P.E.R.C. NO. 99-26

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,
(ROWAN UNIVERSITY),

Respondent,

-and- Docket No. CO-H-98-29

COMMUNICATIONS WORKERS OF AMERICA
AFL-CIO,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint against the State of New Jersey (Rowan University). The Complaint was based on an unfair practice charge filed by the Communications Workers of America, AFL-CIO. The charge alleges that the employer violated the New Jersey Employer-Employee Relations Act when it unilaterally determined that, beginning with the 1997-1998 academic year, employees in four units represented by CWA would be required to work on four official paid holidays. The employer moved for summary judgment dismissing the Complaint and restraining arbitration on a related grievance. The Commission finds that the State had a managerial prerogative and thus did not violate the Act when it required employees to work involuntarily (at holiday pay rates) on previously scheduled holidays if necessary to meet its staffing levels for support services. The Commission also restrains binding arbitration of CWA's grievance to the extent it challenges the directive requiring employees to work on holidays when necessary to meet the State's staffing levels.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Charging Party, Weissman & Mintz, attorneys, (Judiann Chartier, of counsel)

For the Respondent, Peter Verniero, Attorney General, (Mary L. Cupo-Cruz, Senior Deputy Attorney General)

DECISION

On July 27, 1997, the Communications Workers of America, AFL-CIO, filed an unfair practice charge against the State of New Jersey (Rowan University). The charge alleges that Rowan violated 5.4a(1), (3), (5) and (7) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.,[1/] when, in May 1997,

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1/ These provisions 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 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

Footnote Continued on Next Page

it unilaterally determined that, beginning with the 1997-1998 academic year, employees in four units represented by CWA would be required to work on four official paid holidays.

On December 9, 1997, a Complaint and Notice of Hearing issued. On January 6 and June 4, 1998, the State filed an Answer and Amended Answer denying that it had violated the Act and maintaining that it had a managerial prerogative to establish the academic calendar and to require employees to work on dates when employee services are required in conjunction with the calendar. The Answer also contends that the charge is untimely, that it alleges a contractual violation that is not within our unfair practice jurisdiction, and that the parties' contract addressed compensation for employees required to work on holidays.

On June 5, 1998, the State moved for summary judgment dismissing the Complaint and restraining arbitration on a related grievance. On July 9, CWA cross-moved for summary judgment finding a violation of the Act and denying Rowan's motion to restrain arbitration.

The Chair has referred the motions to the full Commission. N.J.A.C. 19:14-4.8(a). The parties have filed

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1/ Footnote Continued From Previous Page

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

briefs, exhibits and certifications. No material facts are in dispute. Accordingly, summary judgment will be granted if either the movant or cross-movant is entitled to relief as a matter of law. N.J.A.C. 19:14-4.8(d); Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995); Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 73-75 (1954). We summarize the undisputed facts.

Rowan is a State university governed by a board of trustees. CWA is the majority representative of State workers -- including employees at Rowan -- in the administrative/clerical, professional, primary level supervisors and higher level supervisors negotiations units. The 1995-1999 contracts between the State and the CWA for all four negotiations units each specify 13 official paid holidays, including Columbus Day, Election Day, Lincoln's Birthday, and Washington's Birthday. The contracts state that the holidays "are recognized as holidays for the purposes of this agreement." The contracts also provide that "[h]ours worked on a holiday are not considered hours worked for the computation of overtime in the regular workweek but shall be compensated at time and one-half (1 1/2) in addition to the holiday credit."

The Rowan board of trustees adopts academic calendars, generally in five-year cycles, which establish when the fall and spring semesters begin and end and set the days in each semester when classes will be held. In 1996, Rowan began planning academic

calendars for 1997 to 2002. In November 1996, a committee comprised of students, faculty and administrators, as well as a CWA local chapter president, recommended to the board academic calendars for 1997 to 2002. The calendars scheduled classes on Columbus Day, Election Day, Lincoln's birthday and Presidents' day.[2/] Classes had not been scheduled on these days in the preceding five academic years. On February 7, 1997, the board approved a resolution that adopted the academic calendars as recommended.

Rowan's policy is to operate all university services when classes are in session. Prior to 1997, CWA unit members were occasionally required to work on a holiday. They were paid in accordance with the above-noted contractual overtime provisions.[3/] In May 1997, Reader sent a memorandum to CWA

2/ For 1997 and 1998, Presidents' Day was listed as the third Monday in February, the same date as the Washington's Birthday holiday listed in the negotiated agreements. N.J.S.A. 36:1-1.

3/ CWA president Abby Demel-Brown certified that these occasions were "rare," and that management would request volunteers to provide coverage. Lawrence Reader, Rowan's vice president for administration and finance, certified that all staff, unless individually excused from reporting, are expected to work on any holiday on which classes are in session. If we assume that Reader's statement describes pre-1997 policy and that the practice of requesting volunteers applied to holidays when classes were scheduled, Demel-Brown and Reader appear to differ on whether, prior to 1997, there was a presumption or expectation that CWA unit members would work on holidays when classes were held. However, given our holding, any dispute on that point is not material to our analysis.

and other majority representatives. It stated that the approved 1997-1998 academic calendar scheduled classes on the four noted holidays and that the university would provide full support services on those days. It continued that "[m]anagers of the various offices will work with employees to determine who will be needed to provide the necessary services." It then explained how employees with 35-hour, 40-hour and no-limit workweeks would be compensated for work on holidays.

On June 23, 1997, CWA President Abby Demel-Brown filed a grievance on behalf of all Rowan employees in CWA-represented units. It sought rescission of Reader's memorandum and contended that employees could not be required to work on contractual holidays. On July 2, Reader denied the grievance, responding that Rowan had a managerial prerogative to remain open on contractual holidays and that CWA agreements authorized work on holidays, subject to Article XVIII's overtime provisions. Reader concluded:

> Rowan's position is that CWA employees, depending on operational needs for staffing on holidays when classes are scheduled, may be required to work on these holidays and if so will receive the appropriate compensation.

CWA demanded arbitration of the "group grievance" challenging involuntary scheduling of work on holidays. The arbitration hearing has been held in abeyance pending the resolution of this unfair practice proceeding.

We reject the State's threshold argument that the charge, filed on June 21, 1997, should be dismissed as untimely under the

six month statute of limitations set forth in N.J.S.A. 34:13A-5.4c. The board did not take formal action to adopt the calendar until February 5, 1997 and CWA was not notified until May that, because of the 1997-2002 academic calendars, unit members would be required to work on four holidays on which classes were scheduled. Since CWA is challenging the work requirement, not the class scheduling decision, the statute of limitations did not begin to run before May 1997. See State of New Jersey (Dept. of Corrections), P.E.R.C. No. 89-111, 15 NJPER 275 (¶20120 1989), aff'd 240 N.J. Super. 26 (App. Div. 1990) (statute of limitations began to run when employer eliminated days off, not when Department of Personnel adopted overtime regulations on which employer relied).

We next consider the parties' competing summary judgment motions. The parties agree that the State had a managerial prerogative to adopt an academic calendar scheduling classes on the four holidays. Burlington Cty. College Faculty Ass'n v. Bd. of Trustees, 64 N.J. 10, 12 (1973); Woodstown-Pilesgrove Bd. of Ed. v. Woodstown-Pilesgrove Ed. Ass'n, 81 N.J. 582, 592-593 (1980); Piscataway Ed. Ass'n v. Bd. of Ed., 307 N.J. Super. 263, 270 (App. Div. 1998), certif. denied ___ N.J. ___ (1998). But they disagree over whether the State has a concomitant managerial prerogative to require support staff to work on those days in order to provide University services. We perceive the specific thrust of the demand for arbitration to be over whether the State

can require employees to work involuntarily (at holiday pay rates) on previously scheduled holidays if necessary to meet its staffing levels for support services. We conclude that the State has such a prerogative even though the employees involved are not faculty members.4/

Burlington and Woodstown-Pilesgrove focused on the relationship between the academic calendar and teacher work days because the cases arose in that context. But the rationale of these cases also applies when, because of a change in when classes are scheduled, an employer determines that the work hours or work days of non-teaching personnel must be changed in order to open schools and provide necessary services. Moreover, outside the academic calendar context, public employers have a prerogative to determine the hours and days during which a service will be operated and to determine staffing levels at any given time. See Local 195, IFPTE v. State, 88 N.J. 393, 412 (1982). And when a change in the times services are provided is made for governmental policy reasons, changes in work hours which necessarily flow from that decision are not mandatorily negotiable. See Hoboken Bd. of

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4/ Given the parties' focus on whether the State had such a prerogative and given our conclusion, we need not decide whether the State eliminated holidays guaranteed by the agreements, as the CWA contends, or whether, as the State maintains, it exercised its contractual right to require employees to work on contractual holidays, subject to the agreements' holiday pay provisions. We do note, however, the State's implicit acknowledgment that it does not have a prerogative to pay support staff required to work on holidays at straight-time rates.

Ed., P.E.R.C. No. 93-14, 18 NJPER 444 (¶23199 1992); Hoboken Bd. of Ed., P.E.R.C. No. 93-15, 18 NJPER 446 (¶23200 1992); contrast Morris Cty. College, P.E.R.C. No. 92-24, 17 NJPER 424 (¶22204 1991) (change in work schedules did not necessarily flow from change in print shop hours). The State could thus unilaterally decide that classes and full University services would be offered on the days in question, that certain staffing levels would be needed on those days, and that support staff could be required to work (at negotiated holiday pay rates) if necessary to meet those levels.

We also disagree with CWA that this matter is distinguishable from Piscataway and Woodstown-Pilesgrove, based on the contractual language in those cases. The prerogative to set the academic calendar is not dependent on contract provisions.

Finally, we are not persuaded by CWA's reliance on Elmwood Park Bd. of Ed., P.E.R.C. No. 85-115, 11 NJPER 366 (¶16129 1985) and East Brunswick Bd. of Ed., P.E.R.C. No. 82-76, 8 NJPER 124 (¶13054 1982). In Elmwood Park, the Commission found that the board violated 5.4a(1) and (5) when it unilaterally altered some maintenance employees' Monday to Friday work schedules and required them to work a Wednesday to Sunday shift. The Commission noted that the adverse consequences to employees were dramatic and

that the reasons for the change were not clear from the record. However, it stressed that to the extent the board needed employees to "cover the weekend boiler watch," it could make those assignments. The weekend assignments in Elmwood Park are analogous to the requirement that CWA unit members work on holidays, as needed to provide university services when classes are in session. Elmwood Park thus militates against finding a violation.

East Brunswick is also distinguishable. In that case, the school board, in order to save energy costs, closed buildings on six days on which students and teachers were already scheduled to be on vacation. The board then offered custodians, maintenance and secretarial employees the options of taking a salary cut, making up the lost hours on a non-overtime basis, or taking vacation days on the days in question. We concluded that the buildings were closed for budgetary, not educational reasons and that the board violated 5.4a(5) when it rejected the Association's demand to negotiate over the impact of the closing and unilaterally changed employee compensation, vacations, and overtime. East Brunswick does not support a 5.4a(1) and (5) violation here. In that case, negotiations over contractual holidays and overtime provisions would not have significantly interfered with the budgetary decision to close schools during teacher/student vacations. In this case, the governmental policy decision to operate all university services on the four holidays

cannot be separated from the decision to require some employees to work on those days.

For these reasons, we find that the State did not violate 5.4a(5) or, derivatively, 5.4a(1), when it required CWA unit members to work on contractual holidays. We therefore grant summary judgment and dismiss that portion of the Complaint alleging a violation of 5.4a(1) and (5).

Further, we grant summary judgment and dismiss the alleged violations of 5.4a(3) and (7) and any alleged independent violations of 5.4a(1). Neither the charge nor the parties' submissions specify any facts supporting such allegations.

Finally, we consider the State's motion to restrain arbitration of the CWA grievance challenging the involuntary scheduling of work on contractual holidays. Ordinarily, we restrain arbitration in the context of scope-of-negotiations, not unfair practice proceedings, and the State has not filed a scope-of-negotiations petition with respect to the grievance. However, the parties have apparently agreed to hold this matter in abeyance pending the resolution of CWA's unfair practice charge, and thus appear to agree that the result reached here will, at least in part, determine whether the grievance can be submitted to binding arbitration. Accordingly, we restrain binding arbitration of the grievance to the extent it challenges the directive requiring employees represented by CWA to work on holidays when necessary to meet the State's staffing levels.

ORDER

The Complaint is dismissed. The State's request for a restraint of binding arbitration of CWA's grievance is granted to the extent the grievance challenges the directive requiring employees represented by CWA to work on holidays when necessary to meet the State's staffing levels.

BY ORDER OF THE COMMISSION

Millicent A. Wasell
Chair

Chair Wasell, Commissioners Boose, Buchanan, Finn, Klagholz and Ricci voted in favor of this decision. None opposed. Commissioner Wenzler was not present.

DATED: September 24, 1998
Trenton, New Jersey
ISSUED: September 25, 1998