I.R. NO. 87-3

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY AND
CHANCELLOR OF THE NEW JERSEY
DEPARTMENT OF HIGHER EDUCATION,

Respondents,

-and-

Docket No. CO-87-51

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

Charging Party.

SYNOPSIS

A Commission Designee orders that the Chancellor of Higher Education reveal any recommendations made by the Chancellor to the Salary Adjustment Committee concerning matters which are terms and conditions of employment. The SAC has rule making authority and could very well promulgate regulations pursuant to the recommendation of the Chancellor and said recommendations would pre-empt negotiations on matters which would otherwise be terms and conditions of employment.

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Appearances:

For the Respondents
Melvin Mounts, Deputy Attorney General

For the Charging Party
Dwyer & Canellis, P.A.
(Michael E. Buckley, of counsel)

INTERLOCUTORY DECISION

On August 18, 1986, the Council of State College Locals ("Union") filed an unfair practice charge against the State of New Jersey and the Chancellor of the Department of Higher Education alleging that, on July 18, 1986 the Board of Higher Education adopted a "Resolution to Insure an Orderly Transition to Full Autonomy for the State Colleges." The Resolution provided that "the Chancellor shall take the necessary action to implement a revised relationship between the Salary Adjustment Committee and the state colleges equivalent to that with Rutgers, the University of Medicine and Dentistry of New Jersey and the New Jersey Institute of Technology." The regulations of the Salary Adjustment Committee

("SAC") applicable to Rutgers University, the University of Medicine and Dentistry of New Jersey, the New Jersey Institute of Technology and/or the state colleges concern such matters as salary caps, initial salaries of new appointees, and a variety of other matters relating to salaries of employees under the auspices of the Department of Higher Education. The Chancellor wrote to the SAC pursuant to the Board of Higher Education's Resolution.

It was further alleged that the Union requested that the Chancellor provide a copy of correspondence to the SAC relating to the implementation of the July 18, 1986 Board of Higher Education Resolution. Article VIII, Section C of the Agreement between the State Colleges and the AFT requires that the State furnish to the Union

> information which is relevant and necessary to the negotiating of subsequent agreements;

The Chancellor, however, took the position that the information requested is not information which the Union was entitled to under the terms of the Agreement.

The parties are engaged in negotiations for a successor contract. The most recent contract has expired and the Union claims it will be irreparably harmed by the continued refusal of the State to provide the correspondence requested, in that the correspondence between the Chancellor and the SAC may directly and intimately affect the topics of collective negotiations and the failure to

provide the information requested constitutes an unfair practice under N.J.S.A. 13A-5.1 ("Act") and 5.4(a) subsections 1 and 5[1/].

The Unfair Practice Charge was accompanied by an Order to Show Cause and Interlocutory Order compelling the State to provide to the charging party the correspondence in issue. The Order was signed and made returnable for August 19, 1986 at which time the parties made oral argument.

The standards for issuing a restraint or order are well settled. The Charging Party must demonstrate a substantial likelihood of success on the merits of the entire charge and demonstrate that immediate irreparable harm will result if the requested relief is not granted.

The State does not dispute the factual allegations of the charging party. It admits that the Director of Higher Education adopted the Resolution in question and that the Chancellor did write to the SAC. However, it takes the position that this is a contract dispute between itself and the Union and, pursuant to the Commission's decision in State of New Jersey, Division of Human Services and C.W.A., P.E.R.C. No. 84-198, 10 NJPER 419 (¶15191,

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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; (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."

1984), this dispute is not an unfair practice and should be resolved through arbitration.

It also takes the position that the letter is no more than the views and opinions of the Chancellor to another independent body of the State and there is no obligation to provide such material to the Union.

At the outset, it must be emphasised that the State does not claim that the subject matter of the letter from the Chancellor to the SAC is confidential within the meaning of the Act, i.e., that the letter does not concern stratagies concerning negotiations or that this communication is otherwise privileged.

The contract between the parties provides:

> the STATE, the Department and College Administrations agree to furnish to the UNION in response to written requests and within a reasonable time, which where practicable will not exceed fifteen (15) work days, information which is relevant and necessary to the negotiating of subsequent agreements; and to furnish a semi-annual register of personnel covered by the Agreement with their home addresses and department or other academic unit wherein such personnel are employed; and to furnish all publicly available information including published agendas and minutes of the Board of Higher Education and Boards of Trustees proceedings, published texts of resolutions and special reports affecting higher education; budgets and such other relevant publicly available information that shall assist the UNION in developing intelligent, accurate, informed and constructive programs.

The New Jersey Supreme Court in IFPTE, Local 195 v. State of New Jersey, 88 N.J. 393 (1982) held that regulations which

expressly set terms and conditions of employment will pre-empt negotiation over those issues. The SAC does promulgate regulations concerning salaries and those regulations can pre-empt negotiations. State of N.J., UMDNJ and Council of AAUP Chapters, P.E.R.C. No. 85-106, 11 NJPER 290 (¶16105 1985), mot. for recon. P.E.R.C. No. 86-7, 11 NJPER 452 (¶16158 1985), aff'd App. Div. Dkt. No. A-11-85T7.

Here, the Chancellor could possibly take a position before the SAC which is at variance with the agreement arrived at in negotiations; if the SAC is influenced by the Chancellor and promulgates regulations in accord with the Chancellor's position, such a result would effectively frustrate negotiations. As an example of this dilemma, if the Union gives up something in negotiations in order to insure high level salaries, while at the same time the SAC promulgates a rule capping salaries, the Union would have given something up while effectively getting nothing in return.

Contrary to the position of the State, Human Services, supra, is not controlling here. The State's defense is not in accord with the plain meaning of the contract. The provisions of Paragraph C are broad-based and require that the State provide "information which is relevant and necessary to the negotiations of subsequent agreements." Failure to follow that provision here, may constitute a repudiation of the contract.

Moreover, independent of the contractual provision, it is a "fundamental principal [in labor relations] that the employer must furnish the union, upon request, sufficient information to enable it to represent employees in negotiations for future contracts and the administration of existing agreements." The Developing Labor Law, Cumulative Supplement, p. 177, BNA, Washington (1976). See also J.I. Case Co. v. NLRB, 253 F 2d 149, 41 LRRM 2679 (CA 7, 1958), enforcing as amended 118 NLRB 520, 40 LRRM 1208 (1957); Curtiss-Wright Corp., Wright Aero. Div. v. NLRB, 347 F 2d 61, 59 LRRM 2433 (CA 3, 1965), enforcing 145 NLRB 152, 54 LRRM 1320 (1963). As to the applicability of private sector precedent, see Lullo v. IAFF, 55 N.J. 409 (1970). The Commission has required an employee to furnish information as to the processing of grievances. Shrewsbury Bd. of Ed., P.E.R.C. No. 81-119, 7 NJPER 235 (1981).

There is no way at this juncture to presume what the Chancellor's recommendations to the SAC were or what his recommendation will be during the ongoing negotiations.

To the extent that the Chancellor's letter addressed areas that are terms and conditions of employment, the Union has a right to know of these recommendations, for such recommendations may be implemented as regulations by the SAC. Moreover, such knowledge is of significance only as long as negotiations are in progress; once a contract is signed it would be impossible to fashion a meaningful remedy. If the Chancellor has made effective recommendations on

areas which would impact on terms and conditions of employment and those recommendations are implemented as regulations by the SAC, then the harm would be irreparable. The Union here would meet the two fold test for granting interim relief. As to the sensitivity of the time period of negotiations, See Galloway Twp. Bd. of Ed. and Galloway Twp. Ed. Assn., 78 N.J. 25 (1978).

To effectuate fully the Legislative policy of protecting the negotiations process, while at the same time ensuring the proper discharge of the Chancellor's duties to allow otherwise frank interchange between sister agencies, a balance must be struck. In this particular instance, I do not believe that the verbatim contents of the Chancellor's letter must be submitted to the Union. However, information, pursuant to Paragraph C, that is relevant "and necessary" to the Union for negotiations must be disclosed to the Union. In balancing the equities, such disclosure would cause only a minor inconvenience to the State, while the lack of information could frustrate the negotiations process.

Accordingly, it is ORDERED that during the course of the negotiations between the Union and the State, the State must keep the Union apprised of all recommendations by the Chancellor, the State Department of Higher Education or the state colleges to the

Salary Adjustment Committee concerning recommendations for that body to enact regulations on matters which otherwise are terms and conditions of employment.

Edmund G. Gerber
Commission Designee

DATED: August 22, 1986
Trenton, New Jersey