

D.U.P. No. 2011-7

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

In the Matter of

STATE OF NEW JERSEY  
(KEAN UNIVERSITY),

Respondent,

-and-

Docket No. CO-2011-271

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

Charging Party.

SYNOPSIS

The Deputy Director of Unfair Practices dismisses an unfair practice charge filed by Council of New Jersey State College Locals, AFT, AFL-CIO, against the State of New Jersey (Kean University). The charge alleges that the State violated 5.4a(1) and (5) of the Act when the State informed the Council that the salary for a newly-created position at Kean University, which would only be used at Kean University, should be negotiated at the local level rather than at the State level. The Deputy Director finds that although the State is statutorily required to negotiate on behalf of all of the State's colleges and universities, that the State is not required to negotiate an issue affecting a single university or college. Furthermore, the parties enter into local agreements regularly, and Kean University offered dates to negotiate.

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Appearances:

For the Respondent,  
Paula T. Dow, Attorney General  
(Geri Benedetto, Deputy Attorney General)

For the Charging Party,  
Bennett Muraskin, Staff Representative

REFUSAL TO ISSUE COMPLAINT

On January 11, 2011, Council of New Jersey State College Locals, AFT, AFL-CIO (Council) filed an unfair practice charge against the State of New Jersey (State). The charge alleges that the State violated 5.4a(1) and (5)<sup>1/</sup> of the New Jersey Employer-

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<sup>1/</sup> These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act; (5) Refusing to negotiate in good faith with a majority representative of 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."

Employee Relations Act (Act) when it informed the Council President that the salary for a newly-created position at Kean University would be "appropriately negotiated at the local level" rather than at the state level. The Council wishes that its negotiations over the new position take place with the State rather than Kean University.

The State denies violating the Act, contending that it has not failed to negotiate in good faith; that this matter is appropriate for local negotiations; that it communicated this to the Council; and that Kean University's representatives reached out to the Council to commence negotiations.

The Commission has authority to issue a complaint where it appears that the Charging Party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the complaint issuance standard has not been met, I may decline to issue a complaint. N.J.A.C. 19:14-2.3. On March 25, 2011, I issued a letter to the parties, advising that I was not inclined to issue a complaint in this matter and set forth the reason for that conclusion. They were also provided an opportunity to respond. The Council filed a letter, asserting that no applicable case law governs this matter and consequently, a complaint must issue to permit a plenary hearing. The Council also asserted that the decision, State of N.J. (Office of Employee Relations) and Council of N.J.

State College Locals NJSFT-AFT, AFL-CIO, P.E.R.C. No. 90-22, 15 NJPER 596 (¶20244 1989), aff'd NJPER Supp.2d 246 (¶206 App. Div. 1991), indicates that the State has a duty to negotiate, even when the negotiable issue affects one college or university. I disagree and find that the complaint issuance standard has not been met.

The Council and State's collective negotiations agreement extends from July 1, 2007 through June 30, 2011. Nine state colleges and universities are bound by the agreement, including Kean University. N.J.S.A. 18A:64-21.1 provides:

The Governor shall continue to function as the public employer under the 'New Jersey Employer-Employee Relations Act,' . . . and through the Office of Employee Relations act as the chief spokesperson on behalf of the *State colleges* with respect to all matters under negotiation. One representative of the State college sector shall be designated by the Governor as a member of the negotiating team, upon recommendation by the State colleges. [Emphasis added]

Under the statute, the Governor's Office of Employee Relations (OER) negotiates the terms of an agreement on behalf of the colleges and universities, which, with few exceptions, apply to all nine of the colleges and universities. This agreement is called the master agreement.

Article XXXV of the agreement provides: "Issues which have, in this agreement, been reserved for resolution between the Local Union and an individual College/University, shall, when resolved, be in the form of a memorandum of agreement which shall then

become the policy of the College/University." The parties have interpreted this article as enabling an individual college or university and its local union to enter a local agreement so long as that agreement does not contravene the terms of the master agreement. An individual college or university and its local union regularly negotiate local agreements. For example, on January 1, 2011, Kean University and the Kean Federation of Teachers executed a local agreement concerning time sheet procedures.

On December 4, 2010, Kean University passed a resolution creating a new position, lecturer. On December 7, 2010, Kean's executive vice president for operations advised the Council by email of the new position. The email provided that recruitment for the position would begin in February, 2011; that all negotiations must conclude by February 1; that Kean was prepared to commence negotiations the following day; and that Kean would be available as often as necessary to meet its February 1 deadline.

On December 8, 2010, the Council president responded to the email in separate letters to Kean's executive vice president for operations and to the Director of OER. The letter to Kean provided that the matter could not be negotiated locally; that the Council would notify OER of its position, and demanded negotiations commence with OER. The letter to OER reiterated the Council's position that this matter was inappropriate for a local

agreement; reiterated the Council's demand for negotiations, and offered to meet to discuss the new position immediately or to defer talks until the parties negotiate their master agreement.

On December 16, 2010, OER issued a letter replying to the Council's December 8 letter. It provides in a pertinent part:

Kean University has created the position of Lecturer and determines the job duties for this position to serve the purpose and mission of Kean University, with no intent to impose its need for the Lecturer position and the duties of that position to any of the other eight (8) State Colleges/Universities. The Lecturer position created by Kean was intended to be utilized by Kean only and therefore it is appropriate in this instance that the terms and conditions be negotiated locally. The Governor's Office of Employee Relations does not generally negotiate for only one College/University; we negotiate for the nine (9) State Colleges/Universities, with the exception of cases that may be in litigation.

Thus, the negotiations, as may be required by law, regarding the terms and conditions of employment of the Lecturer position is appropriately negotiated at the local level.

#### ANALYSIS

The Commission's complaint issuance standard is provided in N.J.A.C. 19:14-2.1(a). It provides in a pertinent part:

[I]f it appears to the Director of Unfair Practices that the allegations of the charge, if true, may constitute unfair practices on the part of the respondent, and that formal proceedings should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues, the Director shall issue and serve a formal complaint . . .

Novelty does not mandate the issuance of a complaint. To meet the standard, a charge must allege facts that may constitute an unfair practice. I find that this case does not meet the standard.

The Council alleges that OER's directive that Kean University negotiate a local agreement for the terms and conditions of a new position that will be used at Kean University only constitutes a refusal to negotiate. The Council argues that N.J.S.A. 18A:64-21.1 mandates OER's participation.

This statute requires that OER negotiate on behalf of all the State's colleges and universities, not to negotiate issues that affect a single university or college. Also, the parties regularly negotiate local agreements, which demonstrates that they have not interpreted the statute as compelling OER to negotiate an issue that implicates only one of the nine State colleges or universities. Neither the Act nor N.J.S.A. 18A:64-21.1 prohibit the parties from entering into local agreements, nor prohibit OER from asserting that an issue is appropriate for a local agreement rather than inclusion in the master agreement.

The Council's reliance upon State of N.J. (Office of Employee Relations) and Council of N.J. State College Locals NJSFT-AFT, AFL-CIO, P.E.R.C. No. 90-22, 15 NJPER 596 (¶20244 1989), aff'd NJPER Supp.2d 246 (¶206 App. Div. 1991) is misplaced. In that case, the Commission found that the State had violated the Act when Stockton College unilaterally removed five

employees from the negotiations unit. In contrast to the facts of this case, that matter did not concern local agreements and how they operate in conjunction with the master agreement. Nor were any facts alleged that Stockton College or the State attempted to negotiate before removing the titles.

The parties do not dispute that the lecturer position will be used at Kean University only; that Kean University attempted to initiate negotiations and offered to meet as many times as necessary to reach an agreement; that the parties regularly enter into local agreements; and that OER provided a letter to the Council stating that Kean University was the appropriate negotiator for this issue. Accordingly, the Council's refusal to negotiate allegation apparently concerns its desire to negotiate with OER rather than Kean University. The Council however, cannot compel OER to negotiate this issue, as parties may lawfully choose their own representatives. Middletown Tp. Bd. of Ed., P.E.R.C. 96-46, 22 NJPER 35 (¶27017 1995); Matawan Reg. Bd. of Ed., P.E.R.C. No. 80-153, 6 NJPER 325 (¶11161 1980).

Finally, if the parties disagree whether their local agreement violates the terms of their master agreement, either may seek resolution through their contractual grievance procedure. See State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

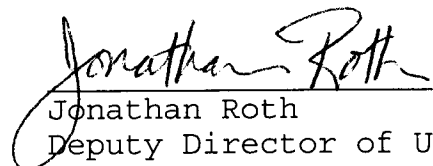


For these reasons, I find that the Commission's complaint issuance standard has not been met and I decline to issue a complaint on the allegations of this charge.<sup>2/</sup>

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Jonathan Roth  
Deputy Director of Unfair  
Practices

DATED: April 20, 2011  
Trenton, New Jersey

This decision may be appealed to the Commission pursuant to  
N.J.A.C. 19:14-2.3.

Any appeal is due by May 2, 2011.

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<sup>2/</sup> N.J.A.C. 19:14-2.3.