D.U.P. NO. 2015-12

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

In the Matter of

RUTGERS UNIVERSITY,

Respondent,

-and- Docket No. CO-2015-091

AFSCME COUNCIL 52, LOCAL 888 & 1761,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by the American Federation of State, County, and Municipal Employees Council 52, Locals 888 and 1761 against Rutgers University alleging violations of N.J.S.A. 34:13A-5.4a(5) and, derivatively, (a)(1). The charge alleges that Rutgers violated the Act by refusing to pay salary increments on employees' anniversary dates after the expiration of the parties' collective negotiations agreement.

The Director finds that the charge is rooted in an alleged violation of the dynamic *status quo* doctrine. For the reasons set forth in the Commission's decision in Atlantic Cty., the Director finds that Rutgers' alleged refusal to pay salary increments following the expiration of the collective negotiations agreements, do not meet the complaint issuance standard and dismisses AFSCME's charge that Rutgers' conduct violates 5.4a(5) and (1) of the Act.

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Appearances:

For the Respondent,
David Cohen, Esq.

For the Charging Party,
Zazzali, Fagella, Nowak, Kleinbaum & Friedman, attorneys
(Paul L. Kleinbaum, of counsel)

DECISION

On October 15, 2014, the American Federation of State, County, and Municipal Employees Council 52, Locals 888 and 1761 (Charging Party or AFSCME) filed an unfair practice charge against Rutgers, the State University (Respondent or Rutgers). The charge alleges that on or about August 22, 2014, the Respondent violated sections 5.4a(5) and, derivatively,5.4 a(1)[1/]

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; and (5) Refusing to negotiate in good faith with a majority representative of
(continued...)

of the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq., by refusing to pay salary increments on employees' anniversary dates after the expiration of the parties' collective negotiations agreement. AFSCME alleges that Rutgers' past practice and the parties' collective negotiations agreements mandate the payment of such salary increments.

The Commission has authority to issue a complaint where it appears that a charging party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4(c); 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; CWA Local 1040, D.U.P. No. 2011-9, 38 NJPER 93 (¶20 2011), aff'd P.E.R.C. No. 2012-55, 38 NJPER 356 (¶120 2012).

The following facts appear.

Rutgers and AFSCME Local 888 are parties to a collective negotiations agreement (Local 888 agreement) extending from July 1, 2011 through August 31, 2014. Rutgers and AFSCME Local 1761 are parties to a collective negotiations agreement (Local 1761 agreement) covering the same time period. AFSCME Locals 888 and

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1/ (...continued)
employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

1761 are local affiliates of AFSCME Council 52. The parties are currently negotiating successor collective negotiations agreements.

Under Article 10, Paragraph C of the Local 888 agreement, "[e]ach eligible employee will receive a normal merit increment on the appropriate anniversary date." The same provision is found in Article 20, Paragraph 3c of the Local 1761 agreement.

In Atlantic Cty. and FOP Lodge 34 and PBA Local 77, P.E.R.C. No. 2014-40, 40 NJPER 285(¶109 2013), app. pending [App. Div. Dkt. No. A-2477-13T4], the Commission considered the same issue - whether an employer violates a(1) and (5) of the Act when it ceases to pay salary increments to unit members after the expiration of the parties' collective negotiations agreement. The Commission stated:

> Thus, the Commission is asked to review in this case its view of the continuing propriety of what is known as the dynamic *status quo* doctrine. That doctrine had its genesis in our decision in Galloway Tp. Bd. of Ed. in which we held that the Board's unilateral determination not to pay any increments after the expiration of a contract negated the teacher's additional year of service and thus altered the existing salary guide system. P.E.R.C. No. 76-32, 2 NJPER 186 (1976), rev'd 149 N.J. Super. 346 (App. Div. 1977), rev'd 78 N.J. 25 (1978). For the first time we defined this as a 'dynamic status quo' which needed to be maintained. [Id., 40 NJPER at 287]

After relating the genesis of the dynamic *status quo* doctrine, the Commission described the doctrine as "a creation of

this Commission which imparted an obligation on employers to maintain terms and conditions of employment upon the expiration of a collective negotiations agreement, inclusive of increment payments due on salary guides which had been negotiated in the expired agreement." Id.

The Commission reasoned that when it elects to apply a doctrine, it has the authority to modify its use if circumstances warrant, writing that "a post-expiration requirement that employers continue to pay and fund a prior increment system creates myriad instabilities in the negotiations process." Id. at 288. The Commission then held:

> [T]he dynamic *status quo* no longer fulfills the needs of the parties in that it serves as a disincentive to the prompt settlement of labor disputes, and disserves rather than promotes the prompt resolution of labor disputes. While public employers will continue to be bound by the strictures of maintenance of the *status quo*, that will be defined as a 'static' rather than a dynamic *status quo*. [Id. at 288-289]

Thus, whereas incremental movement may have been required under the dynamic *status quo* doctrine, the static *status quo* does not mandate such movement. Based on the specific language in its holding, the Commission has made the static *status quo* applicable to all public employers. While the Commission certainly considered such factors as the recent legislative changes to the tax levy cap and the hard cap on the growth of salary

expenditures for police and firefighters in interest arbitration awards, it has not limited its holding to only those employees.

Since Atlantic Cty., the Commission has granted the restraint of binding arbitration of a grievance challenging an employer's failure to pay annual salary increments following the expiration of a collective negotiations agreement, stating that the static *status quo* doctrine does not require such payment. See Tp. of Bridgewater and PBA Local 174, P.E.R.C. No. 2015-11, 41 NJPER 107 (¶38 2014), app. pending [App Div. Dkt No. A000107-14T1](acknowledging that Atlantic Cty. set forth a policy change that public employers would no longer be required, as a matter of law, to fund automatic advancement on a salary guide after contract expiration); and Paterson State-Operated School District and Paterson Ed. Ass'n., P.E.R.C. No. 2014-46, 40 NJPER 336 (¶122 2014), app. pending [App. Div. Dkt. No. A-2998-13T4] (granting a motion for summary judgment filed by the Board in an unfair practice matter wherein the charge alleged that the Board violated the Act when it refused to pay salary increments upon the expiration of the collective negotiations agreement).

The gravamen of this charge, like the charges comprising Atlantic Cty., appears to be rooted in an alleged violation of the dynamic *status quo* doctrine. For the reasons set forth in the Commission's decision in Atlantic Cty., I find that Rutgers' alleged refusal to pay salary increments following the expiration

of the collective negotiations agreements, do not meet the complaint issuance standard and I dismiss AFSCME's charge that Rutgers' conduct violates 5.4a(5) and (1) of the Act.

ORDER

The unfair practice charge is dismissed.

/s/Gayl R. Mazuco
Director of Unfair Practices

DATED: March 24, 2015
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 April 2, 2015.