

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

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

-and-

Docket No. SN-11

STATE OF NEW JERSEY (STOCKTON STATE  
COLLEGE),  
Respondent.

SYNOPSIS

In a decision and order on motion the Commission denies a motion for reconsideration filed by the State of New Jersey relating to an earlier Commission decision in a scope of negotiations proceeding that concerned the negotiability of a tenure plan adopted at Stockton State College. The State had urged that the Commission's Order in that matter be amended by eliminating any reference to the State's obligation to negotiate in good faith, upon demand of the Council, with respect to the impact on terms and conditions of employment of the College's decision to adopt a tenure plan. The State contended that the Order not only went beyond the issue which the parties jointly submitted to the Commission but interjected uncertainty and confusion regarding the State's negotiations obligation since the State alleged that it had already satisfied any negotiations obligation regarding effects on terms and conditions of employment and that the Council has not alleged otherwise. The Commission clarifies its previous order by reaffirming its practice of including in its decisions and orders in scope proceedings a determination of the negotiability of the impact, if any, of an employer's action as an integral part of the resolution of the matter in dispute. The Commission reaffirms that in scope proceedings it has consistently avoided passing upon the factual question of whether the parties have in fact met their obligation to negotiate. The Commission emphasizes that if the State has negotiated concerning the impact of the tenure plan, then compliance with the Commission's prior Decision and Order has been achieved.

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Appearances:

For the Petitioner, Sauer, Boyle, Dwyer & Canellis, Esqs.  
(Mr. William A. Cambria, of Counsel)

For the Respondent, Hon. William F. Hyland, Attorney  
General of New Jersey (Melvin E. Mounts, Deputy Attorney  
General, of Counsel)

DECISION AND ORDER ON MOTION

On April 29, 1976, the Commission issued its Decision  
and Order in the above-captioned scope of negotiations proceeding.  
In re Council of New Jersey State College Locals, NJSFT-AFT/AFL-CIO,  
P.E.R.C. No. 76-33, 2 NJPER 147.

Essentially, the dispute in that proceeding related to  
the negotiability of a tenure plan by the College. We found that  
the authority of the Board of Higher Education to promulgate tenure  
guidelines and the College's adoption of a tenure plan pursuant to  
those guidelines was not subject to the mandatory negotiations  
obligation imposed by the New Jersey Employer-Employee Relations  
Act. On the other hand, we found that nothing in that Act precluded  
the State from discussing or negotiating on a voluntary basis with  
the Council concerning tenure quotas. Finally, we determined that

a tenure plan may impact upon or affect the terms and conditions of employment of the faculty in various ways and that this impact or effect was within the scope of required or mandatory negotiations. We concluded our decision with the following order:

"To the extent that the Council's demand relates to impact on terms and conditions of employment as aforesaid, the State is hereby ordered to negotiate in good faith, upon demand of the Council, with respect thereto.

To the extent that the Council's demand relates to the State's decision to adopt and implement the Stockton Plan as aforesaid, the Council is hereby ordered to refrain from insisting, to the point of impasse, upon the inclusion of such matters in a collective negotiations agreement with the State."

The State filed a timely Motion for Reconsideration of the Commission's Order pursuant to N.J.A.C. 19:15-4.1, with supporting affidavit. In its motion, the State urges that the Commission's Order be amended by eliminating the first paragraph of that Order. This amendment is sought primarily on two grounds. First, according to the State, the Order goes beyond the issue which the parties jointly submitted to the Commission. Second, and perhaps more importantly, the State contends that the Order interjects uncertainty and confusion regarding the negotiations obligation since the State alleges that it has satisfied any negotiations obligation regarding the effect on terms and conditions of employment and that the Council has not alleged otherwise.

The Council, in its letter response, urges dismissal of this motion on the ground that the standards set forth in the

Commission's Rules for reconsideration have not been met. Moreover, it asserts that the State is seeking by this mechanism to be relieved of the negotiating obligation with respect to the effect on terms and conditions of employment of the State's decision regarding the tenure plan. Finally, the Council argues that the Commission should not pass upon the question of whether the State has met its negotiating obligation without providing both parties a full opportunity to present their positions prior to any determination.

It thus appears that the disagreement between the parties does not involve the correctness of the Commission's determination that the effect that the State's decision regarding the tenure plan has on terms and conditions of employment is a required subject of negotiations but rather whether the Commission should have rendered such a determination as part of its decision, and more to the point, whether the State has already met that obligation to negotiate.

While we see no reason to reconsider or modify our earlier determination we will take this opportunity to clarify any uncertainty which may have arisen from the Order in our earlier decision.

As we stated at pages 4 and 5 of our original decision, "The Commission has noted in past decisions that in scope proceedings it is addressing the abstract issue as to whether the subject matter in dispute is within the scope of collective

negotiations."<sup>1/</sup> The method of analysis of such questions has previously been discussed in past Commission decisions, particularly In re Rutgers, The State University, P.E.R.C. No. 76-13, 2 NJPER 13 (1976). In that case the Commission explained the distinction between an action of a public employer which directly concerns terms and conditions of employment, such as a proposal to increase or decrease salaries, and an activity which involves matters other than terms and conditions of employment but which has an effect on terms and conditions of employment. In this latter circumstance the employer is obligated to negotiate this impact or effect on terms and conditions only. Rutgers, supra, at pgs. 9-10, 2 NJPER 15-16. In passing upon scope of negotiations questions, we have consistently included a determination of the negotiability of the impact, if any, of the employer's action as an integral part of the resolution of the disputed matter.<sup>2/</sup> To leave such an obvious and integral part of the dispute unresolved would not effectuate the purposes of the Act or the Commission's scope of negotiations jurisdiction.<sup>3/</sup>

However, in answering questions as to the negotiability of the matter in dispute in a scope proceeding, we have consistently avoided passing upon the factual question of whether the parties have in fact met their obligation to negotiate, or in

<sup>1/</sup> 2 NJPER at 148.

<sup>2/</sup> See for example, In re Fair Lawn Board of Education, P.E.R.C. No. 76-7, 1 NJPER 47 (1975); In re City of Trenton, P.E.R.C. No. 76-10, 1 NJPER 58 (1975); Rutgers, supra; In re Byram Township Board of Education, P.E.R.C. No. 76-27, 2 NJPER 143 (1976) (appeal pending Docket No. A-3402-75).

<sup>3/</sup> N.J.S.A. 34:13A-2; N.J.S.A. 34:13A-5.4(d).

analogous disputes over arbitrability, whether the contract in fact covers such a matter.<sup>4/</sup> Thus, in this proceeding the only issue presented to us was the abstract scope of negotiations question. No evidence regarding the actual conduct of the negotiations was presented nor was any allegation of the breach of a duty to negotiate made. Therefore, although we have determined that as a matter of scope of negotiability the State must negotiate on demand concerning the impact of its decision to adopt the tenure plan in dispute on the employees' terms and conditions of employment, we were not faced nor did we address the factual issue of whether such an obligation has been met. If, in fact, the State has negotiated concerning the impact of the said tenure plan, then compliance with our order has been achieved.

Given this clarification of our previous order we see no reason to further reconsider our prior Decision and Order.

ORDER

Pursuant to N.J.S.A. 34:13A-5.4(d) and N.J.A.C. 19:15-4.1 the Motion for Reconsideration is hereby denied. However, the

<sup>4/</sup> Such disputes are generally resolved in other forums. For example as we noted in our original decision, the Council originally filed an Unfair Practice Charge relating to this dispute and then withdrew it when the instant Petition was filed. Also, questions concerning the contractual arbitrability of a particular matter are usually handled by the arbitrator or the Courts. See In re Hillside Board of Education, P.E.R.C. No. 76-11, 1 NJPER 55 (1975), In re Bridgewater-Raritan Regional Board of Education, P.E.R.C. No. 77-21, 2 NJPER \_\_\_\_ (1976).

Order in our prior decision, P.E.R.C. No. 76-33, shall be read and interpreted in a manner consistent with the clarification in the above discussion.

BY ORDER OF THE COMMISSION

  
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Jeffrey B. Tener  
Chairman

Chairman Tener, Commissioners Forst, Hartnett, Hipp and Parcells voted for this decision.  
Commissioner Hurwitz abstained.

DATED: Trenton, New Jersey  
December 21, 1976  
ISSUED: December 22, 1976