

P.E.R.C. NO. 2012-69

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,
KEAN UNIVERSITY,

Respondent,

-and-

Docket No. CO-2011-072

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

Charging Party.

SYNOPSIS

The Public Employment Relations Commission sustains the decision of the Deputy Director of Unfair Practices refusing to issue a complaint based on an unfair practice charge filed by the Council of New Jersey State College Locals, AFT, AFL-CIO against Kean University, D.U.P. No. 2012-1. The Commission holds that the facts alleged by the AFT did not amount to an unfair practice as they established there was an ongoing dialogue between the parties, but no final agreement reached.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances

For the Respondent, Jeffrey S. Chiesa, Attorney General
(Geri Benedetto, Deputy Attorney General)

For the Charging Party, Bennett Muraskin, Staff
Representative

DECISION

On July 14, 2011, the Council of New Jersey State College
Locals, AFT, AFL-CIO, appealed a decision of the Deputy Director
of Unfair Practices refusing to issue a complaint based on an
unfair practice charge it filed on August 16, 2010 against the
State of New Jersey, Kean University. D.U.P. No 2012-1, ___
NJPER ___ (§ ____). The charge alleges that Kean violated
5.4a(1), (5) and (6)^{1/} of the New Jersey Employer-Employee

1/ These provisions 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. . . (5) Refusing to
negotiate in good faith with a majority representative of
(continued...)

Relations Act, N.J.S.A. 34:13A-1 et seq., by refusing to negotiate in good faith and refusing to reduce a negotiated agreement to writing and sign such agreement. We affirm the refusal to issue a complaint.

We incorporate the facts as found by the Deputy Director. The State and AFT signed a collective negotiations agreement extending from July 1, 2007 through June 30, 2011, which covers full-time faculty, librarians and professional staff employed by Kean.

On November 24, 2009, during local negotiations between the parties, AFT proposed scheduling faculty teaching loads over the entire calendar year. Under the proposal, faculty could choose to "bank courses," i.e., to defer compensation on overload and summer courses in exchange for paid time off at a later date. Phillip Connelly, Vice President of Administration and Finance, and chief negotiator for Kean, agreed to study the proposal.

At the next negotiations session on December 22, 2009, Connelly expressed interest in AFT's proposal and requested that AFT present a few options demonstrating how the "banked course" program would work in practice.

1/ (...continued)
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. . . [and] (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

At the next negotiations session on January 26, 2010, AFT presented three proposed scenarios for banking courses for scheduling faculty teaching loads. At the next negotiations session on March 2, 2010, Kean presented a written counterproposal which indicated that option number 2 held the most promise and included 5 bullet points that contained clarification it wanted on issues relating to option number 2. At the next negotiations session on March 30, 2010, Kean and AFT discussed the meaning of the third bullet point in the Kean's counterproposal and also discussed payment of deferred compensation. The parties agreed that AFT would draft a "Letter of Agreement."

In the next negotiations session on May 4, 2010, the AFT presented "Letter of Agreement #121," which differed slightly from Kean's counterproposal. In addition to the counterproposal, the AFT "letter" included an added bullet point, which raised concerns from Connolly.

Charles Kelly, Kean AFT President, emailed Connolly on May 10, 2010, offering revised language to address Connolly's stated concerns. Kelly received no reply from Connolly. On June 15, Kelly again sent Connolly the Letter of Agreement which included the bullet point at issue in the May 4 version of the Agreement and the changes to that bullet point.

In the next negotiation session on June 29, 2010, AFT presented Kean with a copy of Kean's March 2 counterproposal (without any version of the added bullet point). After caucusing, representatives of Kean declined to sign that version of the Letter of Agreement.

On July 15, 2010, Connolly sent another revised Letter of Agreement to the AFT which included substantive changes to its March 2 counterproposal.

The Deputy Director, viewing the facts asserted in AFT's unfair practice charge as true, found that AFT failed to allege any facts that would constitute an unfair practice within the meaning of the Act. He found that AFT did not set forth any facts demonstrating bad faith in collective negotiations, and that Kean did not refuse to sign a negotiated agreement because no facts asserted by the AFT in its charge established that the parties had reached a "meeting of the minds."

On appeal, AFT asserts that the substantive changes/new demands proposed by Kean on July 15, 2010 evidences its intent to negotiate in bad faith. AFT also elaborates on what it believes to be the meaning behind such substantive changes, which it asserts evidences bad faith.

The substantive changes proposed by Connolly in Kean's July 15, 2010 counter proposal, standing alone, are not evidence that Kean negotiated in bad faith. In deciding whether an employer

has engaged in good or bad faith negotiations, the Commission has consistently held that the totality of the employer's conduct throughout the dispute resolution process must be analyzed to determine whether the employer came to negotiations: ". . . with an open mind and a sincere desire to reach an agreement, as opposed to a pre-determined intention to go through the motions, seeking to avoid, rather than reach, an agreement." Ocean Cty. College, P.E.R.C. No. 84-99, 10 NJPER 172 (¶15084 1984); Mt. Olive Bd. of Ed., P.E.R.C. No. 84-73, 10 NJPER 34, 35-36 (¶15020 1983). Considering the totality of the circumstances here, the parties met on five separate occasions to negotiate the creation of a banked course program. During those sessions there were several counterproposals presented in response to the three proposed scenarios for banking courses initially presented by the AFT. The facts, as asserted by the AFT, show that there was an ongoing dialogue between the parties, but a final agreement was not reached. Negotiations do not require that the parties reach an agreement. North Caldwell Bd. of Ed., P.E.R.C. No. 90-92, 16 NJPER 261 (¶21110 1990). The "substantive changes" that AFT asserts Kean proposed on July 15 were a continuation of the dialogue between the parties. AFT's assertions with regard to the bad faith behind Kean's counterproposal are unsupported.

ORDER

The Deputy Director's refusal to issue a complaint is affirmed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Eskilson, Krengel and Voos voted in favor of this decision. Commissioner Jones voted against this decision. Commissioner Wall was not present.

ISSUED: June 28, 2012

Trenton, New Jersey