second charge alleges that employer violated subsections 5.4(a)(1), (3) and (5) when it transferred unit work from professional and administrative/clerical titles represented by CWA to persons in intermittent, temporary and part-time positions not in CWA's professional or administrative/clerical units. CWA alleges that this practice has been occurring since January 1992, but that the charge is limited to incidents during the last six months.

On June 4, 1993, the cases were consolidated and a Complaint and Notice of Hearing issued. The employer then filed this motion.

On October 18, 1993, special permission to appeal was granted. The parties were notified that we would consider the appeal on the papers submitted to the Chairman.

1/ Footnote Continued From Previous Page

regard to hire or tenure of employment or any term or condition of employment to encourage or discourage 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."

The first charge (CO-93-354) claims a repudiation of the contractual health benefits provision. That provision states that the employer shall provide health benefits for eligible employees. The health benefits provision does not define unit work or protect against the assignment of unit work to non-unit employees. The factual allegations concerning the transfer of unit work, even if true, would not constitute a repudiation of the health benefits provision. There is no dispute that unit employees continue to receive health benefits. The charge also alleges that the hiring of part-time, intermittent and temporary employees violated subsection 5.4(a)(3). However, no specific facts have been alleged to show that the motivation for hiring these employees was to encourage or discourage employees in the exercise of the rights guaranteed to them by the Act. Having found that the allegations in CO-93-354, even if true, would not constitute an unfair practice, we find that a Complaint should not have issued on that charge.

The second charge (CO-93-355) alleges that since January 1992 and continuing to the present, the Department of Labor has been transferring work from professional titles represented by CWA to intermittent, temporary and part-time employees not in CWA's professional negotiations unit. The charge further alleges that during that same period, the Department has been transferring work from clerical titles represented by CWA to temporary employees not in CWA's administrative/clerical negotiations unit. These allegations are untimely.

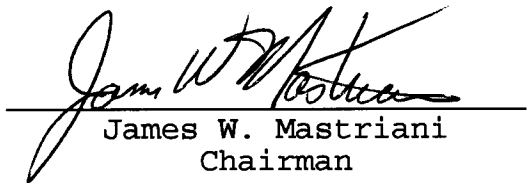
N.J.S.A. 34:13A-5.3 provides that "[p]roposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established." This provision establishes a negotiations obligation before a change in an existing practice can be implemented. If the parties agree or if they negotiate to impasse, the employer can make the proposed change. If a change is made unilaterally before impasse, a majority representative has six months to file an unfair practice charge. N.J.S.A. 34:13A-5.4(c); State of New Jersey (Dept. of Veterans Affairs and Defense), P.E.R.C. No. 89-76, 15 NJPER 90 (¶20040 1989); Salem Cty., P.E.R.C. No. 87-159, 13 NJPER 584 (¶18216 1987).

Here, CWA states that the alleged unfair practice -- the assignment of negotiations unit work to non-unit employees -- began in January 1992, yet the unfair practice charge was not filed until a year and a half later. There are no factual allegations here that the Department repudiated a work preservation clause or that it has been using non-unit employees to encourage or discourage employees in the exercise of the rights guaranteed to them by the Act. Contrast State of New Jersey (Dept. of Veterans Affairs and Defense) (allegation that employer repudiated an agreement may be raised anytime during life of agreement). Having found that the allegations in CO-93-355 are untimely, we find that a Complaint should not have issued on that charge as well.

ORDER

The decision to issue a Complaint in CO-93-354 and CO-93-355 is reversed. The charges are dismissed.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Grandrimo, Regan, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: October 25, 1993
Trenton, New Jersey
ISSUED: October 26, 1993