

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY (STOCKTON STATE  
COLLEGE),

Petitioner,

-and-

Docket No. SN-16

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

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STATE OF NEW JERSEY,  
Respondent,

-and-

Docket No. CO-76-11

COUNCIL OF NEW JERSEY STATE COLLEGE  
LOCALS, NJSFT-AFT/AFL-CIO  
Charging Party.

SYNOPSIS

The Executive Director, acting on behalf of the Commission, denies a request for interim relief during the pendency of an unfair practice proceeding. The employee organization charged that the public employer had unilaterally determined to increase the number of minutes of college classroom instruction per course per week in a way that would also increase the unit members' pre-existing weekly teaching hours; had implemented such change for the current summer session; and was about to implement such change for the fall session. The Executive Director finds that although the employee organization's chances for success are substantial as to the negotiability of the aspects of the decision relating to increased teaching hours, a substantial factual dispute exists as to whether the parties have already negotiated this issue. Furthermore, one aspect of the dispute is currently before an arbitrator and may be resolved accordingly. Finally, the Executive Director is not convinced that the alleged violations cannot be adequately remedied by the Commission at the end of the case.

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Charging Party.

For the State of New Jersey, William F. Hyland, Attorney  
General (Mr. Melvin Mounts, of Counsel)

For the Council of New Jersey State College Locals, Sauer,  
Boyle, Dwyer & Canellis, Esqs. (Mr. William A. Cambria,  
of Counsel)

INTERLOCUTORY DECISION

On June 17, 1975 a Petition for Scope of Negotiations  
Determination (Docket No. SN-16) was filed with the Public  
Employment Relations Commission ("Commission") by the State of  
New Jersey ("State") seeking a determination as to the negotia-  
bility of the decision to increase "contact time"--the number  
of minutes of classroom instruction per course per week -- at  
Stockton State College.

A grievance with respect to this issue had been filed  
by the Council of New Jersey State College Locals, NJSFT-AFT/

AFL-CIO ("Council") and an arbitration proceeding was scheduled for July 9, 1975. The State filed a request that the Commission temporarily enjoin the scheduled arbitration proceeding during the pendency of the instant scope of negotiations proceeding. The Commission having delegated to the undersigned the authority to act upon such requests, the undersigned heard the oral arguments of both parties and, on July 8, 1975, signed an Order to Show Cause and Temporary Stay of Arbitration. A return date of July 18, 1975 was set regarding the Order to Show Cause and arbitration was temporarily stayed in the interim to the extent that such arbitration involved matters pending in the instant scope of negotiations proceeding.

On July 14, 1975 the Council filed with the Commission an Unfair Practice Charge (Docket No. CO-76-11) alleging violations of N.J.S.A. 34:13A-5.4(a)(1) and (5)<sup>1/</sup> on the part of the State.

Essentially, the charge alleges that the increases in contact time at Stockton State College, which had already been implemented for the summer session and which are intended to be implemented for the fall term beginning in September, constitute

<sup>1/</sup> These subsections prohibit employers from "interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act" and from "re-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."

an interference with the rights of employees and a violation of the statutory provision that "§ proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established." N.J.S.A. 34:13A-5.3.

The Council submitted with its charge a proposed Order to Show Cause. That Order, signed by the undersigned on July 15, 1975, required the State to show cause "why the Commission or its designated agent should not issue an Order staying implementation of the new schedule promulgated by Stockton State College for the fall term, and every term thereafter, pending a decision by the Commission in this matter and in the related Scope of Negotiation matter now pending under Docket No. SN-16." The return date, by agreement of the parties, was set for July 18, 1975 to coincide with the return date of the Order to Show Cause previously issued in the related scope of negotiations proceeding.

Both parties appeared before the undersigned on July 18, 1975 and presented oral argument. The undersigned considered the oral arguments, as well as the written arguments and affidavits submitted in connection therewith, and on July 25, 1975 an Interlocutory Order Consolidating Cases and Granting Interim Relief was issued. That Order consolidated the scope of negotiations and unfair practice proceedings, and it restrained and enjoined pendente lite the arbitration pending on the increase in "contact time" to the extent that such arbitration involved

matters pending in the scope of negotiations proceeding. Finally, the undersigned reserved decision concerning the requested stay of implementation of the increased "contact time" for the fall term, and ordered that additional briefs and affidavits on the appropriateness of such a stay be filed on or before August 4, 1975.

Additionally, it is noted that on July 25, 1975 the undersigned issued a Complaint and Notice of Hearing with regard to these matters. The hearing was initially scheduled for August 4 and 5, 1975 but was postponed due to the unavailability of the Hearing Examiner.

In accordance with the July 25, 1975 Order, two affidavits were filed with the undersigned on August 5, 1975 by the Council. On August 8, 1975 the undersigned received from the Council an additional affidavit and a supplemental memorandum dated August 1, 1975 in support of its request for a temporary injunction staying implementation of the proposed new schedule.

By letter dated August 11 and received August 13, 1975, the State requested a reconvening of the show cause hearing for the purpose of exploring the topics and assertions contained in the three above-mentioned affidavits. The letter repeated the State's points that the Council had failed to establish a probability of success on the merits and that any irreparable harm would fall upon the college and its students if the implementation of the schedule were enjoined. Finally, it states

that the parties had completed the arbitration of the related grievances including the issue of whether or not the college violated the contract by refusing to negotiate the impact of the change in class minutes and the issuance of the class scheduling guide. On August 19, 1975 the Council, in response to the State's letter, stated that there was no need for a reconvening of the hearing and that the Council had demonstrated that it was likely to succeed on the merits and that substantial, irreparable harm will occur unless the temporary stay is ordered. Finally, the State submitted a copy of the certified transcript and exhibits in the grievance arbitration matter and requested that the undersigned consider the sworn testimony therein. The undersigned agrees with the Council that an interlocutory decision regarding the temporary injunction staying implementation of the schedule can be rendered without reconvening the hearing.

Briefly, it is the position of the State that it has not violated the Act by refusing to negotiate in good faith with the Council because it is not required to negotiate the subject matter in dispute, that is, the decision to increase student contact time. Additionally, the State contends that it has negotiated the impact of this decision with the Council and that the master agreement and the local Stockton agreement reflect the results of those negotiations. The State cites the history of changes and increases in student contact time at Stockton to support the claim that the Council had to be aware of the possibility

of further increases and, in spite of this, the silence of the contract in terms of specific minutes of contact time. Furthermore, the State contends that any irreparable harm would fall upon the College and its students if an injunction were issued because the contact time could not be made up once lost.

On the other hand, the Council contends that it has demonstrated that it is most likely to succeed on the merits and that irreparable harm would be suffered if the request for a temporary injunction is not granted.

It is argued that the credibility and effectiveness of the Council and the integrity of the agreement would be undermined and that the Commission should not tolerate a situation in which unilateral action is taken without negotiations. Additionally, it is claimed that the new schedule would disrupt faculty routines and academic life at Stockton including the loss, due to the scheduling changes, of the opportunity to hold union meetings and faculty assemblies. The new schedule would require a restructuring of courses and much work on the part of faculty members to adjust to the changes. While it is stated that the Commission has the power to make compensatory awards, it is argued that any such remedy would be grossly inadequate. The Council urges the issuance of an injunction to preserve the status quo because a remedy after the fact cannot be adequate.

In a recent decision,<sup>2/</sup> the undersigned, acting on

2/ In re Township of Little Egg Harbor, PERC No. 94,1 N.J.P.E.R.  
(Docket No. CO-76-14, August 12, 1975)

behalf of the Commission, discussed interim relief in unfair practice proceedings. It was noted that interim relief is an extraordinary remedy only to be invoked in those limited circumstances in which it is appropriate and necessary. It was observed that, "The Commission's exclusive remedial powers, normally intended to be exercised subsequent to a plenary hearing, will not be called into play for interim relief in advance of such hearing except in the most clear and compelling circumstances."<sup>3/</sup>

In that case, it was determined that the alleged unfair practices, if ultimately supported on the facts and the law, could be fully remedied by the Commission in due course. Additionally, it was noted that the charging party would have to show that its chances of favorable resolution of the legal and factual issues were substantial.

The second standard discussed above relates to the chances of favorable resolution of the factual and legal issues.<sup>4/</sup> In the instant case, the State argues that it will be sustained on the merits. It frames the issue as follows: Is the decision to increase minimum contact time per week a matter of educational and managerial prerogative not subject to the obligation to negotiate? The Commission may answer that question in the affirmative. See, Dunellen Board of Education v. Dunellen Edu-

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<sup>3/</sup> Id, at p. 6.

<sup>4/</sup> It is noted that while the undersigned has been delegated the authority by the Commission to rule upon the request for interim relief, the final decision on the merits will be made by the Commission, subject, of course, to judicial review.



Association, 64 N.J. 17 (1973). However, to the extent that the decision contemplates coverage of that increase in contact time by unit members as part of their regular duties and to the extent that this requires an increase in working hours, the Commission may find such aspects of the the decision to relate to required subjects for negotiations. See, Board of Education of Englewood v. Englewood Teachers Association, 64 N.J. 1 (1973). In other words, the State could increase student contact time without increasing the contact time of individual unit members and to the extent that the decision was implemented in such a fashion, there may be no obligation to negotiate, at least with respect to the issue of the number of hours.

However, that does not appear to be the case here. Instead, the College intends for each faculty member to increase his/her number of minutes per week from 270 to 330 in the fall and spring terms and from 200 to 225 in the summer and winter terms.<sup>5/</sup>

Thus, in the opinion of the undersigned, the chances are substantial that the way in which that decision is to be implemented is a required subject for negotiations under the Act. In fact, the State concedes that, "To the extent that the educational judgment impacts upon mandatorily negotiable terms

<sup>5/</sup> There is an additional issue of whether the Council represents summer school teachers. However, that issue is not before the undersigned because the Council only seeks a stay of the implementation of the new schedule starting in September, 1975.

and conditions of employment, the impact, but not the decision itself, can, under certain circumstances, be a proper subject of negotiations."<sup>6/</sup>

There is a factual dispute as to whether or not this matter has been negotiated by the parties. The State, citing the master agreement, Article XII, and the appendix negotiated pursuant thereto,<sup>7/</sup> contends that this matter has been negotiated as reflected in the two agreements taken together. The Council cites the same documents but argues that they support the opposition conclusion. This issue was explored at length during the course of the arbitration proceeding.<sup>8/</sup>

While the Commission has not yet passed upon the advisability of developing a deferral policy, the undersigned views such a policy as desirable in certain circumstances. Without elaborating on these circumstances at this time, it is observed that such deferral may be appropriate in the instant situation at least to the extent that the dispute involves factual matters relating to contract interpretation. The undersigned understands that the arbitrator intends to render a decision prior to the commencement of the school year. Thus, to the extent that

<sup>6/</sup> State's brief filed regarding Scope of Negotiations Petition, p. 13.

<sup>7/</sup> Article XII, paragraph V provides that, "Responsibilities of the faculty as set forth herein shall not apply to Ramapo College of New Jersey or Stockton State College. Responsibilities of the faculty at these colleges now in effect shall remain in effect, unless altered through subsequent negotiations."

<sup>8/</sup> As noted, the undersigned has been given a copy of the transcript of that hearing.

the action of the State constitutes a violation of the agreement, apart from the question of whether the decision is a required subject of negotiations, this matter can be and will be addressed and remedied by the arbitrator in accordance with the agreement of the parties.

Furthermore, the fact that the Council has elected to pursue this matter through the grievance procedure and arbitration lends some credence to the argument of the State that this subject is covered by their agreement. Thus, the State contends that the Council has, in effect, waived any right to negotiate this matter because it has been the subject of negotiations.

Based upon the above, the undersigned concludes that no temporary injunction should issue staying the implementation of the new schedule for the fall term. While an increase in working hours seems clearly to be a required subject of negotiations, it is not clear on the facts in this case that there have not been negotiations. The State also contended in the arbitration proceeding that change in minimum contact time will not affect many courses and instructors because they had been exceeding the minimum number of contact minutes and number of class meetings called for. Additionally, part of this issue is currently before an arbitrator and thus within his power to remedy in accordance with the contract. Finally, the undersigned is not convinced that this matter, if ultimately found to constitute a

violation of the Act by the Commission, cannot be adequately remedied by the Commission at the end of the case.<sup>9/</sup>

Accordingly, the instant request for interim relief is hereby denied. This interlocutory decision is to be read together with the July 25, 1975 Interlocutory Order Consolidating Cases and Granting Interim Relief, attached hereto and made a part hereof.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

By

  
Jeffrey B. Tener  
Executive Director

DATED: Trenton, New Jersey  
August 27, 1975

<sup>9/</sup> It is noted that the Council was informed of the decision to increase contact time beginning in the summer, 1975 term by letter from the President of the College April 23, 1975. That letter specifically stated that the decision was not viewed as being mandatorily negotiable. Yet the Council did not file a charge alleging a violation of the Act until July 14, 1975, almost three months after the announcement and presumably sometime after the commencement of the summer term. This would seem to militate against a finding of substantial and irreparable harm as alleged by the Council.

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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STATE OF NEW JERSEY (DEPARTMENT OF HIGHER EDUCATION, STOCKTON STATE COLLEGE),	:	
Petitioner-Respondent	:	
- and -	:	Docket No. SN-16
COUNCIL OF NEW JERSEY STATE COLLEGE LOCALS, NJSFT-AFT/AFL-CIO (STOCKTON FEDERATION OF TEACHERS),	:	Docket No. CO-76-11
Respondent-Charging Party.	:	

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INTERLOCUTORY ORDER CONSOLIDATING CASES AND  
GRANTING INTERIM RELIEF

The Scope of Negotiations Petition has been opened to the Public Employment Relations Commission by William F. Hyland, Attorney General of New Jersey, attorney for the State of New Jersey (the Petitioner in the Scope of Negotiations matter and Respondent in the within Unfair Practice Charge), Deputy Attorney General Melvin Mounts, appearing. The Petition alleges that a decision to increase student contact time at Stockton State College is a matter of employer prerogative, in that it goes to the mission of the agency and results from an educational and managerial judgment, not subject to the obligation to negotiate. The Petitioner, State of New Jersey, requested that pending the resolution of the Scope of Negotiations question, the Commission restrain the arbitration sought by the Respondent, Council of New Jersey State College Locals; the issue of the said arbitration being whether the said decision to increase student contact time was permitted pursuant to the contract and supplemental agreement between the parties.

The Unfair Practice Charge herein has been opened to the Commission by Sauer, Boyle, Dwyer and Canellis, attorneys for the Council of New Jersey State College Locals (Charging Party in the Unfair Practice matter and Respondent in the Scope of Negotiations matter), William A. Cambria, Esq. appearing, alleging that the Respondent, State of New Jersey, has committed an unfair


practice within the meaning of the New Jersey Employer-Employee Relations Act, as amended, by ordering and implementing an increase in the said student contact time, and requesting a stay of any further implementation of the increased contact time for the fall term and every term thereafter, pending a final determination of these matters by the Commission.

Orders to Show Cause were signed by the undersigned designee of the Commission in both matters and the hearings on the return day to consider the stay of arbitration and restraint of the implementation of the increased contact time for the fall term were consolidated. The undersigned has now heard the informal arguments of the parties and their respective counsel, and has considered the briefs and affidavits submitted, and good cause appearing:

IT IS on this 25th day of July, 1975 ORDERED that pursuant to Section 19:15-1(b) of the Commission's Rules (N.J.A.C. 19:15-1(b)) that the within Scope of Negotiations matter, SN-16, and the within Unfair Practice matter, CO-76-11, be and the same are hereby consolidated; and

IT IS FURTHER ORDERED that pending the final resolution of the consolidated case, the arbitration pending on the increase in student contact time be and is hereby restrained and enjoined to the extent that such arbitration involves matters now pending in the Scope of Negotiations matter, SN-16; and

IT IS FURTHER ORDERED that a decision on the stay of the implementation of the increased student contact time for the fall term be reserved pending further order of the Commission or the undersigned named designee, and that additional briefs and affidavits on the appropriateness of such a stay shall be filed and served by both parties on or before August 4, 1975.

  
Jeffrey B. Tener  
Representative of the Commission

PERC - 76-6 Interlocutory Decision

State of New Jersey (Stockton State College)

and

Council of New Jersey State College Locals,  
NJSFT-AFT/AFL-CIO

Docket No. SN-16

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State of New Jersey

and

Council of New Jersey State College Locals,  
NJSFT-AFT/AFL-CIO

Docket No. CO-76-11

To Parties: 8/28/75  
To Commissioners: 8/29/75  
To Press: 8/29/75  
To Mailing List: 8/29/75