

D.U.P. NO. 94-29

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

RUTGERS, THE STATE UNIVERSITY,

Respondent,

-and-

Docket No. CO-94-112

RUTGERS COUNCIL OF AAUP CHAPTERS,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an AAUP charge alleging the University's refusal to negotiate over terms and conditions of employment for a new series of clinical professor titles. The Director finds that the charge is premature. The University has not yet decided to create the new positions and has agreed to negotiate with the AAUP if and when it does establish the new positions.

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Appearances:

For the Respondent,
Frances Loren, Attorney

For the Charging Party
Reinhart & Schacter, Attorneys
(Denise Reinhardt, of counsel)

REFUSAL TO ISSUE COMPLAINT

On October 8, 1993, January 6, and February 24, 1994, the Rutgers Council of AAUP Chapters filed an unfair practice charge and amendment against Rutgers University. The charge alleges that the University violated subsections 5.4(a)(1) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1.1 et seq.,

^{1/} 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. (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."

by refusing to negotiate over tenure rights and other terms and conditions of employment for a new series of clinical professor titles.

The charge, as amended, asserts that the University administration submitted a proposal concerning the creation of a new series of "clinical professor" titles to the University Senate for its review and recommendations.^{2/} The AAUP learned that the University was considering creating such new titles on September 21, 1993. It then made a demand to negotiate over the new positions' terms and conditions of employment, including tenure rights. By letter of September 27, the University responded, agreeing to negotiate the "mandatorily negotiable" aspects of the positions after it had completed its proposal. On December 17, 1993, the Senate made certain recommendations to the administration about adopting the new program.

While not contesting the employer's right to seek advice from the University Senate, the AAUP asserts that it has a right to negotiate over the new titles' terms and conditions of employment now. The University contends that this charge is premature because it has not yet taken action to create or implement any new positions. The University asserts that it has no obligation to negotiate until after it decides to create the new positions. It further argues that tenure is not mandatorily negotiable.

^{2/} The University Senate is composed of faculty members, alumni, administrators, and students.

The parties have concluded negotiations for a successor contract to the 1990-92 agreement and are in separate litigation before us over execution of that contract.

N.J.S.A. 34:13A-5.3 mandates negotiations over employees' terms and conditions of employment. It also requires an employer to negotiate with the majority representative before changing terms and conditions of employment. We have consistently held that an employer may not act unilaterally -- it must first negotiate changes before implementing them.


A public employer has a managerial prerogative to create new positions, hire employees, and determine their duties. Bergen Pines County Hospital, P.E.R.C. No. 87-25, 12 NJPER 753 (¶17283 1986). However, once positions are created, the employer then has a duty to negotiate the employees' salaries, work schedules and all other negotiable terms and conditions of employment before such terms are set. See Glassboro Housing Authority, P.E.R.C. No. 90-16, 15 NJPER 524 (¶20216 1989).

Here, the University has yet to create the new positions. The University has not indicated it will not negotiate with the AAUP if and when it does establish the new positions. There can be no refusal to negotiate if the University has not made a final decision on the creation of these positions. The fact that the employer sought advice from the Senate or any other body is of no significance. The AAUP does not challenge the employer's right to seek review by the University Senate, nor does it argue that this

review constitutes direct dealing. Rather, it seeks parallel negotiations while the review process is ongoing. The AAUP argues that the University Senate's review process is a rubber stamp of the administration's proposal. The sincerity of the administration's desire for review and recommendations by the Senate is immaterial to the Association's refusal to negotiate allegations. Accordingly, I find that the unfair practice charge raises no valid refusal to negotiate and is premature at this time.

The Commission's complaint issuance standard has not been met. N.J.A.C. 19:14-2.1. Accordingly, the charge is dismissed.^{3/} N.J.A.C. 19:14-2.3.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber
Director of Unfair Practices

DATED: March 11, 1994
Trenton, New Jersey

^{3/} We need not decide the negotiability of tenure in this context. If and when the University creates positions, the parties are then required to negotiate over mandatorily negotiable terms and conditions of employment. If the parties disagree about which subjects are negotiable, either may request a scope of negotiations determination.