

I.R. NO. 93-7

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RUTGERS, THE STATE UNIVERSITY,

Respondent,

-and-

Docket No. CO-92-419

RUTGERS COUNCIL OF AAUP CHAPTERS,

Charging Party.

SYNOPSIS

The Rutgers Council of AAUP Chapters sought to restrain Rutgers University from implementing the findings of a report issued by a special committee appointed to review a controversy surrounding the appointment of a new chairman to the Department of Molecular Biology & Biochemistry. The contract between the parties provides for both procedures for evaluation and for standards for discipline as well as a grievance procedure to resolve disputes arising under the contract. The AAUP has never sought to file any grievances concerning the enforcement of contractual provisions. Nor were the harms alleged irreparable.

Accordingly, the AAUP's Application was denied.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RUTGERS, THE STATE UNIVERSITY,

Respondent,

-and-

Docket No. CO-92-419

RUTGERS COUNCIL OF AAUP CHAPTERS,

Charging Party.

Appearances:

For the Respondent
Carpenter, Bennett & Morrissey, attorneys
(John J. Peirano, of counsel)

For the Charging Party
Reinhardt & Schachter, attorneys
(Denise Reinhardt, of counsel)

INTERLOCUTORY DECISION

On October 30, 1992, Rutgers Council of AAUP Chapters filed an amended unfair practice charge against Rutgers, the State University alleging it violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4 et seq.; specifically subsection 5.4(a)(1), (3) and (5)^{1/} when on October 13, 1992, Rutgers

^{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. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage 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."

President, Francis Lawrence adopted the report of a special committee on the Department of Molecular Biology & Biochemistry. Lawrence created the committee to review the controversy surrounding the appointment of a new chairman of that Department.^{2/}

The Show Cause Order was executed and made returnable for November 16, 1992.^{3/}

The AAUP claims Rutgers had refused to negotiate over the imposition of discipline and evaluation procedures.

In its brief, the AAUP states that it "now applies again for interim relief on the sole grounds:

1. That the President's adoption of the SRC Report constitutes the unilateral imposition of discipline without negotiation over the cause or basis for the discipline.

2. That the President's adoption of the SRC Report constitutes evaluation of unit members without negotiating over procedures for such evaluations."

The AAUP claims "it is irreparably damaged, specifically during the pendency of the unfair practice, its prestige has been diluted and will continue to diminish for it appears powerless to contest the University's action." It alleges research and work of the faculty members will be disrupted and "those faculty members who were chastised are held in disrepute and contempt by their peers."

^{2/} The AAUP has previously sought to restrain the issuance of this report. That application was denied. See I.R. No. 93-5

^{3/} A hearing was held on that date at which time the parties presented evidence and argued orally.

Rutgers argues that its actions are neither evaluative nor disciplinary but if they were, there are contractual remedies available including, grieving the failure to follow contractual procedures. Moreover, the allegations of harm are generalizations which lack specificity.

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when addressing similar applications. The moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegations in a final Commission decision and that irreparable harm will occur if the requested relief is not granted. Further, in evaluating such requests for relief, the relative hardship to the parties in granting or denying the relief must be considered.^{4/}

I do not believe that the AAUP has met its heavy burden.

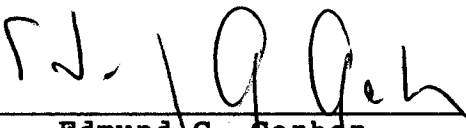
The contract between the parties provides for both procedures for evaluation and standards for discipline as well as a grievance procedure to resolve disputes arising under the contract. Yet the AAUP has never sought to file any grievances concerning the enforcement of contractual provisions although this mechanism is available to resolve this dispute.

^{4/} Crowe v. DeGioia, 90 N.J. 126 (1982); Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975).

Further, the nature of the harms alleged do not seem irreparable. If the AAUP is successful, then the reputation of the AAUP would be restored. Moreover, the alleged damages flowing from the transfer and negative comments are not the type of damages which can never be remedied.

The Application is denied.

BY ORDER OF THE COMMISSION



Edmund G. Gerber
Commission Designee

DATED: November 20, 1992
Trenton, New Jersey