

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION  
BEFORE THE ADMINISTRATOR OF UNFAIR PRACTICE PROCEEDINGS

In the Matter of

STATE OF NEW JERSEY  
(DEPARTMENT OF CIVIL SERVICE),

Respondent,

-and-

DOCKET NO. CO-84-55

INTERNATIONAL FEDERATION OF  
PROFESSIONAL AND TECHNICAL  
ENGINEERS, LOCAL 195,

Charging Party.

SYNOPSIS

The Administrator of Unfair Practice Proceedings declines to issue a complaint with respect to an unfair practice charge filed by IFPTE, Local 195 against the State of New Jersey (Department of Civil Service). Local 195 alleged that the Department of Civil Service implemented certain "Overtime Regulations" without notice to or prior negotiation with Local 195. However, the Administrator finds that the Charging Party failed to allege sufficient facts to support its claims that the Civil Service Commission is both a regulator and an employer of the affected employees. The Administrator was not satisfied that the Charging Party met its responsibility to identify a direct employer interest on the part of the Department of Civil Service in effectuating the instant regulations. Council of N.J. State College Locals, AFT/AFL-CIO v. State Bd. of Ed., 91 N.J. 18 (1982) and In re State of N.J., D.U.P. No. 83-7, 9 NJPER 44 (¶ 14020 1982).

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION  
BEFORE THE ADMINISTRATOR OF UNFAIR PRACTICE PROCEEDINGS

In the Matter of

STATE OF NEW JERSEY  
(DEPARTMENT OF CIVIL SERVICE),

Respondent,

-and-

DOCKET NO. CO-84-55

INTERNATIONAL FEDERATION OF  
PROFESSIONAL AND TECHNICAL  
ENGINEERS, LOCAL 195,

Charging Party.

Appearances:

For the Resondent  
Honorable Irwin Kimmelman, Attorney General  
(Michael L. Diller, Deputy Attorney General)

For the Charging Party  
Rothbard, Harris & Oxfeld, attorneys  
(Arnold S. Cohen, of counsel)

REFUSAL TO ISSUE COMPLAINT

On August 25, 1983, International Federation of Profes-  
sional and Technical Engineers, Local 195 filed an Unfair Practice  
Charge with the Public Employment Relations Commission ("Commission")  
against the State of New Jersey, Department of Civil Service  
("State") alleging violations of the New Jersey Employer-Employee  
Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). Specifically,

the charge alleges violations of §§ 5.4(a)(1), (2), (3), (5) and (7) <sup>1/</sup> when the New Jersey Department of Civil Service implemented certain "Overtime Committee Rules." Allegedly, these rules were issued without notice to or prior negotiation with Local 195.

N.J.S.A. 34:13A-5.4(c) sets forth in pertinent part that the Commission shall have the power to prevent anyone from engaging in any unfair practice, and that it has the authority to issue a complaint stating the unfair practice charge. <sup>2/</sup> The Commission has delegated its authority to issue complaints to the undersigned and has established a standard upon which an unfair practice complaint may be issued. The standard provides that a complaint shall issue if it appears that the allegations of the charging

<sup>1/</sup> N.J.S.A. 34:13A-5.4(a) prohibits public employers, their representatives and agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (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 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."

<sup>2/</sup> N.J.S.A. 34:13A-5.4(c) provides: "The commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice ... Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof, shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof..."

party, if true, may constitute an unfair practice within the meaning of the Act. <sup>3/</sup> The Commission's rules provide that the undersigned may decline to issue a complaint. <sup>4/</sup>

Local 195 is the certified negotiations representative of two state-wide units of employees: (1) Operations, Maintenance, Service and Crafts; and (2) Inspection and Security. Local 195 negotiates with the State of New Jersey, as represented through the Governor's Office of Employee Relations. A collective negotiations agreement exists between the parties covering both units, executed on September 15, 1983 and effective for the period July 1, 1983 through June 30, 1986.

The instant matter concerns the Civil Service Commission's adoption of "Overtime Committee Rules" on May 16, 1983. 15 N.J.R. 801. Local 195 argues that during the period of negotiations for the parties' current agreement, the State -- through the Civil Service Commission -- took the following actions:

- It unilaterally implemented terms and conditions of employment (through its regulatory agency the Civil Service Commission) by issuing overtime rules.

- It issued these rules while the State Office of Employee Relations was still discussing Local 195's overtime demands.

- These rules were adopted without notice to and without discussion with Local 195.

<sup>3/</sup> N.J.A.C. 19:14-2.1

<sup>4/</sup> N.J.A.C. 19:14-2.3

Therefore, Local 195 argues that the "(R)ules are arbitrary, were implemented in bad faith and were adopted solely to avoid negotiations with the Charging Party" <sup>5/</sup> and that the Civil Service Commission served as the employer of the affected employees.

On November 18, 1983, the undersigned advised Local 195 that its Charge failed to present facts that would support its claim that the Civil Service Commission served as the employer of the affected employees. The undersigned also advised Local 195 that its Charge failed to allege facts that rebut the presumed

5/ The unfair practice charge as amended December 19, 1983, states:

On or about May 16, 1983, the Department of Civil Service, an agency of the State of New Jersey, amended Chapter 6 of the Civil Service Rules entitled "Overtime Committee Rules." At the time these rule amendments were implemented, the charging party was engaged in collective negotiations with the Office of Employee Relations, an agency of the State of New Jersey for a successor collective negotiations agreement. During those negotiations, the charging party made demands as to the exact areas covered by the above-mentioned Civil Service Rules. At the time the Civil Service Rules were implemented, these demands of the charging party were still being negotiated. By these rule amendments, the State of New Jersey seeks to circumvent collective negotiations by unilaterally implementing terms and conditions of employment through a regulatory agency, while simultaneously negotiating as to the same terms and conditions through an employer agency. And, these rule amendments were implemented without notice to the charging party. Accordingly said rules are arbitrary, were implemented in bad faith and were adopted solely to avoid negotiations with the charging party as to the terms and conditions of employment. See N.J. State College Locals v. State of Higher Ed., 91 N.J. 18 (1982). The actions of the State of New Jersey are in violation of the Act.

validity of the Civil Service Rules. Local 195 was advised that absent any additional material in support of its claims, a complaint would not issue. In response, Local 195 submitted an amended unfair practice charge asserting, in conclusionary statements, that the State is both the regulator and the employer of Local 195's unit employees. Local 195 states that, "(T)he State negotiates with I.F.P.T.E., Local 195 through the Office of Employee Relations, and regulates I.F.P.T.E., Local 195 through the Civil Service Commission." 6/

For the reasons stated below, the undersigned has determined that the Commission's complaint issuance standard has not been met.

In State v. State Supervisory Employees Association, 78 N.J. 54 (1978) ("State Supervisory"), the Supreme Court held that specific statutes and regulations which set or control a particular term and condition of employment preempt collective negotiations and agreement on those terms and conditions of employment. More recently, in Council of N.J. State College Locals, AFT/AFL-CIO v. State Bd. of Ed., 91 N.J. 18 (1982) ("Council"), the Court stated:

The determination whether an agency regulation affecting terms and conditions of employment should be given preemptive effect may depend upon the direct application of the regulation to the agency's own employees and the agency's posture vis-a-vis the employees affected by the regulation. We therefore hold that if the agency acts solely as a regulator and has no direct employer interest over the employees affected,

6/ Upon further inquiry, Local 195 advised that "no members of the Local 195 bargaining unit are employed at the Department of Civil Service.

its regulations fixing terms and conditions of employment must be given the same preemptive effect as a statute. See Bethlehem Tp. Bd. of Ed. v. Bethlem Tp. Ed. Assn., N.J. (1982); State Supervisory, 78 N.J. at 80-82. However, if the agency acts in dual capacities and promulgates a regulation affecting employees under its control, its regulations establishing terms and conditions of employment will not necessarily preempt negotiation on the subject matter covered therein. In this latter setting, preemption will be presumed. However, that presumption can be overcome by demonstrating that the regulations were arbitrary, adopted in bad faith, or passed primarily to avoid negotiations on terms and conditions of employment. When such a showing is made, the regulations will not be given preemptive effect. Id. at 28

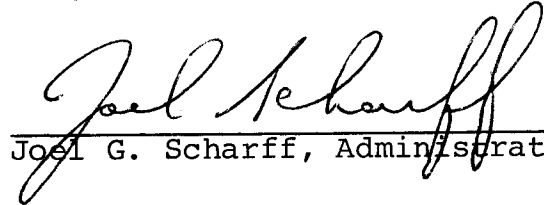
In the instant case, Local 195's Charge includes neither factual allegations nor legal analyses supportive of its claim that the Civil Service Commission is both a regulator and an employer of unit employees. Moreover, Local 195 has not provided the additional material requested nor has it made legal arguments in support of its position as requested by the undersigned on November 18, 1983.

In State Supervisory, the Supreme Court promulgated its rule in the context of the exercise of Department of Civil Service regulatory authority over matters affecting State employees. The circumstances in the instant case appear the same. The instant matter involves the actions of the Civil Service Commission as a regulator, not as the employer of the affected employees. Moreover, the allegations in the instant matter are not unlike those in In re State of New Jersey, D.U.P. No. 83-7, 9 NJPER 44 (¶ 14020 1982) in which it was alleged that Civil Service rules

concerning employment anniversary dates were passed after negotiations with one of the majority representatives of State employees but not prior to negotiations with the Charging Party therein.

The undersigned is not satisfied that the Charging Party has met its responsibility, in light of State Supervisory, Council, and In re State of New Jersey of identifying a direct employer interest on the part of the Department of Civil Service in effectuating the instant regulations. Accordingly, the undersigned declines to issue a complaint.

BY ORDER OF THE ADMINISTRATOR  
OF UNFAIR PRACTICE PROCEEDINGS



Joel G. Scharff, Administrator

DATED: March 15, 1984  
Trenton, New Jersey