

I.R. NO. 94-7

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Respondent,

-and-

Docket No. CO-94-137

COUNCIL OF NEW JERSEY STATE
COLLEGE LOCALS AFT/AFL-CIO,

Charging Party.

SYNOPSIS

The Council of New Jersey State College Locals AFT/AFL-CIO sought by way of an order to show cause to restrain the State of New Jersey, specifically, William Paterson College from implementing a student evaluation procedure without negotiating that procedure with the Council. The College argued that at no time did it refuse to negotiate with regards to the procedures to be used in the processing of evaluations submitted by students. Although the Council claims that the College refused to negotiate procedures, the Council's submissions do not make clear that a demand to negotiate severable issues, as opposed to a demand to negotiate over the evaluation process itself, was ever made to the College. The Application was denied.

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Appearances:

For the Respondent
Fred DeVesa, Acting Attorney General
(Michael L. Diller, Sr. Deputy Attorney General)

For the Charging Party
Dwyer & Canellis, attorneys
(George W. Canellis, of counsel)

INTERLOCUTORY DECISION

On November 12, 1993, the Council of New Jersey State College Locals AFT/AFL-CIO filed an Order to Show Cause with an Application for Temporary Restraints and an Application for Interim Relief against the State of New Jersey, specifically, William Paterson College. The Council alleges that the College unilaterally implemented a student evaluation procedure without negotiating that procedure with the Council. The Application for Temporary Restraints was heard on November 23, 1993. That Application was denied. The Order to Show Cause was executed and ultimately heard on December 2, 1993.

It is undisputed that the College announced it would implement a student evaluation procedure. Students would evaluate the classes taught by faculty represented by the Council. The affidavits submitted by the Council allege that the administration refused to negotiate with the College before implementing this procedure.

The College submitted the affidavit of the Assistant Vice President for Human Resources, Raj Singh. He states that "At no time have I indicated to the Union or any of its representatives that the State or the College, or both, were unwilling to negotiate with regard to the procedures to be used in the processing of the evaluations submitted to us by the students. In fact the College responded to Union concerns and suggestions, and the only outstanding issue was that relating to the Dean's review of the results of the evaluation."

During the argument on December 2, 1993, when asked what were the severable negotiable issues that should have been negotiated, the Council responded: the configuration of the original evaluation form, the ultimate disposition of the completed evaluation form, and the right of faculty to submit rebuttals to these evaluations.

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when addressing similar applications. The moving party must demonstrate that it has a substantial likelihood of

success on the legal and factual allegations in a final Commission decision and that irreparable harm will occur if the requested relief is not granted. Further, in evaluating such requests for relief, the relative hardship to the parties in granting or denying the relief must be considered.^{1/}

The Council admits that the issue of evaluations is a non-negotiable managerial prerogative. It claims, however, that the severable procedures were never negotiated by the College in spite of its demands to negotiate. The Council's submissions, however, do not make clear that a demand to negotiate severable issues, as opposed to a demand to negotiate over the evaluation process itself, was ever made to the College. It should be noted that in its original oral arguments (on the temporary restraint on November 23rd), the Council objected to the College administrators' review of the evaluation. However, such review is not a negotiable issue.

Moreover, the affidavit of Raj Singh asserts that he never refused to negotiate. Accordingly, there are substantial factual matters in dispute. It cannot be said that the Council has a substantial likelihood of success in prevailing on the facts here.

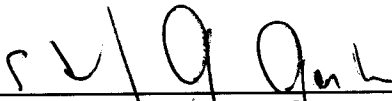
Finally, the harms alleged by the Council which apply directly to faculty member, do not seem to be irreparable in nature. Specifically, the ultimate disposition of the original

^{1/} Crowe v. DeGioia, 90 N.J. 126 (1982); Tp. of Stafford, E.D. No. 76-9, 1 NJPER 54 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975).

evaluation forms and the right of faculty members to submit rebuttals still may be negotiated. The only item that can no longer be negotiated is the configuration of the evaluation form.

Therefore, the Application for Interim Relief is denied.

BY ORDER OF THE COMMISSION



Edmund G. Gerber
Commission Designee

DATED: December 13, 1993
Trenton, New Jersey