

D.U.P. No. 2012-1

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-2011-072

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

Charging Party.

SYNOPSIS

The Deputy Director of Unfair Practices refuses to issue a complaint and dismisses KFT's charge asserting a refusal to negotiate in good faith. The employer, Kean did not refuse to meet or discuss issues despite a failure to reach an agreement. Furthermore, KFT did not establish there was a "meeting of the minds" among the parties, so Kean could not have violated the Act by failing to sign a negotiated Agreement.

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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 August 16, 2010, the Council of New Jersey State College Locals, AFT, AFL-CIO (AFT) filed an unfair practice charge against the State of New Jersey (Kean University) (State or Kean). The charge alleges that Kean violated 5.4a(1), (5) and (6)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A.

^{1/} These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or (continued...)"

34:13A-1 et seq. (Act), by refusing to negotiate in good faith and refusing to reduce a negotiated agreement to writing and sign such agreement.

Kean denies engaging in any unfair practice. It argues that the charge should be dismissed because the parties engaged in good faith negotiations, notwithstanding their failure to reach a meeting of minds warranting the signing of an agreement.

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. Based upon the following facts, I decline to issue a complaint.

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

On November 24, 2009, during local negotiations between the parties, AFT proposed scheduling faculty teaching loads over the

1/ (...continued)
refusing to process grievances presented by the majority representative. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

entire calendar year. Under the proposal, faculty could choose to "bank courses," i.e., to defer compensation on overload and summer courses in exchange for paid time off at a later date. Phillip Connelly, Vice President of Administration and Finance, and chief negotiator for Kean, agreed to study the proposal.

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

At the next negotiations session on January 26, 2010, AFT presented three proposed scenarios for banking courses for scheduling faculty teaching loads.

Kean presented a written counterproposal at the next negotiations session on March 2, 2010. The document, entitled, "University Counter-Proposal: Banked Courses" provides in its introductory paragraph:

Of the options under discussion, number two - a "credit only account" - holds the most promise. It would ask that all participants think ahead carefully, assure that cancelled courses would not complicate the banking system, and would be easy to administer. We could proceed as follows . . .

The counterproposal then sets forth 5 bullet points.

AFT asserts that it "accepted this proposal and suggested the addition of summer session II to the list of semester/sessions that courses could be banked."

At the next negotiations session on March 30, 2010, Kean and AFT discussed the meaning of the third bullet point in the University's counterproposal and also discussed payment of deferred compensation. The parties agreed that AFT would draft a "Letter of Agreement."

In the next negotiations session on May 4, 2010, the AFT presented "Letter of Agreement #121," which differed slightly from Kean's counterproposal. In addition to the counterproposal, the AFT "letter" included an added bullet point, providing: "All banked credits earned and not drawn down can be converted into compensation upon retirement or departure from the University." According to the charge, Connolly asked several questions about the added bullet point. The charge also alleges that Faruque Chowdhury, Director of Human Resources, who participated in the negotiations on behalf of Kean, ". . . stated he had to check a few administrative matters before the agreement could be signed."

Charles Kelly, Kean AFT President, emailed Connolly on May 10, 2010, offering revised language to address Connolly's stated concerns. The revised bullet point provided: "The compensation upon retirement or departure shall not exceed the amount permissible by relevant state law." Kelly received no reply from Connolly. On June 15, 2010, Kelly again sent Connolly the Letter of Agreement which included the bullet point at issue in the May 4 version of the Agreement and the changes to that bullet point.

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

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

ANALYSIS

In deciding whether an employer has engaged in good or bad faith negotiations, the Commission has consistently held that the totality of the employer's conduct throughout the dispute resolution process must be analyzed to determine whether the employer came to negotiations: ". . . with an open mind and a sincere desire to reach an agreement, as opposed to a pre-determined intention to go through the motions, seeking to avoid, rather than reach, an agreement." State of New Jersey and Council of New Jersey State College Locals, E.D. No. 79, 1 NJPER 39, 40 (1975), aff'd. P.E.R.C. No.76-8 (1975), aff'd. 141 N.J. Super. 470 (App. Div. 1976). See also, Bayonne City Bd. of Ed., P.E.R.C. No. 91-3, 16 NJPER 433 (¶21184 1990), adopting H.E. No. 90-32, 16 NJPER 84, 90 (¶21034 1990); Ocean Cty. College, P.E.R.C. No. 84-99, 10 NJPER 172 (¶15084 1984); Mt. Olive Bd. of Ed., P.E.R.C. No. 84-73, 10 NJPER 34, 35-36 (¶15020 1983).

Negotiations do not require that the parties reach an agreement.

North Caldwell Bd. of Ed., P.E.R.C. No. 90-92, 16 NJPER 261

(¶21110 1990); City of Newark and FOP Lodge 12, H.E. No. 2009-2,

34 NJPER 307 (¶113 2008).

The AFT does not set forth any facts demonstrating bad faith in collective negotiations. Kean did not refuse to meet or discuss with or respond to the AFT, as evidenced by the parties' sessions on March 2, 2010, May 4, 2010, May 10, 2010, June 20, 2010 or July 15, 2010. The parties met several times in an effort to negotiate the creation of a banked course program. That no agreement was ultimately reached fails to indicate bad faith negotiations. Accordingly, the a(5) allegation is dismissed.

The AFT asserts that an agreement was reached and that Kean's failure to sign the Letter of Agreement as presented on June 29, 2010 (which mirrored Kean's counterproposal of March 2, 2010), constitutes a refusal to sign a negotiated agreement.

A prerequisite to finding that an employer refused to sign a negotiated agreement is that the parties reached a "meeting of the minds" on the terms of that agreement. Wayne Bd. of Ed. and Wayne Ed. Assoc., D.U.P. No. 86-23, 12 NJPER 549 (¶17208 1986). See also Passaic Valley Water Commission, P.E.R.C. No. 85-4, 10 NJPER 487 (¶15219 1984); Mt. Olive Bd. of Ed.; Borough of Wood-Ridge, P.E.R.C. No. 81-105, 7 NJPER 149 (¶12066 1981); Borough of

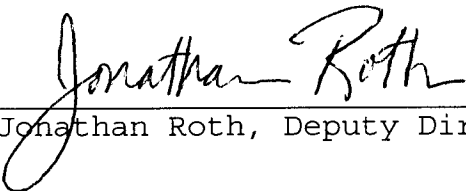
Matawan, P.E.R.C. No. 86-87, 12 NJPER 135 (¶17052 1986); Long Branch Bd. of Ed., P.E.R.C. No. 86-97, 12 NJPER 204 (¶17080 1986). In a "meeting of the minds" case, the parties may have agreed on a specific provision, but not on its meaning or application; or the parties may have agreed on some but not all language; or may have negotiated over a topic but do not mutually agree that a final agreement was reached on the topic. See Washington Tp., H.E. No. 97-25, 23 NJPER 266 (¶28128 1997).

In this case, no facts asserted by the AFT in its charge establish that the parties had reached a "meeting of the minds." Kean's March 2, 2010, counterproposal is cautious; it merely provides that one of AFT's proposals on the banked course issue "holds the most promise." Even assuming that Kean had firmly committed itself in its counterproposal, the AFT effectively rejected the counterproposal by proposing changes on May 4, 2010, and again on May 10, 2010. See, Oakland Bd. of Ed., H.E. No. 84-62, 10 NJPER 378 (¶15176 1984). AFT's July 15 effort to unilaterally revive and "accept" Kean's March 2, 2010 counterproposal does not establish a "meeting of the minds" among the parties. Under these circumstances, I find that the AFT did not provide sufficient facts warranting the issuance of a complaint on its 5.4a(6) allegation.

The facts alleged in the charge do not indicate that Kean refused to sign a negotiated agreement or that it refused to

negotiate in good faith. I also note that no facts support the issuance of a complaint on the 5.4a(1) allegation. Accordingly, I decline to issue a complaint and the charge is dismissed.

By Order of the Director
of Unfair Practices


Jonathan Roth, Deputy Director

DATED: July 7, 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 July 18, 2011.