

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Respondent,

-and-

Docket No. CO-H-87-197

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

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a complaint based on an unfair practice charge filed by the Council of New Jersey State College Locals, NJSFT-AFT/AFL-CIO against the State of New Jersey. The charge alleges that the State violated the New Jersey Employer-Employee Relations Act when the State Board of Higher Education passed resolutions authorizing implementation of travel policies and procedures that were unilaterally determined by the nine State Colleges. The Commission holds that the Autonomy Law, N.J.S.A. 18A:64-1 et seq., does not preempt negotiations over travel policies. It further holds that these travel policies are not regulations which preempt negotiations. The Commission finds, however, that the State regularly modified travel regulations and policies without negotiations. Accordingly, in this instance, the State cannot be held to have violated its duty to negotiate in good faith by not initiating negotiations before adopting these policies.

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

Charging Party.

Appearances:

For the Respondent, Peter N. Perretti, Jr., Attorney
General (Melvin E. Mounts, Deputy Attorney General)

For the Charging Party, Thomas H. Wirth, Staff
Representative

DECISION AND ORDER

On January 28, 1987, the Council of New Jersey State College
Locals, NJSFT-AFT/AFL-CIO ("Council") filed an unfair practice charge
alleging that the State of New Jersey ("State") violated subsections
5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act,
N.J.S.A. 34:13A-1 et seq. ("Act"),^{1/} when the State Board of Higher
Education passed resolutions authorizing implementation of travel

^{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."

policies and procedures that were unilaterally determined by the nine State colleges.

On October 8, 1987, the Director of Unfair Practices issued a Complaint and Notice of Hearing. On October 27, 1987, the State filed an Answer admitting that it had authorized implementation of travel policies and procedures but denying it had an obligation to negotiate them with the Council. The State asserts that: the State College Autonomy Law, N.J.S.A. 18A:64-6(m), authorizes the boards of trustees of the State Colleges to adopt travel policies without negotiations; the policies and procedures do not create or modify work rules because they are similar to existing travel regulations promulgated by the State Department of Treasury, and the Council waived its right to negotiate by failing to negotiate over changes in the Treasury regulations over the past nine years.

On March 22, April 11 and 18, May 3 and 10, and June 30, 1988, Hearing Examiner Joyce M. Klein conducted hearings.^{2/} The parties examined witnesses and introduced exhibits. They filed post-hearing briefs by October 19, 1988.

On February 14, 1989, the Hearing Examiner issued her report and recommended decision. H.E. No. 89-24, 15 NJPER 140 (¶20060 1989). She found that the State violated the Act when it unilaterally implemented travel policies and procedures.

On March 14, 1989, the State filed exceptions to numerous factual findings on modifications of the travel policies.

^{2/} On March 22, 1988, the Hearing Examiner denied the State's motion to dismiss for lack of jurisdiction.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 3-31) are accurate. We incorporate them.

We have jurisdiction to review this challenge to the colleges' travel policies. We recently reaffirmed our jurisdiction to review alleged refusals to negotiate and to decide the preemptive effect of statutes and regulations. State of New Jersey (OER), P.E.R.C. No. 88-89, 14 NJPER 251 (¶19094 1988), recon. den. P.E.R.C. No. 89-96, 15 NJPER ____ (¶____ 1989). This jurisdiction is narrow. It does not extend to determining whether a regulation is statutorily authorized; whether it has been validly adopted; whether it is wise, or whether it should be voided. These questions must go to the Appellate Division. R. 2:2-3(a)(2).

The Council argues that the State had an obligation to negotiate before the nine colleges implemented travel policies and procedures. The State argues that negotiations are preempted by the Autonomy Law, N.J.S.A. 18A:64-1 et seq; the travel policies are regulations that preempt negotiations, and the Council waived its right to negotiate.

There is no dispute that travel policies and procedures are mandatorily negotiable terms and conditions of employment. Morris Cty., P.E.R.C. No. 83-31, 8 NJPER 561 (¶13259 1982), aff'd. App. Div. Dkt. No. A-795-82T2 (1/12/84), certif. den. 97 N.J. 672 (1984). Disputed is whether negotiations are preempted.

In State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80 (1978), the Supreme Court held that negotiations over otherwise mandatorily negotiable terms and conditions of employment are not

preempted unless a statute or regulation specifically sets the terms and conditions of employment and "speaks in the imperative" leaving nothing to the public employer's discretion. See also Bethlehem Tp. Bd. of Ed. v. Bethlehem Ed. Ass'n, 91 N.J. 38 (1982). If negotiations are preempted, the parties must seek changes through the administrative process or a legislative petition. Id.

The Autonomy Law removes professional members of the colleges' academic, administrative and teaching staffs from coverage under Department of Personnel laws and empowers the boards of trustees to set compensation and terms of employment in accordance with salary ranges and policies adopted by the State Board of Higher Education. N.J.S.A. 18A:64-6(m). It does not affect the State's employer status or restrict the scope of negotiations. N.J.S.A. 18A:64-21.1; 64-21.4. Specifically, the Autonomy Law gives the boards of trustees these powers and duties:

The board of trustees of a State college shall, subject to the general policies, guidelines, and procedures set by the Board of Higher Education have general supervision over and shall be vested with the conduct of the college. It shall, subject to the general policies, guidelines, and procedures set by the Board of Higher Education, have the power and duty to:

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m. Adopt, after consultation with the president and faculty, bylaws and make and promulgate such rules, regulations and orders, not inconsistent with the provisions of this article, that are necessary and proper for the administration and operation of the college and the carrying out of its purposes. N.J.S.A. 18A:64-6(m).

This statute does not preempt negotiations over travel policies. The Autonomy Law's general grant of authority does not specifically "set forth" travel policies or procedures. See State Supervisory. General statutory grants of authority do not preempt negotiations. See Wright v. Bd. of Ed. of City of East Orange, 99 N.J. 112 (1985); see also Old Bridge Tp. Bd. of Ed. v. Old Bridge Ed. Ass'n, 98 N.J. 523 (1985).

We further hold that these travel policies are not regulations which preempt negotiations. Agency rule-making is subject to the Administrative Procedures Act, N.J.S.A. 52:14B et seq. ("APA"). The colleges are not administrative agencies and the policies were not adopted pursuant to the APA. The State colleges cannot, by internal administrative action, unilaterally preempt otherwise negotiable terms and conditions of employment. Only a specific statute or regulation can do so. See City of Paterson, P.E.R.C. No. 80-99, 6 NJPER 91 (¶11046 1980), aff'd App. Div. Dkt. No. A-1318-79 (2/10/81).^{3/}

Having found that negotiations are not preempted, we now address whether the State violated the Act by modifying existing policies. N.J.S.A. 34:13A-5.3 provides in part:

^{3/} Because these policies are not regulations promulgated by an employer/regulator, we do not address their preemptive effect under Council of New Jersey State College Locals v. State Bd. of Higher Ed., 91 N.J. 18 (1982).

Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established.

The State admits the State colleges adopted these travel policies and procedures without negotiations. It asserts, however, that it was not obligated to negotiate because a consistent past practice constitutes a clear and unmistakable waiver of the Council's right to negotiate over these changes. The Council maintains that a decision not to contest past changes is not a waiver of the right to contest future changes.

A waiver can come in different forms, but must be clear and unequivocal. Elmwood Park Bd. of Ed., P.E.R.C. No. 85-115, 11 NJPER 366 (¶16129 1985). If the employee organization declines the opportunity to negotiate after being notified of proposed changes or if it has routinely permitted the employer to make similar changes, it may have waived its right to negotiate those changes. South River Bd. of Ed., P.E.R.C. No. 86-132, 12 NJPER 447 (¶17167 1986); see also Rutgers University, P.E.R.C. No. 82-98, 8 NJPER 300 (¶13132 1982).

Here, the State regularly modified travel regulations and policies without negotiations. Before the Autonomy Law, the colleges generally applied the Department of Treasury's travel


regulations which changed periodically. These travel regulations were not preemptive because they expressly provided that negotiated contract provisions would prevail over conflicting regulations.^{4/} After the Autonomy Law, the colleges adopted new policies which the State Board of Higher Education approved. These most recent changes are qualitatively of the same kind as earlier ones.

Nothing in the record beyond a contract provision concerning payment processing suggests that the Council attempted to negotiate travel policies. Here, the employer relied upon the absence of past negotiations demands and continued to unilaterally implement policies consistent with its prior conduct. Accordingly, in this instance, it cannot be held to have violated its duty to negotiate in good faith by not initiating negotiations before adopting these policies.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid, Ruggiero, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey
May 15, 1989

ISSUED: May 16, 1989

^{4/} The pre-Autonomy Law practices at each college are described in the Hearing Examiner's findings of fact (pp. 3-31).

H.E. NO. 89-24

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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Respondent,

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Docket No. CO-H-87-197

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

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission finds that the State Of New Jersey violated subsection 5.4(a)(5) and derivatively 5.4(a)(1) of the New Jersey Employer-Employee Relations Act when the nine State colleges unilaterally implemented travel policies and procedures. Finding that the State College Autonomy Law does not preempt negotiations over travel policies and procedures, the Hearing Examiner recommends the Commission order the State to rescind the travel policies and procedures to the extent that they conflict with past practices at the colleges or with the Treasury regulations. The Hearing Examiner also found the Council of New Jersey State College Locals, NJSFT-AFT/AFL-CIO did not waive its right to negotiate over travel policies and procedures at the State colleges by agreement or past practice.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

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

Charging Party.

Appearances:

For the Respondent,
Carey Edwards, Attorney General
(Melvin Mounts, Deputy Attorney General)

For the Charging Party,
Thomas H. Wirth, Staff Representative

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

On January 28, 1987, the Council of New Jersey State College Locals, NJSFT-AFT/AFL-CIO ("Council") filed an unfair practice charge alleging that the State of New Jersey ("State") violated subsections 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq ("Act") 1/ when the State Board of Higher Education passed resolutions

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

authorizing implementation of travel policies and procedures that were unilaterally determined by the nine State colleges.

On October 8, 1987, the Director of Unfair Practices issued a Complaint and Notice of Hearing. On October 27, 1987, the State filed an Answer admitting that it authorized implementation of travel policies and procedures but denying it had an obligation to negotiate them with the Council. The State asserts that the State College Autonomy Law ("Autonomy Law"), N.J.S.A. 18A:64-6(m), which authorizes State colleges' boards of trustees to adopt travel policies, preempts negotiations. The State asserts that the policies and procedures do not constitute new or modified work rules because they are similar to existing travel regulations promulgated by the State Department of Treasury ("Treasury"). The State also argues that the Council waived its right to negotiate by failing to negotiate over changes in the Treasury regulations over the past nine years and that any changes are minimal.

I conducted hearings on March 22, April 11 and 18, May 3 and 10, and June 30, 1988. The parties examined witnesses, introduced exhibits and filed post-hearing briefs by October 19, 1988. On March 22, 1988, the State moved to dismiss the Complaint

1/ Footnote Continued From Previous Page

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."

for lack of jurisdiction. The State argued that challenges to final administrative actions of the State college boards of trustees should appropriately be filed in the Appellate Division and not with the Commission. It further argued that the Autonomy Law preempts negotiation over otherwise negotiable travel policies. The Council responded that the Autonomy Law is a general grant of authority that does not modify or eliminate the negotiation obligation. It further argues the State and not the individual boards of trustees remains the employer. I denied the State's motion (1T17-1T19).^{2/} In State of New Jersey and Council of State College Locals, P.E.R.C. No. 88-89, 15 NJPER ____ (¶ ____ 1988), the Commission found it had jurisdiction to develop a record and consider whether the Autonomy Law preempts negotiations, Council of New Jersey State College Locals v. State Bd. of Higher Ed., 91 N.J. 18 (1982).

Based upon the entire record, I make the following

Findings of Fact

1. The State is a public employer and the Council is an employee representative within the meaning of the Act. The State and the Council are parties to a collective negotiations agreement effective from July 1, 1986 through June 30, 1989 (J-1). Article XIV(i) provides as follows:

Consistent with the travel regulations, employees shall be given advance payment for the

^{2/} 1T refers to the March 22, 1988 transcript; 2T, to the April 11 transcript, etc. C refers to Commission exhibits; J, to joint exhibits and R, to respondent's exhibits.

anticipated expenses of authorized travel on College business. Upon completion of such business the employee shall follow normal expense reimbursement submission procedures which will be processed by the College within twenty-one (21) days if properly filled out and authorized. Employees shall be reimbursed for travel expenses within thirty (30) days of initiation of submission procedures. 3/

Article XXXI provides for the agreement's maintenance and implementation.

a. This Agreement incorporates the entire understanding of the parties on all matters which were the subject of negotiations. During the term of this Agreement neither party shall be required to negotiate with respect to any such matter except that proposed new rules or modification of existing rules governing working conditions shall be presented to the UNION and negotiated upon the request of the UNION as may be required pursuant to the New Jersey Public Employer-Employee Relations Act, as amended.

* * *

c. Any policy, practice, rule or regulation of a College Board of Trustees or of a College Administration, pertaining to wages, hours and conditions of employment, which is in conflict with any provision of this Agreement, shall be considered to be modified consistent with the terms of this Agreement.

The agreement also provides for negotiations on local issues between each college and the Council, (J-1, Article XXVIII).

3/ Article XI.C. provides that the State colleges will provide or reimburse for transportation when it is required as part of the employee's duties. The Council initially alleged that the State colleges' travel policies constituted a repudiation of that clause, but dropped that argument.

The State colleges supervise their own employees, handle day-to-day labor relations and respond to informal grievances (J-1, Article VIIC). State college presidents hear grievances at the first formal step, and the Chancellor hears second step grievances (J-1). State college boards of trustees make hiring, retention and promotion decisions (J-1, Article XIII; Article XIV), and sign employment contracts with their faculty (J-1, Article XIII.L).

2. Treasury adopted revised travel regulations on January 1, 1985 (J-2). The regulations provide:

Each department may prepare departmental travel regulations as they pertain to its particular circumstances, incorporating the regulations contained herein, and including such additional regulations as may be required. There shall be no conflict between these regulations and those promulgated by the department. Departmental regulations shall be submitted for approval of the Director, Division of Budget and Accounting, and then filed with the Director and the Secretary of State.

* * *

Unless per diem or other specific travel expenses for employees are dictated by law, these regulations are applicable. If any condition in a negotiated contract or in any statute is in conflict with these regulations, the provision of the contract or statute will prevail.

3. The Autonomy Law of 1986 requires the Board of Higher Education ("Board") to oversee the State colleges' transition to autonomy by July 1, 1989. Purchasing, contracting, travel and internal auditing were transferred to the State colleges in the

first phase. The Board authorized the State colleges to develop and maintain comprehensive travel policies approved by their boards of trustees. The Board's autonomy guidelines encouraged the State colleges to model their policies and procedures after Treasury's regulations.

Travel policies and procedures were developed and adopted as follows. State college vice presidents for administration and finance developed a model for travel policies and procedures. The State colleges tailored it to their needs. Consultants helped develop policies and procedures and certified to the college presidents and boards of trustees that the procedures: (a) implemented the policies; (b) met accounting tests for internal control and audit; and (c) were consistent with certain standards and New Jersey statutes and regulations. The president of each State college recommended that its board of trustees ratify the policies. The autonomy transition team certified that each State college followed the appropriate procedures and recommended the Chancellor approve the policies. The Board transferred functions to the State colleges by adopting the policies and procedures (J-3). The State college boards of trustees will authorize subsequent revisions (J-10, J-12).

Between November 20, 1986 and February 20, 1987, the Board adopted travel policies and procedures proposed by each of the State colleges (J-4, J-5, J-6, J-7, J-8, J-9, J-10, J-11b, J-12).^{4/}

4. Treasury's regulations provide reimbursement of expenses incurred by employees traveling on State business. Funds are advanced only with express permission (J-2, Section 1.2). Treasury's regulations provide that employees likely to incur travel expenses greater than \$100 but less than \$300 may be advanced 75 percent of anticipated expenses. Employees may be advanced 90 percent of anticipated expenses over \$300. Advances require approval by the Director of the Division of Budget and Accounting (J-2).

Stockton State College ("Stockton") followed Treasury's travel advances regulation until it adopted a policy on September 1, 1986 (J-9). Section 3.3 of Stockton's policy provides advances of up to 90 percent of anticipated travel expenses. I find that Stockton's new regulations change the practice for travel advances from Treasury's formula to unlimited advancement up to 90 percent of estimated expenses.

Edison State College's ("Edison"), regulations provide advances for "certain expenses in excess of \$100...." (2T4-5,

^{4/} The State travel policies were used at Kean College of New Jersey ("Kean") until December 8, 1986, when Kean's board of trustees adopted its own policies (3T18-3T19). No resolution authorizing the implementation of travel policies and procedures for Kean appears in the record, but their approval was on the Board's February 1987 agenda (J-11b).

2T10-12). There is no limit on the amount advanced (J-4). Edison technically changed the practice by requiring only twenty days for an advance request. I find that change from the parties' agreement minimal, but find that Edison's formula differs from Treasury's formula by providing advances for all expenses in excess of \$100.

Glassboro State College's ("Glassboro") policy provides reimbursement of up to 90 percent of employees' estimated travel costs if requested seven days in advance (3T5-3T7; J-5, Section 3.3). Glassboro rarely used Treasury's formula because it required too much lead time (3T6). Under the Treasury regulations, Glassboro provided advances with Glassboro's bookstore funds (3T5-3T6). I find that Glassboro's formula changed both the amount advanced and the deadline for requesting advances (J-1, Article XIV i).

Montclair State College ("Montclair") provided travel advances using student co-op funds. Until Montclair instituted its own regulations, it advanced 75 percent of any travel request (4T45). Under Montclair's new policy, up to 80 percent of approved travel expenses are advanced (4T44-45; J-10). Montclair requires seven days notice for travel advance requests (4T75). To receive an advance, the employee must sign a power of attorney authorizing the college to negotiate repayment. Though Montclair never followed the Treasury formula, increasing the amount advanced constitutes a change. The deadline for requesting travel advances at Montclair differs from the parties' agreement.

The William Paterson College of New Jersey's ("William Paterson") initial travel policy became effective October 16, 1986 and did not mention travel advances (J-7). Since several regulations were omitted from the initial policy, the college issued a more complete version on February 19, 1988 (J-7a). The new policy provides travel advances of up to 75 percent when travel expenses are greater than \$200. Advances are not paid if William Paterson purchases airline tickets or pays conference or workshop registration fees directly (J-7a).

Charles Farawell, William Paterson's director of business services, arbitrarily chose 75 percent for travel advances because he thought it was too difficult to document full advancement (5T80). Farawell testified that until the college implemented its revised policy, William Paterson followed the State travel policies (5T49, 5T52). Farawell also testified, however, that before new travel policies were implemented, advances depended upon the request (5T51). Full advances have been granted. (5T51).

Farawell's testimony describing how William Paterson granted travel advances is inconsistent. He testified that the College followed the Treasury formula on a case-by-case basis, sometimes advancing the full cost of travel. I conclude only that travel advances were granted on a case-by-case basis until the College adopted its revised policies in February 1988. Since the revised policies provide travel advances of up to 75 percent of trips costing more than \$200, I find a change from the past practice.

Jersey City State College ("Jersey City") never applied the Treasury formula for travel advances and that Treasury never questioned their requests (5T5). Under Jersey City's current policies, up to 100 percent of estimated expenses may be advanced (5T4-5T5; J-6). I find that no change in past practice for travel advances at Jersey City.

Currently, neither Trenton nor Kean College advance funds. Trenton provided advances under the Treasury policy but no longer does so because it provides immediate reimbursement (2T18-2T19). I find Trenton's policy changes the past practice.

Since Kean uses credit arrangements and purchase orders for airfare, hotel reservations and registration fees, its new policy does not address travel advances (3T21-3T22). Kean adhered to the Treasury formula, but rarely advanced funds. Kean generally prepaid or paid expenses by invoice. Treasury never informed Kean that this was improper (3T23). Kean's sparse use of Treasury's travel advance provisions does not negate the changed practice.

5. Treasury regulations prohibit reimbursement for personal phone calls while traveling (J-2 at 18). Trenton, Jersey City, Montclair and William Paterson permit one call home per travel day (J-12, J-6, J-10, J-7A).

Jersey City has always reimbursed for one call home per day of overnight travel (5T42). Treasury never refused to reimburse for those calls (5T28). William Paterson's regulations provide that more than one call home per day will not be reimbursed without a

written explanation (J-7a, 5T76). Trenton's and Montclair's respective provisions for one phone call home per day of overnight travel are new (2T36, 2T52, 4T68, J-10).

I find the provisions reimbursing for one phone call home per day in the travel policies of Trenton, Montclair and William Paterson constitute changes from practice under the Treasury regulations.^{5/} I further find that the provision for one phone call home per day of overnight travel is consistent with the past practice at Jersey City.

6. Section 4.2 of the Treasury regulations provides a meal allowance on day trips where the employee works three hours beyond the normal workday (J-2 at 14). The Treasury regulations provide \$2.50 for breakfast, \$3.50 for lunch, \$7.50 for dinner and \$2.50 for midnight breakfast for meals in connection with overtime (J-2).

Trenton's travel regulations provide that employees on day trips and those working extended workdays receive a meal allowance (J-12). Employees are reimbursed \$3.00 for breakfast and midnight breakfast, nothing for a noontime lunch and \$8.00 for dinner (J-12). Trenton's regulations change the amounts provided under Treasury's regulations.

The travel policies at Stockton, Glassboro and Jersey City do not reimburse for meals in connection with overtime or day trips (3T79, J-9, J-5, J-6). Provisions for breakfast and midnight

^{5/} The change encompasses instances where more than one call home per day is reimbursed by William Paterson.

breakfast are not included in Glassboro's travel regulations because they are not directly related to travel (3T8-3T9). Reimbursement for breakfast or midnight breakfast has not been requested (3T8-9). Meals in connection with day trips are not reimbursable at Glassboro (3T79, J-5). Glassboro did not reimburse for meals in connection with day trips under the Treasury regulations (3T79). Since there is no contradictory evidence that Glassboro has reimbursed for meals in connection with day trips, I find their exclusion from Glassboro's policy does not change the practice.

Stockton follows Treasury's regulations for meal reimbursement, but Stockton's policy does not mention meals (1T36). Meals are not considered travel expenses. Stockton continues to provide reimbursement for meals in connection with overtime. Therefore, Stockton has not changed its practice of reimbursing for meals in connection with overtime. Stockton's policy, however, is a change from its practice. Stockton could legitimately change its practice to conform to its written policy. I therefore find the adoption of the policy constitutes a change.

Jersey City has never reimbursed for meals in connection with day trips (5T21). Jersey City's policy does not provide for meals in connection with overtime, though employees have requested and received reimbursement for them (5T33). Jersey City has not publicized or announced that reimbursement is available (5T34). Reimbursement for meals in connection with overtime was not included in the travel policy because it did not involve travel (5T34).

Jersey City has not received reimbursement requests for breakfast. It does not consider breakfast a "travel concept" (5T11-5T12). Jersey City employees are entitled to \$7.50 for dinner if they work three hours beyond normal quitting time (5T12). Like Stockton, Jersey City has eliminated meals in connection with overtime provisions from its policies, but has not changed its practice of reimbursing for those meals. I find that Jersey City has changed its policy by omitting the provision for reimbursement for meals in connection with day trips.^{6/}

Ramapo did not discuss changing the overtime meals policy when it created its travel policies. Ramapo continues to follow the Treasury regulations, but does not reimburse for meals on day trips (4T11 4T19, J-8, section 5.3). Since the Treasury regulations provided reimbursement for employees working extended workdays and Ramapo's policy does not, I find a change in the policy.

Breakfast and midnight breakfast are not considered travel issues at Montclair and are not included in its travel policy (4T49; J-10). Reimbursement has not been requested. According to Charles Moore, Montclair's director of budget and fiscal planning, Montclair employees traveling on day trips are reimbursed for meals when they work overtime at the following rates: breakfast-\$5, lunch-\$6.50,

^{6/} Jersey City has never reimbursed for meals in connection with day trips. Treasury's regulations contained such a provision and Jersey City's do not. It is not clear from the record whether Jersey City chose not to reimburse for day trips or whether no one asked.

and dinner-\$13.50.^{7/} Individual meals on partial travel days are reimbursed at those rates (4T61, J-10 at 4). I find Montclair's meal reimbursement rates are a change from Treasury's rates.

Kean reimburses for meals in connection with overtime at Treasury's rates if employees work three hours beyond the normal workday (3T25, 3T26; J-11, Section 4.2). Kean applies overtime meal regulations to day trips (3T35-3T36). Breakfast and lunch are not reimbursed unless the meals in connection with overtime provisions apply (3T72). Kean's and Montclair's policies mirror the State's policy and their implementation does not change the past practice.

7. Treasury regulations provide reimbursement amounts regardless of the funding source (J-2).

Montclair's policy provides that grant-funded travel is reimbursed at the same level as all other travel unless the grant provisions are more restrictive (J-10). Montclair also provides an exception if grant provisions can not be accomplished within its travel regulations. Montclair's provision on grant-funded travel was intended to allow higher rates than the Treasury regulations for grant-funded travel (4T55). There is no evidence of a situation where a grant was more restrictive than Treasury's regulations. Department heads have the discretion to make-up the difference

^{7/} Moore has not been responsible for enforcing the travel regulations since the new regulations went into effect and does not know what has been allowed under Montclair's new regulations (4T91-92). I rely on Moore's testimony to the extent that it does not concern Montclair's practice since its policy became effective.

between the grant rate and Montclair's rate (4T56, 4T77). I find that Montclair's policy essentially provides that grant-funded travel is reimbursed at the grant rate unless department heads exercise their discretion to change the rate. I further find the discretion granted to department heads is a change from the Treasury regulations.

Stockton's policy provides that where travel is reimbursed from a grant the employee must receive prior approval, "to establish that all anticipated travel costs will be allowable for reimbursement in accordance with the Grant/contract terms." (J-9).

At Stockton, grant-funded travel is reimbursed at the grant rate if it is more than the college's rate. If the grant rate was below Treasury's rate, the employee was reimbursed for travel against the grant at the grant rate and the employee was also reimbursed by the State for the difference between Treasury's rate and the lower grant rate (1T69-1T70). If the grant did not mention a rate, then Treasury's rate applied (1T41). Stockton has not changed its practice since implementing its policy (1T42).

8. Treasury's regulations provide that employees may be reimbursed for the full cost of an official meal, where it is "an integral part of an official proceeding" relating to State business (J-2, 4.2(f)). Section 4.1(b)(2) of Treasury's regulations provides:

For conventions, conferences, staff training and seminars...including situations in which a "package" arrangement includes housing and meals as an integral part of the scheduled activities, the allowable per diem reimbursement for housing

is limited to actual reasonable expenditures (receipts required) and \$25 for meals (no receipts required).

Subsection E provides:

Reimbursement is approved for the full cost of an official convention meal which the employee attends when such meal is scheduled as an integral part of the convention or conference proceedings. If a meal or meals are included in the registration fee, the allowance for said meal or meals (see 4.1(b)(3) above) is to be deducted from the per diem subsistence allowance.

Jersey City's policy does not mention official convention meals. Official convention meals may be reimbursed under the extraordinary expenses provisions at Jersey City's discretion. When meals are part of an official program or conference, Jersey City pays the cost of the meal and does not limit employees to per meal rates (5T20). The standard reimbursement rate, however, is deducted from the overall meal charge for the day (5T20). Since Jersey City's policy does not mention official convention meals and the college retains the discretion to provide reimbursement for those meals, I find a change from Treasury's regulation.

Stockton's policy includes conference meals that are an integral part of the scheduled activities in the per diem limits (J-9, Section 5.1, p. 7). Apparently, it is possible to be reimbursed in excess of the per diem for official convention meals at Stockton but it is not clear whether or at what rate

reimbursement has been provided (1T93-1T94).^{8/} Even though Stockton continues to reimburse for the full amount of conference meals, omission of such a provision from its policy is a change. See p. 12 infra.

At Montclair, employees are reimbursed for the full amount conference meals, but that amount is subtracted from their per diem (J-10 at p.3; 4T59, 4T62). Montclair's policy includes official lunches. Montclair employees were reimbursed for lunch under Treasury's regulations (4T62).

Montclair provides reimbursement for in-house refreshments and business meals while conducting official college business. Internal events are distinguished from events or meetings involving outsiders. Food and beverage may be purchased for receptions, events and meetings which primarily involve members of the college community under Montclair's policy (J-10). The policy suggests use

^{8/} Harry Clark, Stockton's vice president for administration and finance, initially testified that Stockton had always followed the Treasury's policies for convention meals (1T42). Clark stated that under Treasury's policies, convention meals do not have to fit within the per diem (1T72). He noted that official lunches and dinners are not travel regulations but are reimbursable by Stockton (1T73). Finally, Clark testified that employees know about Stockton's policy of reimbursing for convention meals because department heads review travel regulations at yearly training sessions. This information is theoretically passed on to everyone. Because it is not included in Stockton's written policy, that an employee would not get reimbursed for the full amount of a conference meal if the secretary processing the reimbursement request was not aware of the policy (1T74). I find Stockton employees are reimbursed for official meals at either the per diem rate or the full cost of the meal depending upon who processes the request.

of the college food service when feasible. When meetings involve individuals not employed by Montclair, however, reimbursement is limited to those "who must meet, not necessarily all who are in attendance." (emphasis supplied). The policy provides that the per diem reimbursement rates prevail absent special approval (J-10). I find a change from Treasury's regulation.

Section 5.1 of Glassboro's policy limits reimbursement for meals and lodging in connection with conventions and conferences to "actual reasonable expenditures." Where the convention meal exceeds the per diem, Glassboro will reimburse the full cost of the meal (3T100-3T101). Employees would not get the full \$25 per diem plus the conference meal (3T15 3T101).

Glassboro does not have a policy for official lunches and dinners not involving travel, but employees are reimbursed for the cost of the official meal (3T102). Glassboro has always followed Treasury's policy for official meals (3T83).

Ramapo has always provided reimbursement for meals and lodging that are an integral part of a conference even if they exceed the per diem (4T20). Ramapo's policy provides that employees can be reimbursed for the full amount even if it is greater than the per diem for a conference meal if overnight travel is involved (4T35; J-8 at Appendix A, p. 15). Justification, approval and original receipts are required.

William Paterson's initial regulations and new regulations both provide reimbursement of conference meals. William Paterson

interpreted the policy to provide that conference meals are reimbursible in full (5T88). There is no indication that official luncheons or dinners are covered in the regulations.

Glassboro, Ramapo, and William Paterson do not provide full reimbursement for official meals not involving overnight travel. Since the Treasury regulations do not distinguish between official meals connected with overnight travel and those connected with daily events, I find these policies constitute changes.

9. Section 4.1(c) of the Treasury regulations provides:

In any cases in which the total per diem reimbursement exceeds \$100 or meals exceed \$25, the costs will be considered to be in excess of "actual reasonable expenditures" in the absence of substantial justification... Receipts shall be submitted when the per diem reimbursement for meals exceeds \$25. (J-2)

All of the colleges, except Montclair and Ramapo, have similar policies. William Paterson's amended regulations provide "expenses in excess of this maximum (\$75 per diem) may be reimbursed if accompanied by a written explanation and subject to the approval of the Vice President of Administration and Finance." (J-7a). Since both William Paterson and Treasury reimburse up to \$75 a day for lodging unless a greater amount is justified, I find no difference between the procedures.

At Montclair, employees who stay at a hotel or motel at the conference site or where conference officials arrange for accommodations are reimbursed for the actual room cost even if it is greater than the reimbursable rate of \$75 (J-10 at 3). Montclair

requires written justification such as a conference brochure or description of the conference location including lodging prices (4T57, 4T59). Exceptions were granted under Treasury's policy (4T58). Exceeding the lodging per diem was the exception under Treasury and is the rule at Montclair. Evidence of a change in practice, however, is insufficient.

Ramapo's policy provides that, "expenditures are reimbursable in full for lodging and meals that are an integral part of the scheduled activities of a conference." (J-8 at Section 5.4 p. 9). Under the Treasury's policies, Ramapo allowed reimbursement for conference expenditures greater than the food and lodging per diems (4T34). I find that Ramapo has not changed its practice for reimbursement of conference-related expenses.

10. Section 4.1(h) of the Treasury regulations provides that, "under ordinary circumstances no subsistence expenses are allowed an employee at his official station, at the employee's residence, or within a radius of 10 miles of such station." Generally, that provision is strictly enforced, though exceptions for agency-wide retreats are granted with advance approval (6T16-17).

Only Edison's policy includes the 10 mile limit (J-4, 4.1G). No one at Stockton has asked for reimbursement within the 10 mile limit in the last 17 years (1T86). Stockton's policy is silent about the 10-mile limit, but evidence shows that it would apply (1T86). Trenton would not reimburse for expenses within 10 miles of home, but would examine each situation on a case-by-case basis

(2T38-39). No one at Glassboro has requested reimbursement within the 10-mile limit, but reimbursement is possible on a case-by-case basis (3T90, 3T106-107). There have been no requests for reimbursement within the 10-mile limit at Jersey City, but reimbursement might be permitted as an extraordinary expense on a case-by-case basis (5T29). There is no evidence that this issue has arisen at William Paterson, but reimbursement might be justified on a case-by-case basis (5T78). Ramapo might reimburse employees for official meals eaten within ten miles (4T26). Employees at Ramapo have been reimbursed for expenses incurred within the 10-mile limit in the last few years (4T26).^{9/}

I find that Stockton, Trenton, Glassboro, Jersey City and Ramapo^{10/} have changed their policies by eliminating the 10-mile limit.

Under the Treasury regulations, Kean tried to justify reimbursement for expenses within the 10-mile limit, based on its proximity to major urban areas. Treasury initially rejected Kean's requests for reimbursement within the 10-mile limit (3T75). The

^{9/} The State made an offer of proof that Robert Pitcher, Ramapo's controller, advised the State after his testimony, that reimbursements had been made within the 10-mile limit without special approval but reimbursement was requested in advance. In the absence of objection by the Council or rebuttal testimony, I accept the proffer.

^{10/} Since it is not clear whether Ramapo began reimbursing within the 10-mile limit before or after it implemented its own travel procedures, I find its current policy a change from the Treasury regulations.

College however, won most of those cases after appeals (3T75). Consequently when Kean created its own travel regulations, it eliminated the 10-mile limit (3T75). Kean's elimination of the 10-mile limit is understandable, but the change from Treasury's regulation remains.

Treasury's 10-mile limit was not applied at Montclair and is not now included in its regulations.^{11/} I find that Montclair never applied the 10-mile limit and its exclusion from the policy is not a change from past practice.

11. Treasury regulations provide three classes of travel from home to off-campus work sites (J-2 at Section 1.4). Class A travel is infrequent or irregular assignments to off-campus work sites. Under Class A travel, a commutation deduction applies. Class B travel is regular and recurring assignments to off-campus work sites. Under Class B travel, home is not the official station. The employee is reimbursed for the round-trip from home or from the official station whichever is less. Under Class C travel, the employee does not regularly report to the official station. Home is designated as the alternative official station and mileage is reimbursed from home, except for travel to the official station (6T15). Only Edison provides for Class B and C travel.

^{11/} Moore testified that Treasury's 10-mile limit was not applied at Montclair and is not included in its regulations now (4T69, 4T85). The Council suggests I disregard Moore's testimony because it contradicts the written Treasury regulation and because his testimony was generally contradictory. Moore's testimony on the 10-mile limit concerned the period when he was responsible for travel regulations. It was straightforward and I credit it.

At Montclair, Class B travel applies to all assignments or day trips whether or not they are regular and recurring (J-10). A commutation deduction would result under the Treasury policy. Under Montclair's policy, no commutation deduction is subtracted (4T78).^{12/} I find Montclair's elimination of the commutation deduction constitutes a change from the Treasury regulations.

Travel policies at Stockton, Glassboro, Jersey City, and William Paterson do not provide for Class A travel or a commutation deduction (J-5, J-6, J-7, J-9). Stockton still adheres to Treasury's temporary official station policy and applies the commutation deduction even though it is omitted from the new travel regulations (1T51-52, 1T83-85). Stockton does not have temporary official stations so the provision was not included in the regulations. Stockton's regulations do not clearly provide that a commutation deduction should be subtracted from mileage on a day trip (1T84). Though Stockton continues to apply the commutation deduction, I find it changed the policy by omitting it from the regulations.

Glassboro does not have a temporary official station and home is not considered an official station. Some employees work permanently at the Camden campus and that is their official station

^{12/} Montclair's procedure currently provides that "employees on work assignments or day trips shall be reimbursed for that mileage accrued on a personal automobile. Mileage will be calculated from the College or home, as appropriate whichever is the shorter distance."

(3T88-89). Individuals who teach at both campuses use the campus where they have the largest course load as the official station (3T89). According to Lawrence Reader, Glassboro's vice president for administration and finance, if an employee has an official station at Glassboro and works two days a week in Camden, the employee is reimbursed for mileage traveled to Camden in excess of the normal commutation (3T99). Reader also testified that the Treasury regulations applied before the new travel regulations were implemented and continue to apply where Glassboro's policy is silent (3T5, 3T94-95). There is no provision in Glassboro's policies applying the Treasury regulations where Glassboro's policy is silent.

I find Reader's testimony concerning official stations credible, despite the absence of official stations provisions in Glassboro's policy. Apparently Glassboro has always ignored the official station provisions of Treasury's regulations and applied a commutation deduction for travel to a second campus.

Jersey City's policy is silent on official stations and a commutation deduction. Admissions personnel who use their home as an alternate official station are reimbursed for travel from home (5T17-19).^{13/} The commutation deduction provisions were omitted in the haste to prepare for autonomy (5T35-36). Jersey City has not altered its practice for admissions personnel, and its other

^{13/} I assume that admissions personnel are nonmanagerial administrative staff covered by the parties' agreement (J-1, Article I).

practices concerning official stations and commutation deductions. Omission of these policies, however, constitutes a change from the Treasury regulations.

Provisions for official stations and a commutation deduction were omitted from William Paterson's initial travel regulation, but were added to the February 1988 amendment. William Paterson's amended policy establishes the Wayne campus is the official station for all employees. Employees traveling from the campus will be reimbursed from the campus to the temporary assignment. A commutation deduction applies to employees leaving from home to the temporary assignment. William Paterson applies home as an alternate official station with no commutation deduction where, "employees normally work at other than the Wayne Campus, but do not have regular or periodic requirements to work at another station." (J-7a). I find no change from Treasury's regulations to William Paterson's amended policy.^{14/}

Trenton does not have an official station other than the campus and does not consider home an official station (2T25). The commutation deduction applies without exception on regular workdays (2T45). Trenton employees do not travel regularly (2T45). Trenton's lack of employees who travel regularly does not negate its omission of official station and commutation deduction provisions in

^{14/} The record does not reflect William Paterson's practice under the initial policy. I find that William Paterson changed its policy by omitting official station provisions from its first policy.

its travel policies. I find the omission constitutes a change from Treasury's regulations.

Ramapo's official station has always been the Mahwah campus (4T16). Ramapo has not used temporary official stations (4T25). Provisions concerning alternate official stations were not included in Ramapo's policy, because it never had an official station other than Mahwah. If an employee was assigned to a temporary official station, expenses would be reimbursed under the extraordinary expenditures provision with proper justification (4T33). Now, employees need justification to get reimbursed. Under Treasury's policies simply working at an alternate official station was sufficient. As in Trenton, I find the omission changes the policy even though the situation has not arisen.

At Kean, the Union campus is the official station (3T34). Fort Monmouth is an off-campus work site. Under the Treasury's policies, reimbursement from home to Fort Monmouth was not permitted unless the employee taught more than 12 credits (3T70-71). Under Kean's regulations, the official station is Kean College, but teachers receive mileage to Fort Monmouth no matter how many credits they teach. Under the Treasury regulations, the off-campus setting was the temporary official station and the employee was not reimbursed for the travel. When Kean applied the Treasury policy, it did not reimburse for travel to and from the off-campus location (3T44). Kean's regulations are a change from the Treasury regulations.

12. Under Treasury's regulations, vouchers are submitted each month to the Division of Budget and Accounting (J-2 section 9.2(g)). If the total of monthly expenses is under \$10, it is carried over to the next month. If the employee does not plan to incur travel expenses in that month, is about to take a leave of absence, has been terminated, or is traveling in the last month of the fiscal year, the employee may submit vouchers for less than \$10 (J-2 at Section 9.2(h)). Treasury did not advance funds more than two weeks before travel (6T12). That policy was not strictly enforced (6T12, 6T16-17).

Travel expense vouchers and receipts must be submitted to the Director of the Division of Budget and Accounting within 30 working days of the travel. Failure to do so may foreclose additional advances (J-2 Section 1.2).

At Trenton, the deadline for travel authorization requests has been reduced from one month to two weeks (2T17-17a, J-12 at Section 301.6). To receive reimbursement, Trenton employees must submit travel invoices within five working days of completion of travel (J-12 at Section 305.1).^{15/}

^{15/} The State made an offer of proof that the five day deadline in Trenton's policy is suggestive only and that there is no penalty if it is exceeded (6T2). The regulation itself however, speaks in the imperative, "Within five working days of the completion of any reimbursable travel..., the employee must submit the TSC Travel Expense Invoice to the Director of Business Services." Since the regulation requires that the

Under the Treasury regulations, Kean required that advance requests be submitted six weeks before travel for submission to Treasury (3T20). Now Kean's policy requires only two weeks for advance approval, because only local processing is required (3T20, J-11). Generally, vouchers should be submitted immediately after the trip (3T47), but Kean's policy does specify a deadline (J-11). Section 5.2, however, requires employees who travel regularly to submit travel monthly invoices (3T48, J-11). Employees are not penalized for submitting late invoices (3T76). I find the current deadline for requesting advance approval a change from the Treasury regulations.

At Ramapo, the travel request form must be submitted at least ten days before travel (J-8 Section 2.3). Under Treasury's policy, Ramapo's deadline for overnight travel was ten days plus the time Treasury needed to process the request (4T6-7). Ramapo's policy provides that vouchers for extended travel should be submitted as soon as possible after the trip (4T27). Ramapo has always requested expenses for administrative travel or daily trips, be submitted each month (4T28). The policy has never been followed rigidly and employees submitting late vouchers are not penalized

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travel request form be submitted within five working days, I do not find that it is suggestive only. I find this policy a change from the Treasury regulations because Trenton would be within its rights to deny reimbursement for expenses when vouchers are submitted late.

(4T28). Ramapo changed the policy by eliminating time needed to send the request to Treasury.

William Paterson requests that all vouchers be submitted monthly and follows the same process as the Treasury regulations (5T79).

Under the Treasury regulations, Stockton required travel advance requests to be submitted five weeks from the week of travel (1T60). The advance time has decreased to ten days, because it is no longer necessary to go through Treasury (1T60 J-9). Until Stockton adopted its own regulations, it applied Treasury's deadlines (1T62). Neither deadline was strictly enforced (1T62).

Stockton has always had a deadline for requesting travel advances. It is not clear whether it was always ten days, but travel advance deadlines were always flexible (1T32-33). Though Stockton has always used flexible deadlines, I find a change in timing of advancement requests.

At Jersey City, when travel funds are advanced, the travel expense invoice, "must be completed within seven days of return and upon payment to the employee, the advanced fund must be repaid" (J-6). The seven day limit is new, but has not been strictly enforced (5T8). Before Jersey City implemented its own policy, the College asked that invoices be returned as soon as possible (5T7). Under the Treasury's regulations, Jersey City tried to follow the thirty day requirement for regular travel vouchers. Since it did not work, it was dropped from the new policy (5T30). Treasury never

tried to enforce the thirty day rule. Since Jersey City has always used flexible deadlines, I find a change only to the extent that Jersey City requires that vouchers must be submitted within seven days of return when funds are advanced.

Glassboro's policy provides that requests for travel advances be made at least seven days before the trip (J-5 Section 3.5, 3T6). Under the Treasury regulations, greater lead time was required so the advancement provisions often were not used. Glassboro also requires that the travel expense invoice be submitted within seven days after the trip for reimbursement (J-5 Section 3.6). Since the pre-Autonomy practice is not clear, I find Glassboro's adoption of the seven day requirement for travel advances a change from the Treasury regulations.

Under the Treasury regulations, Edison required submission of travel advance requests one month before travel (2T11, J-2). Edison changed its practice by reducing the time to twenty days (2T10, J-4 at 2).

The deadline for requesting travel authorization has decreased from one month under Treasury's regulations to seven days at Montclair (4T75). Vouchers for daily travel should be submitted monthly and those for overnight travel within fifteen days of return under Montclair's policy (4T70 4T75-76, J-10 at 6). Montclair did not strictly enforce Treasury's deadlines for submitting vouchers (4T70). According to Moore, employees who submit vouchers outside

the fifteen day deadline would be reimbursed (4T91).^{16/} I find Montclair changed the policy with respect to deadlines for requesting authorization and for submitting vouchers for overnight travel.

Analysis

The Council argues the State had an obligation to negotiate before the nine State colleges implemented travel policies and procedures. The State argues the Autonomy Law, N.J.S.A. 18A:64-6m, preempts negotiation over travel policies and procedures at the State colleges. Specifically, the State argues that the Autonomy Law preempts negotiations under a traditional preemption analysis and under the analysis applied to the Board in Council of New Jersey State College Locals v. State Bd. of Higher Ed., 91 N.J. 18 (1982) (College Locals).

Neither party disputes that policies and procedures for reimbursement of travel expenses are negotiable, Morris Cty., P.E.R.C. No. 83-31, 8 NJPER 561 (¶13259 1982), aff'd. App. Div. A-795-82T2 (1/12/84), certif. den. 97 N.J. 672 (1984).

N.J.S.A. 34:13A-5.3 provides in part:

Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established.

^{16/} Moore does not know whether employees who submit vouchers late are reimbursed (4T91-92).

In State v. State Supervisory Employees Ass'n, 78 N.J. 54 (1978) ("State Supervisory"), the Supreme Court first considered when a statute or regulation preempts negotiation over an otherwise negotiable term and condition of employment. The Court stated:

Furthermore, we affirm PERC's determination that specific statutes and regulations which expressly set particular terms and conditions of employment, as defined in Dunellen, for public employees may not be contravened by negotiated agreement. For that reason, negotiations over matters so set by statutes or regulations is not permissible. We use the word "set" to refer to statutory or regulatory provisions which speak in the imperative and leave nothing to the discretion of the public employer.
78 N.J. at 80.

The Court also held that statutes or regulations permitting the public employer to retain and exercise some discretion over a particular term and condition of employment only partially preempt negotiation. The Court stated:

It is implicit in the foregoing that statutes or regulations concerning terms and conditions of public employment which do not speak in the imperative, but rather permit a public employer to exercise a certain measure of discretion, have only a limited preemptive effect on collective negotiation and agreement. Thus, where a statute or regulation mandates a minimum level of rights or benefits for public employees but does not bar the public employer from choosing to afford them greater protection, proposals by the employees to obtain that greater protection in a negotiated agreement are mandatorily negotiable. A contractual provision affording the employees rights or benefits in excess of that required by statute or regulation is valid and enforceable. However, where a statute or regulation sets a maximum level of rights or benefits for employees on a particular term and condition of employment, no proposal to affect that maximum is negotiable nor would any

contractual provision purporting to do so be enforceable. State Supervisory at 81-82.

See also Local 195, IFPTE v. State, 88 N.J. 393, 403-404 (1982).

The Autonomy Law, P.L. 1986, C. 42, provides the State colleges boards of trustees with greater autonomy. It removes professional members of the State colleges' academic, administrative and teaching staffs from coverage by Department of Personnel laws and empowers the State colleges' boards of trustees to set employees' compensation and terms of employment in accordance with salary ranges and policies adopted by the State Board of Higher Education, N.J.S.A. 18A:64-6(m); N.J.S.A. 18a:64-6(h). Specifically, the Autonomy Law gives the boards of trustees the following powers and duties:

The board of trustees of a State college shall, subject to the general policies, guidelines, and procedures set by the Board of Higher Education have general supervision over and shall be vested with the conduct of the college. It shall, subject to the general policies, guidelines, and procedures set by the Board of Higher Education, have the power and duty to:

* * *

m. Adopt, after consultation with the president and faculty, bylaws and make and promulgate such rules, regulations and orders, not inconsistent with the provisions of this article, that are necessary and proper for the administration and operation of the college and the carrying out of its purposes. N.J.S.A. 18A:64-6(m).

The Autonomy Law continues the Act's application to the State colleges and the Governor's and the Office of Employee Relations "function as the public employer", N.J.S.A. 18A:64-21.1. Subsection 21.4 provides:

Nothing in this amendatory and supplementary act shall be construed to contravene or modify the provisions of the "New Jersey Employer-Employee Relations Act," P.L.1941, c. 100 (C.34:13A-1 et seq.) or to limit or restrict the scope of negotiations as provided pursuant to that law. N.J.S.A. 18A:64-21.4 (Emphasis supplied).

The Autonomy Law provides the State Colleges with a general grant of authority that does not specifically address travel policies or procedures. Authority is granted subject to the Legislature's intent to maintain the status quo with respect to the Governor's employer status, the Act and the scope of negotiations, N.J.S.A. 18A:64-21.1.; N.J.S.A. 18A:64-21.4.

Examination of the Autonomy Law's legislative history demonstrates the Governor's and the Legislature's commitment to preserving the rights granted to public employees under the Act.

During the 1984-85 legislative session, Governor Kean sent a conditional veto to the Legislature. In its original form, the bill provided that representatives of the State College Governing Boards Association and the Chancellor's Office be full members of the State's negotiating team. Governor Kean considered including them on the negotiating team as members or as observers. He rejected both and suggested continuation of his authority to "function as the public employer," N.J.S.A. 18A:64-21.1.

During the next session, the Legislature amended the bill to include subsection 21.4, insuring that application of the Act and the scope of negotiations was unchanged. The following statement expressed the Senate's reason for the amendment:

This amendment assures that the increase in the Board of Higher Education's authority effectuated by this act will not be construed to nullify the State's obligation to negotiate proposed changes in terms and conditions of employment of State College employees with their majority representative prior to implementation, as is required of all other public employers by the New Jersey Employer-Employee Relations Act.

Senate Amendment to Assembly Bill No. 1173, adopted May 15, 1986.

The Senate's amendment and accompanying statement demonstrate that the Legislature intended that the State's negotiations obligation with respect to State college employees remains the same as all other public employers. The Autonomy Law does not specifically grant authority to the State colleges that proscribes negotiations over travel policies and procedures. The Autonomy Law did not change the State's obligation to negotiate over travel policies and procedures at the State colleges. State Supervisory.

The State argues there is no evidence that the State college travel policies and procedures are arbitrary, adopted in bad faith or primarily to avoid negotiations, College Locals. There, the Court held that regulations are not entitled to absolute preemptive effect without further inquiry when the regulating agency also performs employer functions over the employees it regulates. The Chancellor of Higher Education formulated, and the Department of Higher Education approved, regulations governing staff reductions at State colleges during fiscal emergencies. The Chancellor and the Department of Higher Education, however, also acted as an employer

to the employees the covered by regulations. They participated on management's collective negotiations team, signed agreements, and helped resolve grievances.

Addressing the problem of the Board's dual roles, the Court stated:

When an agency performs dual roles as both regulator and employer, the possibility exists that the agency could use its preemptive regulatory power in an abusive or arbitrary manner to insulate itself from negotiations with its employees. The mere potential for such abuse is not grounds in and of itself to hold that preemption does not apply to regulations promulgated by such agencies. However, that possibility raises serious questions about the soundness of any rule that would accord absolute and unqualified preemption to a regulation affecting terms and conditions of employment when passed by an agency qua employer to govern the employment terms and conditions of its own employees. To effectuate fully the legislative policy of protecting the rights of State public employees, while at the same time encouraging the proper discharge of statutory responsibilities by State agencies, the preemption accorded to administration regulations governing the employment of an agency's own employees must be qualified. College Locals at 27-28.

Under College Locals, regulations are presumptively preemptive, but the presumption can be overcome by showing "that the regulations were arbitrary, adopted in bad faith, or passed primarily to avoid negotiations on terms and conditions of employment." College Locals at 28. Relevant factors include:

- (1) the extent to which the regulation was consistent with or necessary to effectuate the agency's statutory authority;
- (2) the relationship between the regulations and the exercise of the agency's regulatory jurisdiction;
- (3) the scope of the agency's employer role;
- (4)

the agency's rationale for adopting the regulation; (5) the circumstances under which the regulation was adopted; (6) the scope and composition of the class of employees affected by the regulation; (7) the basic fairness of the regulation to the employees affected; and (8) the extent to which the employees or their representatives had the opportunity to express their views on the regulation during its formative stages. [Id. at 28-29]

The State's argument assumes the State Colleges are regulating agencies.^{17/} In College Locals, the Court found the Board performed employer functions and regulator functions because it adopted rules and regulations governing all of the State colleges. The Autonomy Law empowers the State colleges to directly control their finances, enter contracts, purchase land, fix tuition, plan and build buildings and to generally exert greater local control. The State Colleges' authority, however, is subject to "the general policies, guidelines and procedures set by the Board of Higher Education." N.J.S.A. 18A:64-6.

The Board of Higher Education, not the State colleges, adopted guidelines for the transition to autonomy. The State colleges followed the guidelines to adopt travel policies. These guideline do not provide for or result in the formal adoption of regulations through the administrative rule-making procedure.^{18/}

^{17/} Neither party addressed this issue.

^{18/} Travel regulations at the State colleges were developed by local committees at each of the State colleges. The

Rather, the State colleges' travel policies are an exercise of local control over travel policies and procedures.

In State of New Jersey (University of Medicine and Dentistry of New Jersey), P.E.R.C. No. 85-106, 11 NJPER 290 (¶16104 1985), recon. den. P.E.R.C. No. 86-7, 11 NJPER 452 (¶16158 1985), aff'd App. Div. Dkt. No. A-11-85T7 (4/14/86) ("UMDNJ"), the Commission rejected the argument that criteria for salary cap exemptions were not entitled to preemptive effect because they are not technically statutes or regulations, UMDNJ at n.12. There, legislation specifically directed the Chancellor and the Director of Business and Accounting to promulgate criteria. Other legislation directed establishment of rules and regulations specifically governing salaries. Under those regulations, authority was delegated to the Chancellor and Director of Budget & Administration. Because the Appellate Division had already approved the delegation, the Commission applied the presumption of preemption. See Council of Chapters of the American Association of University Professors v. State, App. Div. Dkt. No. A-3179-82T2 (Feb. 16, 1984).

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committees used guidelines and a model developed by committees at each of the State colleges. The committees used guidelines and a model developed by the Board of Higher Education. As the variety of policies adopted proves, the State colleges were free to incorporate as much or as little of the guidelines as they wished. After review of the policies by independent consultants, the board of trustees at each State college adopted travel policies. These policies were approved by the Board of Higher Education. Subsequent revisions will be adopted only by the State college's boards of trustees.

I find that the Legislature intended to grant the State colleges greater administrative control, but did not intend to give them regulator status. The Legislature empowered the State colleges to control their own operations without requiring approval of each action by the appropriate government agency. That legislation gave the colleges greater control, but did not create nine new regulator-type agencies. Regulator authority remains with the Board of Higher Education. The State colleges have been empowered merely to create their own rules and regulations much in the same way that local boards of education implement policy manuals. Simply including a policy in the manual does not insulate it from negotiations.

Since the State colleges are not regulators, College Locals does not apply. Negotiations over travel regulations at the State colleges may be preempted only if the statute speaks in the imperative leaving nothing to the discretion of the State colleges. State Supervisory. I have already found it does not. See pp 32-35 infra.

The State argues that negotiations over travel policies and procedures are preempted under the College Locals factors. Assuming, for the sake of argument, that the State colleges are regulators, I apply the College Locals factors and find the presumption of preemption is rebutted for travel policies and procedures.

The Commission first applied these factors in UMDNJ. There, the Commission noted that the Chancellor and the Director of Budget and Accounting were obliged to adopt criteria by legislative command. It contrasted that situation with an agency with a discretionary grant of general regulatory power. The Autonomy Law provides the colleges with general authority. While travel procedures fall within the general grant, the Autonomy Law does not specifically oblige the State colleges to adopt travel policies. Negotiation over travel policies would not adversely affect the State college's statutory authority or exercise of their (assumed) regulatory jurisdiction.

In both the College Locals and the UMDNJ cases, the Board of Higher Education's employer role was secondary to its regulator role. In formulating the Autonomy Law, the Legislature chose to maintain the status quo, preserving the Governor's position as the employer, at least for the purposes of negotiations.

While the Governor maintain's his employer status, the State colleges continue to exercise employer functions. The boards of trustees and presidents of the State colleges continue to process grievances, supervise the day-to-day activities of employees and make decisions about hiring, promoting and retaining employees. If the State colleges are to be considered to possess a regulatory role that that role is secondary to their role as employers.

The State colleges' adopted travel policies because the Autonomy Law and the Department of Higher Education guidelines

authorized them to do so. Before Autonomy, only Stockton implemented its own travel policies. There is no indication that the State colleges needed or were required to adopt their own policies in order to continue to allow employees to travel on college business.

The circumstances surrounding adoption of the travel policies and procedures do not show that the colleges were hostile to the negotiations process, though the State admits that the policies and procedures were not negotiated with the Council (C-2).

The scope and composition of the class of employees affected by the regulation is broad. The new travel policies affect all State college employees traveling on college business. Members of the Council's negotiations unit at the State colleges as well as all other college employees including members of the college administration traveling on college business are affected. The travel policies do not distinguish between unit members and non-unit members. The policies do not result in disparate treatment of unit members.

The policies adopted by the colleges are basically fair and provide more generous reimbursement than Treasury's policy.

The final factor is the extent to which the employees or their representatives had the opportunity to express their views on the regulation during its formative stages. The Autonomy Law requires that the boards of trustees consult with the faculty in adopting rules and regulations. N.J.S.A. 18A:64-6m. Some colleges

included a faculty member on their travel policy committee, but there is no evidence of meaningful consultation with the faculty in adopting the travel policies. In finding that the regulations concerning the steps to be taken in a fiscal emergency did not preempt negotiations over additional procedures for making staff reductions, the Court relied on the provision mandating discussions with the college community, College Locals, 91 N.J. at 35.

Because the travel policies were adopted as an exercise of discretionary authority by public bodies with greater employer functions than regulator functions, I find the presumption of preemption has been rebutted. Though some colleges had faculty members on their autonomy committees, there is no evidence of meaningful discussion of travel policies with the faculty or the Council as its chosen representative.

On balance, I find the travel policies and procedures adopted by the State colleges are negotiable. The State admits the State colleges unilaterally implemented travel policies and procedures without negotiations. It asserts that the policies merely conformed to existing practices at the State colleges.

Terms and conditions of employment may arise from a past practice not contained in the parties' collective negotiations agreement. New Brunswick Bd. of Ed., P.E.R.C. No. 78-47, 4 NJPER 84 (¶4040 1977) mot. for recon. den., 4 NJPER 56 (¶4073 1978), aff'd App. Div. Dkt. No. A-2450-77 (4/2/79). If the agreement is silent or ambiguous about the issue, past practice controls. Sussex Cty.,

P.E.R.C. No. 83-4, 8 NJPER 431 (¶13200 1982). A past practice should demonstrate "a pattern of conduct and some kind of mutual understanding, either expressed or implied." United Transportation Union v. St. Paul Union Depot Co., 434 F.2d 220, 75 LRRM 2595 (8th Cir. 1970).

Whether prior conduct establishes a working practice under the Act depends upon consideration of the facts and circumstances of the particular case. Among the factors one might reasonably consider would be the mutual intent of the parties, their knowledge of and acquiescence in the prior acts, along with evidence of whether there was joint participation in the prior course of conduct, all to be weighed with the facts and circumstances in the perspective of the present dispute (Id. at 2597).

See Trenton Bd. of Ed., P.E.R.C. No. 88-135, 14 NJPER 452 (¶19187 1988), aff'g H.E. No. 88-52, ___ NJPER ___ (¶_____ 1988); Somerville Boro., P.E.R.C. No. 84-90, 10 NJPER 125, 126 (¶15064 1984).

Before the Autonomy Law, the colleges generally applied Treasury's travel regulations. In certain instances the colleges' practices differed from Treasury's. The colleges used different procedures either to meet Treasury's deadlines or for greater convenience and efficiency. The pre-Autonomy Law practices at each college are described in the findings of fact. See pp 3-31 infra. Where the colleges' policies changed their practices--either from the existing Treasury regulations or from their pre-Autonomy

practices--they had an obligation to negotiate over the policies to the extent that they changed the existing practice.^{19/}

The State argues the Council waived its right to negotiate over any changes in travel policies and procedures when it permitted Treasury to occasionally change the travel regulations without negotiations and by agreeing to a zipper clause in the parties' contract.

A waiver of section 5.3 rights will not be found unless a contract or practice clearly, unequivocally and specifically authorizes a unilateral change, Red Bank Reg. Ed. Ass'n v. Red Bank Reg. H.S. Bd. of Ed., 78 N.J. 122, 140 (1978); Sayreville Bd. of Ed., P.E.R.C. No. 83-105, 9 NJPER 138 (¶14066 1983); North Brunswick, supra; State of New Jersey, P.E.R.C. No. 77-40, 3 NJPER 78 (1977).

Only Article XVI(I) of the parties' collective negotiations agreement considers travel policy or procedure. It simply provides that travel advances provided in the Treasury regulations apply to non-teaching unit members. Article XXI provides that the agreement incorporates the parties' entire understanding only of those matters "which were the subject of negotiations." The clause continues by providing that the parties negotiate over new or modified rules

^{19/} The State argues that to the extent that the travel policies implemented by the State college changes any practices or procedures, the changes are de minimus. I do not believe the travel policies are too insignificant to merit negotiations. See Montville Tp. Bd. of Ed., P.E.R.C. No. 86-118, 12 NJPER 372 (¶171143 1986).

governing working conditions. In State of New Jersey (Ramapo College), P.E.R.C. No. 86-28, 11 NJPER 580 (¶16202 1986), the Commission found a similar clause in the Council's and the State's prior agreement did not constitute clear and unequivocal waiver. The Commission found the clause acknowledged that the employer's powers are subject to the limitations imposed by the Act. The clause did not grant the employer specific authority to unilaterally impose changes in terms and conditions of employment without negotiations.

In South River Bd. of Ed., P.E.R.C. No. 86-132, 12 NJPER 447 (¶17167 1986), the Commission listed the various forms waiver may take:

A waiver can come in a number of different forms, but must be clear and unequivocal....For example, if the contract explicitly allows the employer to make the changes, the employee representative has waived any right to negotiate the changes during the term of the contract. In addition, if the employee organization has been appraised of proposed changes in advance and declines the opportunity to negotiate, or has routinely permitted the employer to make similar changes in the past, it may have waived its right to negotiate those changes. [Citations omitted.]

There, over a five year period, three high school teachers had their hours changed and their salaries adjusted pro rata. Schedule changes involved a teaching period alone or a combination of at least one teaching period and some preparation, assigned duty or maintenance periods. The change at issue involved only an assigned duty period. Since the employee organization had never sought to negotiate over a prior schedule reduction, the Commission

rejected the distinction between an assigned duty period and one involving both assigned duties and teaching periods.

Here, the Council allowed Treasury to modify travel regulations from time to time without negotiations. Treasury, however, modified one policy that applied throughout the State. The State colleges created nine distinct policies. Since both the entity creating the policies and the number and variety of policies has changed, I find the change has not been clearly, unequivocally and specifically authorized.

I therefore find that the State violated the Section 5.4(a)(5) and derivatively (a)(1) of the Act when the State colleges unilaterally adopted travel policies and procedures that provide different benefits and procedures than was the practice under the Treasury regulations.

Recommended Order

I recommend that the State of New Jersey:

A. Cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., particularly by unilaterally implementing travel policies and procedures at the State colleges.

2. Refusing to negotiate in good faith with the Council of New Jersey State College Locals, NJSFT-AFT/AFL-CIO concerning terms and conditions of employment of Council unit

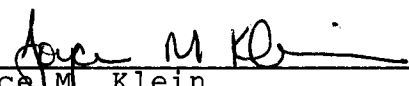
members, particularly by unilaterally implementing travel policies and procedures at the State colleges.

B. Take the following affirmative action:

1. Restore the status quo ante by rescinding the travel policies and procedures at the State colleges to the extent that they conflict with past practice at the colleges or with the Treasury regulations and require negotiations over any proposed changes to the travel policies and procedures.

2. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice on forms to be provided by the Commission shall be posted immediately upon receipt thereof and, after being signed by the Respondent's authorized representative, shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

3. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply with this order.



Joyce M. Klein
Hearing Examiner

Dated: February 14, 1989
Trenton, New Jersey

NOTICE TO ALL EMPLOYEES**PURSUANT TO**

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining or coercing employees in the exercise of rights guaranteed by the Act, particularly by unilaterally implementing travel policies and procedures at the State colleges.

WE WILL cease and desist from refusing to negotiate in good faith with the Council of New Jersey State College Locals, NJSFT-AFT/AFL-CIO concerning terms and conditions of employment of council unit members, particularly by unilaterally implementing travel policies and procedures at the State colleges.

WE WILL rescind the travel policies and procedures at the State colleges to the extent that they conflict with past practices at the colleges or with the treasury regulations.

WE WILL negotiate in good faith with the Council over proposed changes to the travel policies and procedures at the State colleges.

Docket No. CO-H-87-197State of New Jersey

(Public Employer)

Dated _____

By _____

(Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State St., CN 429, Trenton, NJ 08625 (609) 984-7372.