

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RUTGERS, THE STATE UNIVERSITY,

Respondent,

-and-

Docket No. CO-80-257-118

RUTGERS COUNCIL OF AMERICAN  
ASSOCIATION OF UNIVERSITY  
PROFESSORS CHAPTERS,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission, adopting the recommendations of its Hearing Examiner, holds that Rutgers, The State University violated the New Jersey Employer-Employee Relations Act, specifically N.J.S.A. 34:13A-5.4(a)(1) and (5), when it instituted procedures for a membership review of graduate faculty members without engaging in prior negotiations with the majority representative, the Rutgers Council of American Association of University Professors Chapters. The Commission specifically holds that Rutgers had to participate in collective negotiations, rather than invoke the collegial system, because the Membership Review Procedure constituted a term and condition of employment.

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RUTGERS, THE STATE UNIVERSITY,

Respondent,

-and-

Docket No. CO-80-257-118

RUTGERS COUNCIL OF AMERICAN  
ASSOCIATION OF UNIVERSITY  
PROFESSORS CHAPTERS,

Charging Party.

Appearances:

For the Respondent, Carpenter, Bennett & Morrissey, Esqs.  
(Edward F. Ryan, of Counsel)

For the Charging Party, Sterns, Herbert & Weinroth, P.C.  
(John M. Donnelly, of Counsel)

DECISION AND ORDER

On February 15, 1980, the Rutgers Council of American Association of University Professors Chapters ("AAUP") filed an Unfair Practice Charge against Rutgers, The State University ("Rutgers").<sup>1/</sup> The Charge alleged that Rutgers violated the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act"), specifically subsections N.J.S.A. 34:13A-5.4(a)(1) and (a)(5),<sup>2/</sup> when it unilaterally instituted,

<sup>1/</sup> AAUP is the exclusive negotiations representative for a unit comprising all Rutgers University faculty members, teaching assistants and graduate assistants.

<sup>2/</sup> 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; and (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."

without prior negotiations, a Membership Review Procedure applicable to all graduate school faculty members and when it unilaterally adopted criteria to evaluate graduate school faculty members different from those established in university regulations and incorporated by reference in the AAUP-Rutgers collective agreement.

On February 19, 1980, the AAUP amended its unfair practice charge to specify that the allegedly objectionable acts occurred on or about October 30, 1979.

On June 6, 1980, the Director of Unfair Practices, having determined in accordance with N.J.A.C. 19:14-2.1 that the charge's allegations, if true, might constitute unfair practices, issued a Complaint and Notice of Hearing. On June 16, 1980, Rutgers filed its Answer in which it contended that it acted pursuant to a managerial prerogative in furthering an educational goal in order to consider individuals for reappointment to the graduate faculty and that there was no obligation to negotiate those matters.

On August 18 and October 24, 1980, Commission Hearing Examiner Edmund G. Gerber conducted a hearing during which he afforded all parties an opportunity to examine witnesses, present evidence, and argue orally. At the outset of these proceedings, the Hearing Examiner granted Rutgers' Motion to Dismiss those aspects of the charge relating to any claimed requirement to negotiate evaluation criteria. Both parties submitted post-hearing briefs on or before December 27, 1980.

On July 28, 1981, the Hearing Examiner issued his Recommended Report and Decision, H.E. No. 82-2, 7 NJPER 489 (¶12217 1981). He concluded that Rutgers had violated subsections 5.4(a)(1) and (5) of the Act when it failed to negotiate procedures to be utilized in its membership review of graduate faculty members. He recommended that the Commission order that Rutgers (1) negotiate in good faith with AAUP over the procedures for implementing and conducting the Graduate School Faculty Review; (2) suspend, pending negotiations, any procedures for such review already implemented; (3) reinstate all graduate faculty members removed as a result of evaluations conducted under the illegally implemented Membership Review Procedure; and (4) post notices setting forth Rutgers' intent to carry out remedial measures (1) through (3).

On August 31, 1981, after having received an extension of time, Rutgers filed its Exceptions to the Recommended Report and Decision and an accompanying brief. On October 1, 1981, AAUP, after having likewise received an extension of time, filed its brief. Neither party has requested oral argument.

The facts in this case are simple and essentially undisputed.<sup>3/</sup> Rutgers' Graduate School, which supervises and coordinates about 65 graduate programs, does not have a separate faculty of its own; instead, its faculty is drawn from the

<sup>3/</sup> With some minor exceptions discussed infra, the Hearing Examiner's factual findings are accurate.

faculties of other academic units of the University. A member is appointed to the graduate faculty by the President on nomination from the Dean of the Graduate School, with the approval of the Executive Council. The Graduate Director, the Executive Committee of a Program, and the Membership Committee of the Graduate Faculty may all initiate nominations. There are two categories of graduate faculty membership: full and associate membership. Only full members may be responsible for the direction of doctoral research and chair doctoral committees; both full and associate faculty members teach graduate courses, serve on student dissertation committees, and chair masters committees. The director for a particular graduate program determines which graduate faculty members perform what duties.<sup>4/</sup>

For many years, persons selected for the Graduate School faculty remained on that faculty until they left Rutgers. During the 1977-78 academic year, the Membership Committee of the Graduate Faculty and an ad hoc planning committee recommended to the Executive Council the establishment of periodic membership reappointment reviews during the year preceding a program's external review. The Executive Council approved this recommendation and passed it on to the Graduate Faculty.<sup>5/</sup> On May 17,

<sup>4/</sup> If a graduate program director wishes to use a faculty member who is not on the Graduate School faculty, he must secure the permission of the Graduate School Dean.

<sup>5/</sup> The recommendation provided:

In the year preceding the external program evaluation, all members of the Graduate Faculty in a program must be considered by the program faculty for reappointment to the Graduate Faculty (of the program). The program

(continued)

1978, the Graduate School faculty voted and approved the Executive Council's recommendation to implement a reappointment review system; the faculty added a right of appeal to the Dean.

On October 30, 1979, the Dean addressed a graduate faculty meeting and introduced for consideration a new Membership Review Procedure for determining which graduate faculty members would receive reappointments. In presenting this item, the Dean stated that it had become apparent that the procedures then in effect did not give sufficient information to the evaluators and protection to the professors being reviewed. A letter from AAUP's President was then read. This letter protested the adoption and implementation of any membership review procedures which were not the result of collective negotiations between AAUP and Rutgers.<sup>6/</sup> The graduate faculty then voted and approved the new Membership Review Procedure.

It is undisputed that Rutgers made no attempt to negotiate with AAUP prior to the October 30, 1979 adoption or subsequent

5/ (Continued)

should then submit their recommendations to the Membership Committee as the initial step in the internal review of Membership for that program. Nominations for reappointment should be based on research activity, as in the case of new nominations, and should also include information on teaching, thesis supervision, and professional activity for the preceding five years.

6/ A Sociology Professor presented a letter in which he challenged the concept of a membership review system; the Dean ruled this notice out of order since the faculty was then concerned with only procedures, not policy.

implementation of the Membership Review Procedure.<sup>7/</sup> It is also undisputed that the adoption or implementation of the Membership Review Procedure did not contravene any existing contractual provisions.<sup>8/</sup>

Since the institution of the current Membership Review Procedure in October 1979, several graduate faculty members received notices indicating that a recommendation to dismiss or demote them had been made. As of the hearing, none of these recommendations had been implemented, although some had been

<sup>7/</sup> The Membership Review Procedure now in effect sets forth a number of steps: (1) the Dean notifies all affected faculty each year of the forthcoming reviews and the applicable procedures and requests the submission of current vitae; (2) the program director nominates and the Dean appoints a program committee to conduct an internal review of the program; (3) the committee conducts the review and assesses the scholarly activity, teaching, and program participation of each member of the program faculty; (4) the internal committee reports to the program director and recommends reappointment, non-reappointment, or some intermediate action for each member of the program faculty; the faculty member concerned is informed of the recommendation and reasons given; (5) each faculty member is given an opportunity to respond to the graduate director and internal committee; the committee must consider any responses in preparing its final report and shall forward any response to the Dean where the Committee disagrees or the faculty member so desires; (6) the Membership Committee receives the final report, faculty vitae, and any additional correspondence; (7) a subcommittee reviews the materials and drafts a report; (8) and (9) the entire committee reviews this report, makes any desired changes, and then sends it to the program director for comment; (10) the Membership Committee forwards its final report to the Executive Committee; the report comments generally on the program faculty and lists those members specifically recommended for reappointment; (11) members not recommended for reappointment receive letters so notifying them and affording an opportunity to request reconsideration based on new information; and (12) if reconsideration is denied, the member may appeal to the Dean, whose decision is final.

<sup>8/</sup> Thus, AAUP does not allege that Rutgers has violated an Article of the applicable collective agreement which spells out the procedures governing decisions whether or not to reappoint or promote faculty members.

held in abeyance or were in the course of being appealed.<sup>9/</sup>

AAUP presented evidence that membership on the graduate faculty is a significant factor in deciding whether a faculty member will obtain university promotions. Thus, Dr. Wells Keddie, a member of the graduate faculty and AAUP officer, testified that he had been involved in the process of evaluating faculty members for promotion since 1974 and that evaluators discussed and considered graduate faculty membership; dismissal or demotion can tarnish a graduate faculty member's reputation and appreciably diminish chances for promotion.<sup>10/</sup> Further, graduate faculty

<sup>9/</sup> For example, Professor Boxer of the Geography Graduate Faculty received a notice in January, 1980 stating his membership would not be continued; he appealed and prevailed. Professor Ching-I Tu received a notice in April, 1980 that the Membership Committee recommended his demotion from full to associate membership on the Graduate Faculty of Comparative Literature; the Executive Council ultimately decided to hold the recommendation in abeyance until an external review of the graduate program had been completed. Professor Nathaniel Tarn, also a member of the Graduate Faculty in Comparative Literature, received a similar notice and a similar result of abeyance pending further review of the external program. Professor Snaidas received a notice in June of 1980 that the Membership Committee had recommended discontinuance of his associate membership; he appealed and pending the outcome of the appeal, he remains a graduate faculty member.

<sup>10/</sup> In particular, Dr. Keddie testified:

...[R]emoval from graduate school faculty is held to be an evaluation of your credentials. It entered into the discussions of your promotion or reappointment and the consequences are sometimes separation from the university, second consequence could be and is, in fact, denial of further possibilities of promotion if you already have tenure, if you are here over the long haul; and third, a heavy impact upon your career in terms of your reputation throughout the country because these kinds of decisions do not remain silent. They are brooded about in this faculty and the professional associations.



membership is noted in a faculty member's personnel file. In addition, AAUP introduced a memorandum entitled "Notes on the Role of the New Brunswick Department of Biological Sciences in the Promotion Process." This memorandum stated, in pertinent part:

It is generally expected that a faculty member coming up for reappointment to a second three-year term as assistant professor will meet the requirements for associate membership in the Graduate School and that a candidate for the associate rank will meet the requirements for full membership.

AAUP also demonstrated that a Spanish professor's alleged inability to contribute to the graduate program was noted and considered during the tenure evaluation process; when the professor appealed the denial of tenure, Rutgers' officials emphasized that the factor of contribution to the federated discipline, including graduate programs, was a relevant consideration in tenure decisions. In another case involving a tenured professor who was dismissed, Rutgers attempted to justify the dismissal by introducing evidence that the professor had been removed from the graduate faculty. In sum, AAUP witnesses concluded that dismissal from the Graduate School rendered chances for promotion within the University "nil" and constituted "a professional disaster."

Rutgers advanced a more sanguine view of the effects of graduate faculty dismissal or demotion. Thus, the Dean of the Graduate School stressed that while some of the criteria considered for continued membership in the graduate faculty are also considered

during the reappointment and promotion process for faculty members, membership in the graduate faculty is not a requirement for reappointment to a second three-year period or promotion to the rank of associate professor. The Dean testified that during the last two years, associate faculty members have obtained full professorship despite not being members of the graduate faculty. Further, the Graduate School does not routinely notify deans of academic units or department administrative officers whether a faculty member has become or remains a member of the graduate faculty. The Dean also noted that as a member of the Promotion Review Committee for four years before assuming his present position in July, 1975, he never considered or heard discussion of membership in the graduate faculty.

We now turn to the legal issues involved in this case. In its brief, Rutgers has prefaced discussion of its specific exceptions with a preliminary statement encapsulating its view of the controversy. Rutgers contends that it has an unrestricted and unrestrictable right to select from its employees those whom they deem to be capable of performing specific functions in order to further its educational mission; the imposition of a duty to negotiate collectively on the "procedure" of selection would perforce restrict management's right of selection from among its employees. In sum, Rutgers is free to adopt a Membership Review Procedure through its collegial system because this procedure does not concern a term and condition of employment.

As AAUP's brief properly notes, Rutgers' statement of the issue cuts far too broad a swath. AAUP does not seek to negotiate over who shall evaluate the graduate faculty, the criteria for such evaluation, the substantive application of these criteria, or the assignment of graduate faculty members to certain tasks. Further, its demand to negotiate does not concern the initial selection process at all, but only the retention process; thus, there is no possible restriction on the pool of available candidates for graduate faculty positions. Instead, AAUP only seeks to negotiate the procedures (for example, notice of evaluations to be conducted, notice of evaluation criteria, opportunity for input and reply, and notice of appeal procedures)<sup>11/</sup> surrounding the actual evaluation. In short, we need only decide whether Rutgers had a managerial prerogative to adopt, through the collegial system rather than collective negotiations, the procedures set forth in the October 30, 1979 Membership Review Procedure and used in the determination of whether a graduate faculty member is retained, demoted or dismissed.

In Rutgers, The State University and Rutgers Council of American Association of University Professors Chapters, P.E.R.C. No. 76-13, 2 NJPER 13 (1976), we considered, in the context of deciding a scope of negotiations contest, "...the unique juxtaposition of two concepts: collegiality<sup>12/</sup> and collective nego-

<sup>11/</sup> Compare Steps 1,4,5,11 and 12 in the current Membership Review Procedure which are undeniably procedural in nature and designed to afford graduate faculty members under review such fundamental protections as notice, input, and appeal rights.

<sup>12/</sup> We defined collegiality as "...essentially a system whereby functions generally performed by management...are either shared with, or even entirely delegated to, groups of faculty members." Supra at pp. 14-15.

tiations. We stated:

As viewed by the Commission, therefore, there is no reason why the systems of collegiality and collective negotiations may not function harmoniously. Neither system need impose upon the other, with one exception: terms and conditions of employment including grievances. The University is free to continue to delegate to collegial entities whatever managerial functions it chooses, subject, of course, to applicable law. The Act is among the law applicable to the University as a public employer, and therefore collective negotiations under the Act would only mandate a change in the collegial system if that system were to operate so as to alter the University's obligation to deal exclusively with the AAUP with regard to the grievances and terms and conditions of employment of unit employees. Beyond that, both systems are free to operate without necessarily interfering with one another.

Supra at p. 15.

Applying this test, we specifically held, inter alia, that proposals concerning promotion-related procedures (including procedures for the selection of department chairpersons) are mandatorily negotiable terms and conditions of employment while proposals concerning the composition of a promotion review committee are not. Supra at pp. 16, 20.

Under the test set forth in our previous Rutgers decision, Rutgers had to participate in collective negotiations, rather than invoke the collegial system, if the Membership Review Procedure was a mandatorily negotiable term and condition of employment. In Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981), the New Jersey Supreme Court reiterated its definition of this critical legal phrase:

Negotiable terms and conditions of employment are those matters which intimately and directly affect the work and welfare of public employees and on which negotiated agreement would not significantly interfere with the exercise of inherent management prerogatives pertaining to the determination of governmental policy. (Slip opinion at p. 8).

See also, Bd. of Ed. of Woodstown-Pilesgrove v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582 (1980) and Dunellen Bd. of Ed. v. Dunellen Ed. Ass'n, 64 N.J. 17 (1973).

Our Supreme Court, the Appellate Division, and our Commission have all undeviatingly affirmed that procedures to be followed in making evaluations, promotions, demotions, and related decisions are mandatorily negotiable terms and conditions of employment, while the criteria governing such determinations are not. See, e.g., State v. State Supervisory Employees Ass'n, 78 N.J. 54 (1978); State v. State Troopers NCO Ass'n, 179 N.J. Super. 80 (App. Div. 1981); Bethlehem Twp. Bd. of Ed. v. Bethlehem Twp. Ed. Ass'n, App. Div. Docket Nos. A-4582-78 and A-4642-78 (Feb. 17, 1981), pet. for certif. pending Supreme Court Docket No. 18,327; Fair Lawn Bd. of Ed. v. Fair Lawn Ed. Ass'n, 174 N.J. Super. 554 (App. Div. 1980); In re Byram Twp. Bd. of Ed., 152 N.J. Super. 12 (App. Div. 1977); In re New Jersey Institute of Technology, P.E.R.C. No. 82-13, 7 NJPER 461 (¶12203 1981); In re Delaware Valley Reg. H.S. Dist., P.E.R.C. No. 79-69, 5 NJPER 183 (¶10100 1979). These cases govern here.

The procedures which are set forth in the Membership Review Procedure instituted in October, 1979, intimately and

directly affect the work and welfare of Rutgers' faculty members. The evidence (not to mention common sense) tells us that dismissal from or demotion within the Graduate Faculty can and does have a deleterious impact on subsequent faculty promotion or tenure opportunities. Regardless of whether or not membership in the graduate faculty is, strictly speaking, a requirement for faculty reappointment, promotion, or tenure, the loss of such membership is an indelible blot on a professor's reputation. Subsequent faculty evaluators considering many of the same criteria as employed in the graduate faculty review program are not likely to ignore a previous determination that a professor is unfit to serve on the graduate faculty because he or she lacks scholarly ability, creativity, or research achievement.<sup>13/</sup> College officials have themselves stressed the relevance of potential graduate faculty contribution; clearly, actual performance would be equally or more relevant. Collective negotiations over membership review procedures can help ensure that faculty members are not unfairly stigmatized on the basis of an incomplete or improperly conducted review.

13/ Consider, in light of the memorandum already discussed, the bleak prospects for reappointment or promotion of a faculty member in the Department of Biological Sciences who is saddled with a previous determination that he does not meet graduate faculty membership standards.

Negotiation over membership review procedures will not significantly interfere with management prerogatives pertaining to the determination of governmental policy. Indeed, the adoption of the Membership Review Procedure in October, 1979 apparently stemmed from a belief that some procedural safeguards were necessary to insure the fairness, integrity, and efficiency of the review process. AAUP merely seeks input in determining the nature and extent of such procedural safeguards. We repeat and emphasize its concession that it does not wish to negotiate evaluation criteria, the substantive application of these criteria, the identity of the evaluators, or the actual assignment of graduate faculty members to particular tasks. Given these limitations, the Membership Review Procedure which Rutgers unilaterally adopted on October 30, 1979, concerned mandatorily negotiable procedural safeguards, not substantive limitations on the employer's ability to determine the composition of its graduate faculty. Rutgers can retain intact its collegial review of graduate faculty performance, provided it negotiates procedures to be followed in this review.

We now turn to Rutgers' specific exceptions. Rutgers first excepts to the Hearing Examiner's finding of fact that "[i]n order to join the faculty of the Graduate School, one must be recommended to the Dean of the Graduate School by certain prescribed individuals or bodies. The Dean then nominates the candidate to the Graduate School and the Graduate School, as a

collegial body, passes upon the nomination." (p. 2) Rutgers contends that the Dean technically has the final responsibility for graduate faculty appointments; the participation of the graduate faculty is only a mechanism through which the Dean receives advice on appointments. AAUP responds that this contention is irrelevant because it is not challenging Rutgers' authority to determine unilaterally who -- the Dean --or the graduate faculty -- will make appointments or reappointments. We agree with AAUP and further note that the initial appointment mechanism -- as opposed to the procedures for determining a member's continuation, demotion, or dismissal -- is not an issue in this case.

Rutgers next excepts to the Hearing Examiner's purported finding that the actions of the graduate faculty on May 17, 1978 in adopting a review process violated our Act. (p. 3) To the contrary, his conclusion that Rutgers dishonored its obligation to negotiate is based solely on the October 30, 1979 adoption of the Membership Review Procedure.<sup>14/</sup> Further, AAUP does not challenge Rutgers' May 1978 decision -- whether adopted through the Dean or a collegial body -- to institute a review of the credentials of its graduate faculty members; it merely protests Rutgers' October 1979 decision to adopt unilaterally certain procedures for this review.

<sup>14/</sup> Under N.J.S.A. 34:13A-5.4(c), "...no complaint shall issue based upon any unfair practice occurring more than 6 months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing the charge...." This section would apparently rule out basing an alleged violation on the May 17, 1978 vote.



Rutgers next excepts to the Hearing Examiner's findings that the AAUP was apparently not aware of the May 17, 1978 decision and that its president did not become so aware until he read an agenda notice of the October 30, 1979 meeting. Rutgers argues that it was not obligated to notify AAUP of the collegial decision making process and that it did notify all graduate faculty members. Again, the purported factual distinctions signify no material difference. AAUP is challenging, and we are considering, the propriety of Rutgers' actions on October 30, 1979, not on May 17, 1978. There is no dispute that AAUP knew of the proposed procedures before the meeting and made a demand at that meeting to negotiate procedures; this finding is all that we need to know about the notice issue in order to review the October 30, 1979 action.<sup>15/</sup>

Rutgers next excepts to the Hearing Examiner's findings that removal from the Graduate School would render chances for promotion nil and would constitute a professional disaster. The Hearing Examiner did not directly make such factual findings; instead, he found that certain witnesses had testified, as they had, to these perceptions. In any event, for the reasons we have already discussed, we are satisfied that dismissal from or

<sup>15/</sup> We disagree with Rutgers' contention, raised in its brief but not exceptions, that AAUP should technically have made its demand upon the Director of the Office of Employee Relations. AAUP took the most effective measure to inform the Dean and the graduate faculty on the record that it should not adopt the proposed Membership Review Procedure.

demotion within the graduate faculty will appreciably diminish subsequent chances for faculty promotion or reappointment and will otherwise adversely affect a professor's reputation and career.

Rutgers next excepts to the Hearing Examiner's purported finding that the process of delegation to various committees of the graduate faculty by which the Dean selects graduate faculty members is a "procedure" which must be negotiated. The Hearing Examiner made no such finding. His report and this decision do not question the Dean's managerial right to delegate authority over appointments or reappointments to a collegial body; the only restriction on the Dean's authority, whether exercised directly or through delegation, is that the procedures to be used in his or the collegial body's review of graduate faculty members must be negotiated. In short, delegation yes, unilateral adoption of procedural safeguards no.<sup>16/</sup>

Rutgers next excepts to the Hearing Examiner's discussion of the previous Rutgers decision. We have already considered this decision and its bearing on this case at length. We find no inaccuracies in the Hearing Examiner's consideration of this case and no reason to believe that it makes the adoption of membership review procedures non-negotiable.

<sup>16/</sup> This exception also misses the mark to the extent it is directed to the initial selection process rather than the review system.

Rutgers finally excepts to the Hearing Examiner's findings that there was testimony that roughly 30 individuals were evaluated under the new program, that some of those faculty members were not aware of the evaluations until after they occurred, and that four or five of those evaluated were separated from the graduate faculty. Rutgers concedes that testimony in the record supports these statements, but argues that contradictions in AAUP's testimony and testimony of its own witnesses undermined this support. Our review of the record confirms that roughly 30 individuals were evaluated under the review program instituted in May 1978 and that some members were not aware of the ongoing evaluation until after receiving notice of the results. Only one member has actually been removed from membership in the graduate school faculty since then, but one member will not be reappointed unless his appeal is successful and two others will be demoted if recommendations, now being held in abeyance, are ultimately followed. Regardless of the technical accuracy of this factual finding, there is no dispute that the membership review system can result in the demotion or dismissal of any graduate faculty member being reviewed and that the October, 1979 Membership Review Procedure was instituted because of a perceived need for additional procedural safeguards. In light of these facts, Rutgers' obligation to negotiate with AAUP before adopting the Membership Review Procedure is clear.

For the foregoing reasons, and after considering all of Rutgers' exceptions, the entire record, and the parties' briefs, the Commission holds that Rutgers violated N.J.S.A. 34:13A-5.4(a)(1) and (5) when it instituted the Membership Review Procedure in October, 1979 without engaging in prior negotiations with AAUP.

ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that Respondent, Rutgers, The State University:

A. Cease and desist from:

1. Interfering with, restraining or coercing employees represented by the Rutgers Council of American Association of University Professors Chapters, in the exercise of rights guaranteed by the Act by unilaterally implementing, without negotiations with the AAUP, procedures for Graduate School Faculty Review.

B. Take the following affirmative action:

1. Negotiate in good faith with the AAUP the procedures for implementing and conducting the Graduate School Faculty Review;

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2. Suspend the procedures that Rutgers implemented on October 30, 1979 with respect to the Graduate School Faculty Review until Rutgers negotiates in good faith with the AAUP procedures for such review;

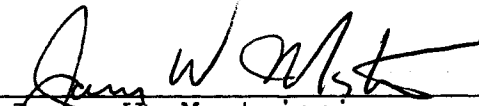
3. Reinstate all faculty members who have been removed from the Graduate School as a result of evaluations conducted since October 30, 1979 and re-evaluate said faculty members only when the negotiations ordered under paragraph one are completed;

4. Rescind all pending recommendations to dismiss or demote graduate faculty members which have resulted from evaluations conducted since October 30, 1979;

5. Post at all places where notices to employees 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 Respondent's authorized representative, shall be maintained by it for a period of sixty (60) consecutive days. Reasonable steps shall be taken by the Respondent to ensure that such notices are not altered, defaced or covered by other materials;

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

BY ORDER OF THE COMMISSION

  
\_\_\_\_\_  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Hupp, Parcels, Suskin and Newbaker voted in favor of this decision. Commissioner Hartnett voted against this decision. Commissioner Graves was not present.

DATED: November 10, 1981  
Trenton, New Jersey  
ISSUED: November 12, 1981

# 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 represented by the Rutgers Council of American Association of University Professors Chapters, in the exercise of rights guaranteed by the Act by unilaterally implementing, without negotiations with the AAUP, procedures for Graduate School Faculty Review.

WE WILL negotiate in good faith with the AAUP the procedures for implementing and conducting the Graduate School Faculty Review.

WE WILL suspend the procedures that Rutgers implemented on October 30, 1979 with respect to the Graduate School Faculty Review until Rutgers negotiates in good faith with the AAUP procedures for such review.

WE WILL reinstate all faculty members who have been removed from the Graduate School as a result of evaluations conducted since October 30, 1979 and re-evaluate said faculty members only when the negotiations ordered under paragraph one are completed.

WE WILL rescind all pending recommendations to dismiss or demote graduate faculty members which have resulted from evaluations conducted since October 30, 1979.

RUTGERS, THE STATE UNIVERSITY

(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. 82-2

STATE OF NEW JERSEY  
BEFORE A HEARING EXAMINER OF THE  
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PROFESSORS,

Charging Party.

SYNOPSIS

The Graduate School of Rutgers University instituted a program to review the activities of members of the Graduate School Faculty in order to remove from the school those faculty members who are found wanting. A Hearing Examiner found that Rutgers committed an unfair practice when it refused to negotiate the procedures for this program with the American Association of University Professors and recommends to the Commission that they order that Rutgers negotiate procedures for the Graduate School review program with the AAUP.

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.

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Appearances:

For the Respondent, Pitney, Hardin & Kipp, Esqs.  
(Nancy A. Adams, Esq.)

For the Charging Party, Sterns, Herbert & Weinroth, Esqs.  
(John M. Donnelly, Esq.)

HEARING EXAMINER'S RECOMMENDED  
REPORT AND DECISION

On February 15, 1980, the Rutgers Council of American Association of University Professors (AAUP or Association) filed an Unfair Practice Charge alleging that Rutgers, The State University (Rutgers or Respondent) violated N.J.S.A. 34:13A-5.4(a)(1) et seq. when it unilaterally, without negotiations, instituted a Membership Review Procedure and applied it to all Graduate School faculty members. Under this system each Graduate faculty member is subject to periodic review of his or her performance and if the faculty member is found wanting, he or she is removed from the Graduate School faculty.



It was specifically alleged that this conduct violated § 5.4(a)(1) and (5). <sup>1/</sup>

It appearing that the allegations of the charge, if true, might constitute an unfair practice within the meaning of the Act, a Complaint and Notice of Hearing was issued on June 6, 1980.

Hearings were held on August 18 and October 24, 1980, at which time both parties were given an opportunity to present evidence, examine and cross-examine witnesses and argue orally. Both sides submitted briefs by December 27, 1980.

The facts of this matter are basically not in dispute. The Graduate School of Rutgers supervises 65 separate graduate programs leading to Masters and Doctoral degrees offered by the University.

Unlike most of the schools and colleges of the University, the Graduate School does not have a separate faculty of its own. Rather, the faculty of the Graduate School is drawn from the faculties of other units of the University. In order to join the faculty of the Graduate School, one must be recommended to the Dean of the Graduate School by certain prescribed individuals or bodies. The Dean then nominates the candidate to the Graduate School and the Graduate School, as a collegial body, passes upon the nomination. For many years persons selected by the Graduate School remained members until they left Rutgers.

<sup>1/</sup> These subsections prohibit public employers, their representatives, or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of 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."

On May 17, 1978, Rutgers, through the action of the Graduate Faculty, adopted a review process to evaluate members of the Graduate School Faculty in order to remove those members of the Graduate School Faculty who wouldn't or couldn't contribute to the Graduate School. Apparently the AAUP was not aware of this action.

On October 30, 1979 at a meeting of the Graduate School Faculty, the Dean of the Graduate School, Kenneth Wolfson, discussed the Membership Review Procedure. He stated that the procedure then employed could be improved and attempted to revise the process.

On that date, Dr. Wells Keddie, the President of the AAUP, and who was on the Graduate School Faculty, had become aware of the proposed procedure through an agenda notice he received as a faculty member. He wrote to the members of the Graduate School faculty advising it that although the position of the AAUP was that discussion of proposals for faculty review can and should go forward but

"before any action is taken which changes the terms and conditions of employment of faculty members...it must be negotiated between the university administration and the AAUP. Thus, the decision made today or in the future about such membership review cannot be implemented until negotiated with...the AAUP."

The Graduate School instituted a revised review procedure but at no time did the University negotiate any aspects of the Graduate School faculty program with the AAUP.

There was testimony as to the significance of removal from the Graduate School. Wells Keddie testified that after removal

from the Graduate School, chances for promotion within the University would become nil. There was further testimony from a professor who was dismissed from the Graduate School and he characterized the dismissal as a professional disaster.

It is the position of the University that promotions within the University are not predicated on the membership in the Graduate School Faculty per se. It was admitted however that the same criteria are considered in granting promotions as in granting appointments to the Graduate School faculty. In their brief the Association acknowledged that Graduate faculty membership is not an absolute prerequisite to promotion, but maintained it is a highly significant event that adversely affects the faculty members' academic career.

#### Analysis

It is well settled that although substantive criteria for promotion are not negotiable, since such criteria go directly to inherent management prerogatives, promotional procedures are negotiable. State v. State Supervisory Employees Assn., 179 N.J. 90, 92, 96 (1970); State v. State Troopers NCO Assn., 179 N.J. Super. 80 (App. Div. 1981); Fair Lawn Bd. of Ed. v. Fair Lawn Ed. Assn., 174 N.J. Super. 554, 558 (App. Div. 1980); Delaware Valley Regional High School District, P.E.R.C. No. 79-69, 5 NJPER 183 (1979); Hazlet Twp. Bd. of Ed., P.E.R.C. No. 79-57, 5 NJPER 113, 114 (1979).

It is undisputed that Rutgers never negotiated the procedures for the implementation of the Review Process. Rutgers

argues that appointment to the Graduate School faculty is not a promotion but rather, is an assignment and pursuant to Ridgefield Park Ed. Assn. v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978) not negotiable. Assuming that Rutgers is correct that appointment to, and removal from, the Graduate School is an assignment, Ridgefield Park still would not be controlling here.

While Ridgefield Park, supra, held that the substantive decision to transfer was an inherent managerial responsibility, it did not rule that procedural aspects of a transfer are not a term and condition of employment. The procedural processes of transfer are a term and condition of employment, just as promotional procedures, though not promotional criteria, are terms and conditions of employment. See In the Matter of Local 195 IFPTE, AFL-CIO v. State of New Jersey, 176 N.J. Super. 85 (App. Div. 1980). See also, In the Matter of State of New Jersey and State Troopers NCO Assn. of New Jersey, P.E.R.C. No. 81-81, 7 NJPER 70 (¶12025, 1981).

The issue at hand may be a hybrid between assignment and promotion, but the obligation to negotiate remains constant. In failing to negotiate procedures prior to the implementation of a system designed to remove individuals from the Graduate faculty, Rutgers violated § 5.4(a)(1) and (5) of the Act.

Rutgers maintains that because the Faculty Review Procedure was created by a collegial body, it is exempt from negotiations. The fact that the University chose to adhere to the collegial system does not preclude negotiations; because faculty members participate

in the decision-making process does not satisfy the obligation to negotiate. That obligation runs to the Association and not individual faculty members. See In the Matter of Rutgers, The State University, P.E.R.C. No. 76-13, 2 NJPER 13 (1976).

In their brief, the AAUP has conceded that criteria for promotion is not negotiable and therefore I deem that portion of their charge dealing with a demand to negotiate criteria withdrawn. It must be emphasized that Rutgers is free to adopt any criteria it deems appropriate and is free to choose any individual or body to both create the criteria and do the evaluating. There can be no significant interference with management's inherent prerogative to establish educational policy in regard to promotion. (For an illustrative example of what areas may be negotiated and how, see State of New Jersey and State Troopers NCO Assn. of New Jersey and State Troopers NCO Assn. of New Jersey, 179 N.J. Super. 80, supra.)

There was testimony at the hearing that roughly 30 individuals were evaluated under the new program. At least some of those faculty members were not aware of the evaluation until after they occurred. Four or five of those evaluated were separated from the Graduate School.

For the purposes of a remedy in this matter it would serve no significant purpose to order the re-evaluation of those faculty members who were satisfactorily reviewed. Those who were separated from the Graduate School should be re-evaluated after the University re-negotiates procedures for evaluations. (As an example, it is possible that a faculty member might have been evaluated on an

incomplete curriculum vitae and the individual in question, not being aware that he or she was being evaluated, could not supply the evaluator with the missing information.)

Therefore it is hereby recommended that the Commission  
ORDER

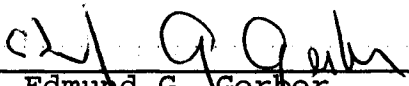
1) Rutgers negotiate in good faith with the AAUP the procedures for implementing and conducting the Graduate School Faculty Review.

2) Suspend any procedures that Rutgers has implemented with respect to the Graduate School Faculty Review until Rutgers negotiates in good faith with the AAUP procedures for such review.

3) Reinstate all faculty members who have been removed from the Graduate School as a result of evaluations conducted and re-evaluate said faculty members only when the negotiations ordered under paragraph one are completed.

4) Post at all places where notices to employees 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 Respondent's authorized representative, shall be maintained by it for a period of sixty (60) consecutive days. Reasonable steps shall be taken by the Respondent to ensure that such notices are not altered, defaced or covered by other materials.

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

  
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Edmund G. Gerber  
Hearing Examiner

DATED: July 28, 1981  
Trenton, New Jersey

# 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 negotiate in good faith with the AAUP the procedures for implementing and conducting the Graduate School Faculty Review.

WE WILL suspend any procedures that we have implemented with respect to the Graduate School Faculty Review until we negotiate in good faith with the AAUP procedures for such review.

WE WILL reinstate all faculty members who have been removed from the Graduate School as a result of evaluations conducted and re-evaluate said faculty members only when the negotiations ordered are completed.

RUTGERS, THE STATE UNIVERSITY

(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