

P.E.R.C. NO. 90-91

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY
(STOCKTON STATE COLLEGE),

Respondent,

-and-

Docket No. CO-H-89-120

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

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses an allegation that the State of New Jersey (Stockton State College) violated the New Jersey Employer-Employee Relations Act when it offered a \$50 stipend for a faculty writing workshop. The Commission further finds that the employer violated the Act when it retaliated against the Council of New Jersey State College Locals, New Jersey State Federation of Teachers, AFT/AFL-CIO for demanding to negotiate over compensation for the workshop.

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COUNCIL OF NEW JERSEY STATE
COLLEGE LOCALS, NEW JERSEY
STATE FEDERATION OF TEACHERS,
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, Bennett Muraskin, Council Staff
Representative

DECISION AND ORDER

On November 1, 1988, the Council of New Jersey State
College Locals, New Jersey State Federation of Teachers, AFT/AFL-CIO
filed an unfair practice charge against the State of New Jersey
(Stockton State College). The charge alleges that the employer
violated the New Jersey Employer-Employee Relations Act, N.J.S.A.
34:13A-1 et seq., specifically subsections 5.4(a)(1), (3) and
(5),^{1/} when Stockton State College offered a \$50 stipend for

^{1/} These subsections prohibit public employers, their
representatives or agents from: "(1) Interfering with,

participation in a faculty writing workshop, refused to negotiate the amount of the stipend, and then rescinded the compensation offer.^{2/}

On March 17, 1989, a Complaint and Notice of Hearing issued. On March 31, the employer filed an Answer denying that the College had any obligation to negotiate over the stipend, and that it had rescinded the offer because the Federation asked to negotiate.

On May 17, 1989, Hearing Examiner Susan Wood Osborn conducted a hearing. The parties examined witnesses and introduced exhibits. They waived oral argument, but filed post-hearing briefs and replies by July 14, 1989.

On October 12, 1989, the Hearing Examiner issued her report and recommendation. H.E. No. 90-15, 15 NJPER 653 (¶20268 1989). She found that the College unlawfully refused to negotiate over the amount of the stipend and that it withdrew the stipend in retaliation for the Federation's request to negotiate.

1/ Footnote Continued From Previous Page

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."

2/ An allegation that the College would not provide information about the history of workshop compensation was withdrawn.

On November 3, 1989, the employer filed exceptions. It contends that the Hearing Examiner erred because: (1) a past practice supports the College's right to determine the stipend unilaterally; (2) this stipend was in accord with this past practice, and (3) the decision to withdraw the stipend offer was a return to the status quo.

On November 15, 1989, the Federation filed a reply. It denies the alleged past practice and maintains that the withdrawal of the stipend offer was retaliatory.

We have reviewed the record. The Hearing Examiner's findings of fact (H.E. at 3-8) are accurate. We incorporate them here.

Before December 1986, the College unilaterally determined compensation for institutionally-sponsored workshops. Between December 1986 and the disputed August 1988 workshop, the College did not offer any compensation for those workshops. When the disputed workshop was offered, the College unilaterally set a \$50 stipend. The Federation commended the College for sponsoring the workshop and encouraged faculty and staff to attend, but requested immediate negotiations over the amount of compensation.

The parties do not dispute that compensation for faculty workshop participation is mandatorily negotiable or that a unilateral change in terms and conditions of employment normally violates the Act. Hunterdon Cty. Freeholder Bd. v. C.W.A., 116 N.J. 322 (1989); Hudson Cty. Freeholder Bd., P.E.R.C. No. 78-48, 4 NJPER

87 (¶4041 1978), aff'd App. Div. A-2444-77 (4/19/79); New Brunswick Bd. of Ed., P.E.R.C. No. 78-47, 4 NJPER 84 (¶4040 1987), recon. den. P.E.R.C. No. 78-56, 4 NJPER 156 (¶4073 1978), aff'd App. Div. No. A-2450-77 (4/2/79). They do dispute whether the Federation waived its right to negotiate over compensation for this workshop by acquiescing in the unilateral setting of compensation or no compensation for earlier workshops. South River Bd. of Ed., P.E.R.C. No. 86-132, 12 NJPER 447 (¶17167 1986), aff'd App. Div. Dkt. No. A-5176-85T6 (3/10/87); Elmwood Park Bd. of Ed., P.E.R.C. No. 85-115, 11 NJPER 366 (¶16129 1985); see also Rutgers Univ., P.E.R.C. No. 82-98, 8 NJPER 300 (¶13132 1982).

The Federation had not previously asked the College to negotiate over the stipends for institutionally-sponsored workshops. Before December 1986, stipends were sometimes provided. Since then they have not been. Here, the employer was justified in unilaterally restoring stipends because of the absence of past negotiation demands. In this instance, it cannot be held to have violated its duty to negotiate in good faith.^{3/} See State of New Jersey, P.E.R.C. No. 89-129, 15 NJPER 343 (¶20152 1989).

However, the withdrawal of the stipend in retaliation for the request to negotiate violated subsection 5.4(a)(3), and,

3/ This finding does not preclude negotiations over future stipends. See Hamilton Tp. Bd. of Ed., P.E.R.C. No. 90-80, 16 NJPER 176 (¶21075 1990); Westinghouse Elec. Corp., 150 NLRB No. 136, 58 LRRM 1257 (1965).

derivatively, 5.4(a)(1). In Hunterdon, the Supreme Court considered similar facts. The employer had unilaterally offered a benefit to employees and then withdrew the benefit when the employee organization asked to negotiate over the amount. Here, the only reason why the College withdrew the stipend offer was because the Federation requested negotiations. Applying Hunterdon, we find a violation.

ORDER

The State of New Jersey (Stockton State College) is ordered to:

A. Cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by retaliating against the Federation for demanding to negotiate over workshop compensation.

2. Discriminating with 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 the Act, particularly by retaliating against the Federation for demanding to negotiate over workshop compensation.

B. Pay each participant in the August 31, 1988 workshop \$50, the amount offered before the Federation's demand to negotiate, plus interest at the rate authorized by R. 4:42-11.

C. Negotiate on demand over future workshop stipends.

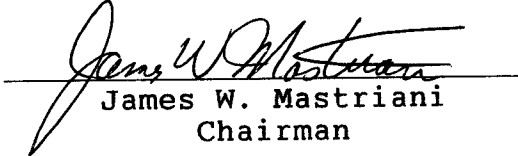
D. Post in all places where notices to employees are customarily posted, copies of the attached notice marked Appendix "A". Copies of such notice shall be posted immediately and, after

being signed by the College's authorized representative, shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to insure that such notices are not altered, defaced or covered by other materials.

E. Notify the Chairman of the Commission within ten (10) days of receipt what steps the Respondent has taken to comply with this order.

The remaining allegations in the Complaint are 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
April 25, 1990
ISSUED: April 26, 1990

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 the rights guaranteed to them by the Act, particularly by retaliating against the Federation for demanding to negotiate over workshop compensation.

WE WILL cease and desist from discriminating with 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 the Act, particularly by retaliating against the Federation for demanding to negotiate over workshop compensation.

WE WILL pay each participant in the August 31, 1988, workshop \$50, the amount offered before the Federation's demand to negotiate, plus interest at the rate authorized by R. 4:42-11.

WE WILL negotiate on demand over future workshop stipends.

CO-H-89-120

Docket No. _____

State of New Jersey (Stockton State College)

(Public Employer)

[Handwritten signature]

[Redacted signature]

By: _____

[Redacted signature]

H.E. NO. 90-15

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

In the Matter of

STATE OF NEW JERSEY
(STOCKTON STATE COLLEGE),

Respondent,

-and-

Docket No. CO-H-89-120

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

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends the Commission find that Stockton State College violated the New Jersey Employer-Employee Relations Act when refused to negotiate with the Stockton Federation of Teachers concerning workshop compensation. The Hearing Examiner found that when Stockton decided to compensate faculty for voluntarily participating in workshops, it had an obligation to negotiate the mid-contract change with the Federation.

The Hearing Examiner also recommends that the Commission find Stockton violated 5.4 (a)(1)(3) and (5) when it withdrew the offered compensation in retaliation for the Federation's demand to negotiate the amount of the stipend.

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.

H.E. NO. 90-15

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

In the Matter of

STATE OF NEW JERSEY
(STOCKTON STATE COLLEGE),

Respondent,

-and-

Docket No. CO-H-89-120

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

Charging Party.

Appearances:

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

For the Charging Party,
Bennett Muraskin, Council Staff Representative

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

On November 1, 1988, the Council of New Jersey State College
Locals, NJSFT-AFL-CIO ("Federation") filed an Unfair Practice Charge
with the Public Employment Relations Commission ("Commission") alleging
that the State of New Jersey ("State") violated the New Jersey
Employer-Employee Relations Act ("Act"), N.J.S.A. 34:13A-1 et seq.

specifically subsections 5.4(a)(1), (3) and (5),^{1/} when Stockton State College ("College") offered faculty members a stipend for workshop participation, refused to negotiate the amount of the stipend with the Federation, and then retaliated by rescinding the compensation offer.^{2/}

On March 17, 1989, the Director issued a Complaint and Notice of Hearing on the Charge. The State filed an Answer denying any unfair practice, denying that the College changed past practice concerning workshop compensation and denying any obligation to negotiate the workshop stipend.

On May 17, 1989 I conducted a hearing.^{3/} The parties examined witnesses and presented documentary evidence. Both parties filed post-hearing briefs by June 30, 1989. The State filed a reply brief on July 14, 1989.

Upon the entire record, I make the following:

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- 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 and tenure of employment or any term and condition of employment to encourage or discourage employees in the exercise of their 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."
- 2/ An additional allegation--that the College failed to provide requested information about the history of workshop compensation--was withdrawn at hearing.
- 3/ The transcript of the hearing will be referred to as "T- "; jointly submitted exhibits will be referred to as "J-"; and Federation exhibits will be referred to as "CP-".

FINDINGS OF FACT

1. The State employs teaching, research and administrative faculty its each of its nine State colleges, including Stockton College. The Federation is the faculty's exclusive negotiations representative.

2. The State and the Federation negotiated a collective agreement (J-1) covering faculty for the period July 1, 1986 to June 30, 1989. The agreement does not provide for workshop compensation. Article 29 of the contract permits negotiation of local issues between each college and the Federation locals (J-1, p. 44). Although Stockton Federation Local 2275 ("Local 2275") has negotiated compensation for other voluntary faculty activities, it has never sought to negotiate workshop compensation. (J-1; T9, T27-T28, T52-T53, T67-T68)

3. Workshops are small gatherings of faculty for a mutual purpose. Faculty participation in workshops is usually voluntary. (T52-53)^{4/}

4. The parties jointly submitted a list of all workshops held between January 1, 1984 and November 8, 1988 (J-2). During this period, the College conducted 60 workshops. J-2 categorizes these workshops as "grant-funded" workshops and "institutionally sponsored" workshops. Grant-funded workshops are supported exclusively by funds from federal or State grants, principally grants sponsored or administered by the State Department of Higher Education. A grant is secured by a formal

4/ Freshman advisors are expected to attend advising workshops.

application by faculty to the granting agency, with approval by the College. Any stipend for participants is a component of the grant. Therefore, compensation for participants in grant funded workshops has historically varied, depending on the grant. Institutionally sponsored workshops are funded directly by the College, including reimbursement for speakers, lunches, logistical support such as computers, and any payment to participants. The College sets the amount of any stipend. (T40-T46, T73, T74-T76, T79-T83)

5. Between January 1, 1984 and November 8, 1988, 18 grant-funded workshops were held. All but three offered participants a stipend.^{5/} Of the 15 grant-funded workshops that were compensated, four full-day workshops each paid \$100 stipends (including three held in 1988), five half-day workshops were each compensated at \$50; and the full-day May 14 and August 26, 1987, Freshman/Senior Seminars paid \$50 and \$75 respectively.^{6/} The remaining four grant-funded workshops were held over multiple days and paid participants various amounts. (J-2)

6. The College conducted 42 institutionally sponsored workshops between January 1, 1984 and November 8, 1988. Prior to January, 1986,

^{5/} Local 2275 President Elinor Lerner speculated that these three uncompensated workshops, which began at 4:30 p.m., likely ran less than half day as indicated in J-2. But since she did not attend these workshops and she was unsure, I do not credit her testimony to prove the length of those workshops.

^{6/} I credit the testimony of Charles Tantillo, Senior Vice-President for Employee Relations, that these workshops were originally designed to pay participants \$150 a day, but problems with the grant straddling fiscal years caused the amount to be cut (T71-T72). Lerner was unsure of the amount faculty actually received (T42-T43).

the College compensated faculty for workshop participation, with certain exceptions. A stipend was paid for ten of the 21 workshops held before January, 1986 in the following amounts: one 9-day faculty writing workshop at \$400; four full-day workshops at \$50 a day; and five half-day workshops at \$25 a day. (J-2)

Participation in certain types of institutionally sponsored workshops was never compensated. All workshops scheduled for less than a half day (5 workshops prior to 1986) and those which amounted to faculty skills training sessions, such as computer training (3 workshops prior to 1986), were never compensated.^{7/} Three other institutionally sponsored workshops held prior to January, 1986, were not paid.^{8/} (J-2)

7. After January 1, 1986, the College offered no stipend for participation in institutionally sponsored workshops (T85). J-2 lists 21 workshops held between January 1, 1986 and November 8, 1988. Five of those were less than half day, nine involved faculty computer skills training, and one involved faculty training in grant development. The remaining five, in addition to the August 31, 1988 Writing Workshop disputed here, were: the April 12, 1986 half-day Junior Test Reading

^{7/} According to Lerner, faculty never expected payment for such short workshops which were more like small meetings (T33-34). Nor did faculty expect payment for such training sessions as computer training, grant development training and staff writing skills improvement workshops (T35-T36, T38-T39, T49-T51, T76).

^{8/} No compensation was offered for the February 10, 1984 half-day workshop, the August 5 and 6, 1985 workshop, or the August 30, 1985 half-day workshop.

Workshop^{9/}; the August 29, 1986 half-day Freshman Preceptor Workshop; the November 7, 1986 full-day Junior Test Reading Workshop; the May 27, 1987 half-day College-Wide Planning Retreat Workshop; and the September 2 and 3, 1988 two-day Freshman Preceptor Workshop. (J-2)

8. At the suggestion of a writing consultant, the College decided to conduct a writing workshop in August 1988, and to offer faculty participants a stipend. The purpose of this writing workshop was to socialize new faculty to the Stockton writing program and develop the skills of rotating faculty teaching writing courses (T60-T61, T63, T85-T86).^{10/}

9. On August 2, 1988, Stockton's Writing Director Jack Connor sent a memorandum (CP-1) inviting faculty to an all-day writing workshop on August 31, 1988 and offering participants a \$50 stipend. (T16-T17).

10. When Local 2275 President Elinor Lerner learned of the workshop compensation offer, she called Dean of General Studies G. Jan Colijn to ask whether the stipend could be increased (T18, T57-T58). By letter of August 24 (CP-3), Colijn responded to Lerner that the College would not increase the workshop stipend. His letter stated that he had

^{9/} Lerner credibly testified that four of these were not traditional "workshops", but student test-grading sessions. However since two such sessions were compensated, I have considered all four as workshops for purposes of this decision.

^{10/} It does not appear that this workshop involved faculty skills development. However, whether this workshop was the type for which the Federation would not seek compensation is not relevant to whether there was a change in the past practice of workshop compensation. The fact is, the College offered compensation.

found no established or consistent precedent regarding institutional support for workshops. He noted that workshops had not been institutionally supported for some years;^{11/} and only grant-supported workshops were compensated as determined by what was available in the grant. He noted that payment was inconsistently given. His memo continues,

Institutional as opposed to grant support has generally not been forthcoming at all. For example, in General Studies, there has been no money for these kinds of workshops through institutional support since 1985...[S]upport for a writing workshop...was granted from institutional means for the first time in, I understand, three years...There is no grant to support this; the General Studies budget funds this workshop.

Given the fiscal constraint, I regret that I cannot honor your suggestion [to increase the stipend to \$100]. I do hope that the re-establishment of institutional support for workshops of this kind is at least of some satisfaction to the union (CP-3).

11. On August 24, 1988, Lerner wrote to College President Vera King Farris expressing the Local's support for the workshop but asking that the offered \$50 stipend be raised to \$100, the amount of a "recent full-day Freshman and GIS Seminar Workshops"^{12/}, and requesting that the College negotiate over workshop compensation (CP-2). In her memorandum, Lerner contended the \$50 stipend,

^{11/} Specifically, he indicated that workshop institutional support was unavailable during the respective terms of acting vice-presidents Kleinman and Tantillo. They collectively served as vice-presidents of academic affairs from late 1985 until mid-1988 (T91-T92).

^{12/} The two workshops she referred to were grant-funded workshops held on May 17, 1988 and September 1, 1988, respectively (J-2).

... establishes either a new rule or modification of an existing rule with regard to compensation which was instituted without negotiations with the Stockton Federation of Teachers. Since such negotiations are required by law and the State union contract, such an action constitutes an unfair labor practice." (CP-2).

12. On August 26, 1988, President Farris responded to Local 2275 by memorandum (CP-4). She advised Lerner that the College "sees neither a reason nor a requirement" to negotiate over workshop compensation. She denied that the writing workshop established or modified a rule regarding workshop compensation. Farris further advised Lerner that because of Lerner's claims, the College was cancelling the stipend offered to participants in the August 31 workshop. At the hearing, Farris stated that she rescinded the \$50 stipend to return to the College's practice of offering no institutional support for workshops (CP-4; T85, T93, T94).

13. The August 31 writing workshop was conducted, but only lasted a half day. Faculty members were not compensated for their attendance (T25).

ANALYSIS

N.J.S.A. 34:13A-5.3 requires public employers to negotiate over proposed changes in terms and conditions of employment before they are implemented. Thus, a change in negotiable terms and conditions of employment without negotiations normally violates the Act. Hunterdon Cty. and CWA, P.E.R.C. No. 87-150, 13 NJPER 506 (¶18188 1987), aff'd App. Div. Dkt. No. A-5558-86T8 (3/21/88), aff'd ___ N.J. ___ (1989) (S. Ct. Dkt No. A-92-88) [8/9/89] ("Hunterdon"); Hudson Cty. Bd. of Chosen Freeholders, P.E.R.C. No.

78-48, 4 NJPER 87 (¶4041 1978), aff'd App. Div. A-2444-77 (4/9/79); New Brunswick Bd. of Ed., P.E.R.C. No. 78-47, 4 NJPER 84 (¶4040 1978), mot. for recon. den. P.E.R.C. No. 78-56, 4 NJPER 156 (¶4073 1978), aff'd App. Div. No. A-2450-77 (4/2/79). Neither party disputes that compensation for faculty workshop participation is mandatorily negotiable. I must decide whether the College's reinstatement of workshop compensation obligated it to negotiate the stipend rate with the Federation.

The Federation argues that the College's decision to resume institutional support for workshops created a new or modified term and condition of employment. The State argues that the College's consistent practice on workshop payment was that the College routinely set the stipend amount. The State maintains that the College's decision to pay a \$50 stipend for the August 31, 1988 workshop merely continued that practice.^{13/}

^{13/} The Federation alternatively argued in its post-hearing brief that all Stockton workshops--institutionally sponsored and grant-funded workshops--should be considered together regardless of the funding source. It asserted that since the State Department of Higher Education is the funding agent or administrator of virtually all grant-funded workshops, the College or the Department of Higher Education has an obligation to negotiate the workshop stipend with the Federation prior to determining the amount of the grant. But that argument is inappropriate to resolve the present dispute. The issue here is whether the College's alleged change in its past practice concerning workshop stipends created a mid-contract negotiations obligation. The consistent practice was that the parties historically treated stipends for grant funded workshop participation separately. Further, stipends for the grant-funded workshops were consistently determined by the grant itself.

Prior to December, 1986, the College routinely set the amount of the workshop compensation. While most full-day workshops offered participants \$50, not all did. However, once the College stopped offering a workshop stipend at all, the practice then became non-payment for workshops.

The State also argues that the August 31, 1988 Writing Workshop was a staff training workshop of the type for which it did not offer compensation in the past. But since it offered a stipend for the August 31 workshop, apparently the College believed that it was the type of workshop for which participants should be compensated. ^{14/} Significantly, Colijn's August 24 letter shows that the intention of the College was to reinstitute financial support for institutionally sponsored workshops. Once the College decided to reinstate stipends after the two-and-one-half year hiatus, it was at this point that the College had a negotiations obligation, particularly after the Federation requested negotiations on the stipend amount. The College's refusal to negotiate the workshop rate violates (a)(5) and derivatively, (a)(1) of the Act.

^{14/} The Federation also argues that most of the 1986-1988 workshops were not "compensable" workshops. Lerner testified at length concerning the nature of those workshops and why the College did not pay faculty for their participation. I find that the nature of those workshops and whether the Federation might have sought compensation is not relevant. Even if the College had offered no "compensable" workshops during the 1986-88 period, the College practice of unilaterally setting a stipend rate was broken in 1986 when it withdrew all institutional support for workshops.

The Federation also alleges that the College's withdrawal of the \$50 stipend was in retaliation for the Federation's demand to negotiate the stipend rate, and thus violated subsection 5.4(a)(3) of the Act. Once the College reinstated workshop compensation and offered a \$50 stipend for the August 31, 1988 Writing Workshop, the Federation demanded negotiations over the amount of the stipend for this and future workshops. Lerner advised the College that the stipend was a new or modified term and condition of employment over which the Federation sought negotiations. The College responded by disagreeing that it was changing a past practice but nevertheless withdrawing the offered stipend.

The State argues that by withdrawing the offered stipend, it was merely restoring the status quo, that is, no stipend for workshop participants.

In Hunterdon, the Supreme Court considered the same argument. There the employer unilaterally offered a benefit (a safety incentive) to employees and then withdraw the benefit when the union asked to negotiate the amount. The Court specifically affirmed the Commission's rejection of the County's defense that unilateral termination of the benefit merely returned to the status quo. The Court approved the use of the discrimination test as set forth in Bridgewater Township, 95 N.J. 235 (1984) to determine whether the employer's withdrawal of an offered benefit was in retaliation for the majority representative's demand to negotiate.

Under Bridgewater, no violation will be found unless the charging party has proved, by a preponderance of the evidence on the entire record, that protected conduct was a substantial or motivating factor in the adverse action. This may be done by direct evidence or by circumstantial evidence showing that the employee engaged in protected activity, the employer knew of this activity and the employer was hostile toward the exercise of the protected rights. Id. at 246. If the employer does not present any evidence of a motive not illegal under our Act or if its explanation is rejected as pretextual, there is sufficient basis for finding a violation without further analysis.^{15/}

Here, it is apparent that the College's only reason for terminating the offered workshop compensation was because the Federation asked to negotiate the stipend amount. I reject the State's assertion that it withdrew the workshop stipend offer to preserve the status quo. The College's own response to the Federation's demand indicated that it did not believe that there was a clear or consistent past practice to return to. Once the College decided to reinstate workshop compensation, and the Federation then asked to negotiate about the amount, the College's withdrawal of the

^{15/} Sometimes, however, the record demonstrates that both motives unlawful under our Act and other motives contributed to a personnel action. In these dual motive cases, the employer will not have violated the Act if it can prove, by a preponderance of the evidence on the entire record, that the adverse action would have taken place absent the protected conduct. Id. at 242. I do not find this case to involve dual motives.

stipend then effectively shifted the blame for the change to the Federation.

Moreover, as the Commission found and the court specifically adopted in Hunterdon,

"An employer which unilaterally grants favorable benefits contrary to its statutory duty to negotiate may not unilaterally terminate such benefits absent a request to do so by the union; rather, it is obligated to negotiate with the union before again unilaterally changing the benefits." 12 NJPER @ 772, as cited in Hunterdon Cty, slip opinion at p. 21.

Here, the Federation did not request that the College terminate the stipend; rather it sought to negotiate an increase in the stipend.

Accordingly, I recommend that the Commission find that the College violated 5.4(a)(1)(3) and (5) of the Act by unilaterally withdrawing the workshop compensation offer in retaliation for the Federation's demand to negotiate the stipend rate.

Based upon the entire record in the matter, I make the following

RECOMMENDED ORDER

I recommend that the Commission ORDER:

A. That Stockton State College cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, by refusing to negotiate in good faith with the Federation concerning the amount of compensation for institutionally sponsored workshops.

2. Discriminating with regard to hire or tenure of employment or any term of condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by the Act, and particularly, by retaliating against the faculty because of their exercise of protected rights to seek negotiations over terms and conditions of employment, including workshop compensation against the Federation for its demand to negotiate workshop compensation.

3. Refusing to negotiate in good faith with the majority representative, and particularly refusing to negotiate in good faith with Local 2275 concerning workshop compensation.

B. That the Respondent take the following affirmative action:

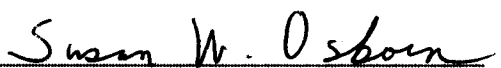
1. Negotiate in good faith with the Federation concerning compensation for all institutionally sponsored workshops conducted since August, 1988, including the August 31, 1988 workshop.

2. Pay each participant in the August 31, 1988 workshop \$50, the amount it offered prior to the Federation's demand to negotiate, plus interest from August 31, 1988, at the rate authorized by R.4:42-11.

3. 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 College's authorized representative, shall

be maintained by it for at least thirty (60) consecutive days. Reasonable steps shall be taken to insure that such notices are not altered, defaced or covered by other materials.

4. Notify the Chairman of the Commission within ten (10) days of receipt what steps the Respondent has taken to comply herewith.


Susan Wood Osborn
Hearing Examiner

Dated: October 12, 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 refusing to negotiate with the Stockton Federation of Teachers Local 2275 concerning compensation for institutionally supported workshops.

WE WILL cease and desist from retaliating against the faculty because of their exercise of rights to seek negotiations over terms and conditions of employment, inclusion workshop compensation.

WE WILL negotiate in good faith with the Stockton Federation of Teachers Local 2275 concerning compensation for all institutionally sponsored workshops conducted since August, 1988, including the August 31, 1988 workshop.

WE WILL pay each participant in the August 31, 1988 workshop \$50, plus interest from August 31, 1988.

Docket No. CO-H-89-120

Stockton State College
(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.