

I.R. NO. 91-25

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Respondent,

-and-

Docket No. CO-91-333

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

Charging Party.

SYNOPSIS

In an Application for Temporary Restraints brought by the Council of New Jersey State College Locals, NJSFT-AFT/AFL-CIO ("AFT") against the State of New Jersey, a Commission Designee declines to restrain the State from implementing the Early Retirement Incentive Program for State employees (Chapter 137), given the narrow area of negotiability (Pension statutes are not negotiable. N.J.S.A. 34:13A-8.1) and the voluntary nature of the program, the AFT did not show the harm was irreparable and it had a substantial likelihood of success.

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Appearances:

For the Respondent, Robert J. DelTufo, Attorney General  
(Melvin E. Mounts, Deputy Attorney General)

For the Charging Party, Dwyer & Canellis, attorneys  
(Paul J. Burns, of counsel)

INTERLOCUTORY DECISION

On June 4, 1991, Council of New Jersey State College Locals, NJSFT-AFT/AFL-CIO ("AFT") filed an unfair practice charge against the State of New Jersey (Office of Employee Relations) ("State"). The charge alleges that the State violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), when after the enactment of C.137, L.1991, the Early Retirement Incentive Program for State employees (Chapter 137), the AFT demanded negotiations with the State and submitted a list of negotiations proposals. It also demanded that the implementation of the program be delayed pending the completion of negotiations. The AFT further alleged the State refused to delay the implementation of the program, did not supply written counter proposals and claimed

the majority of the AFT proposals were non-negotiable. The AFT claims the State action constitutes a refusal to negotiate.

The AFT also submitted an Order to Show Cause. The Order was executed and made returnable for June 14, 1991. A hearing was held and both parties had the opportunity to submit affidavits and other evidence, file briefs and argue orally.

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.<sup>1/</sup>

It is not disputed that the AFT and State met for negotiations on May 24 and May 31.

The AFT submitted a list of demands for negotiations (Appendix A). The State took the position that many of these demands are not negotiable and, since the statute specifically and expressly sets the implementation dates for employees to file for the program, the State could put off implementing the program.

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<sup>1/</sup> 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).

The State agreed to supply information as requested in proposals A and B (See Appendix A), but claimed that the balance of the proposals are substantive in nature and therefore are not negotiable.

At the hearing, the AFT argued that certain procedures unilaterally established at Glassboro State College and Kean College were mandatorily negotiable. Chapter 137 provides that if the College believes a faculty member who applies for early retirement is indispensable, the College may, with the consent of the faculty member, have that employee work one additional year and still qualify for the benefits of Chapter 137. Kean and Glassboro Colleges solicited the names of faculty members who wished to qualify for this program without negotiations with the AFT. At the hearing, State counsel stated that these Colleges had exceeded their authority and these programs would be abandoned.

The area of negotiations here is narrow. It is not disputed that Chapter 137 is a pension statute. The Act at subsection 8.1 provides that no provision of the Act shall "annul or modify any pension or statute of this state."

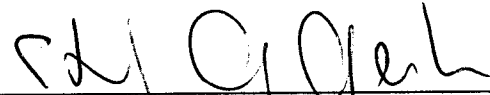
The N.J. Supreme Court held that:

The Legislature has determined that the entire subject matter of public employee pensions is to be insulated from negotiated agreements which would contravene or supplement its comprehensive regulation of that area. Public employees and employee representatives may neither negotiate nor agree upon any proposal which would affect the sacrosanct subject of employee pensions. [State v. State Supervisory Employees Assn., 78 N.J. 54, 93 (1978)].

Chapter 137's retirement program is a voluntary one and employees are not required to retire. Similarly, a College may ask an employee who wishes to retire under the program to stay on, but the employee is not required to do so. Given the narrow area of negotiability and the voluntary nature of the program, I find the AFT has not met its heavy burden.

The AFT's application is denied.

It is noted that neither party filed a scope of negotiations petition to determine the negotiability of the AFT demands. However, such a petition may expedite the processing of this matter. It could avoid an unfair practice hearing and allow the Commission to directly review the underlying issues of this case. Accordingly, I suggest the parties file a scope of negotiations petition.

  
Edmund G. Gerber  
Commission Designee

DATED: June 19, 1991  
Trenton, New Jersey

Appendix A

A. On or before June 3, 1991, the State shall provide a roster of the names and current home addresses of all employees eligible for early retirement incentives to the Union, together with specification of each such employee's age, years of service, veteran's status and retirement program.

B. Each eligible employee shall be notified in writing on or before June 3, 1991, of his or her eligibility and shall be informed as to which incentive he or she would be entitled. Such notice shall include information as to whether and to what extent the incentive will be subject to social security and income taxes and a copy of the Statute and this Agreement.

C. The deadlines for retirement application shall be the same as those currently in effect. The employee shall not be required to fill out any special forms to be eligible for the incentives.

D. An employee shall have the right to withdraw, cancel or change an application for retirement at any time before his or her retirement allowance becomes due and payable. (See N.J.A.C. 17:3-6.2).

E. As regards employees in the Alternate Benefit Program who retire and begin receiving Social Security benefits, the State shall inquire of the Social Security Administration as to the effect of the incentive payments on said benefits. The State shall disseminate all information received in writing to all employees who might be affected. If any lawful measures can be taken by the State, the Department, or the Colleges to minimize or eliminate diminution of Social Security benefits, these measures will be taken.

F. Prior to filing an application for retirement, employees eligible for an incentive may inquire of the College president in writing whether the College would delay retirement if an application of retire were filed. The president shall respond in writing to any such inquiry in writing within five (5) days of receipt. If a delay is contemplated, the president or designee thereof shall, upon request, meet with the employee to work out a mutually acceptable retirement date. Any agreement shall be reduced to writing and signed by the president and the employee prior to submission of the employee's application for retirement. Whether or not an agreement is reached, the employee shall reserve all his/her rights, including but not limited to the right not to retire, the right to rescind his/her retirement application, and the right to withhold consent to a delay.

G. For purposes of determining eligibility of employees participating in the Alternate Benefit Program for an early retirement incentive, employees whose salaries for an academic year are considered as a full year's compensation shall be given credit for service in the proportion that the time employed bears to the duration of the academic year, but not more than one year's credit shall be given during any consecutive 12 months.

H. For purposes of implementation of the Statute, "base annual salary at the time of retirement" is the annual salary set forth in the Agreement applicable to the range and step occupied by the employee on the date of retirement. The same figure shall apply to employees on leave with reduced pay or without pay and to employees working at a fraction of their regular salary rate.

I. Employees who have received an incentive shall be eligible for employment as part-time, adjunct or summer school employees at the applicable contractual part-time, overload or summer school rates.

J. The provisions of this Agreement and the Statute shall apply equally to all employees. There shall be no intimidation, interference or discrimination because of age, sex, marital status, race, color, creed, national origin, physical handicap or political activity, private conduct or union activity which is permissible under law and which does not interfere with an employee's employment obligation.

K. A grievance alleging a breach, misinterpretation or improper application of the terms of this Agreement or the Statute may be filed as a B(1) grievance and shall be processed according to the provisions of Article VII of the Master Agreement except otherwise set forth herein. Any grievance must be filed within 25 calendar days from the date on which the act which is the subject of the grievance occurred or 25 calendar days from the date on which the employee should reasonably have known of its occurrence. Step 2 of the grievance process will be bypassed and the grievance may be appealed from Step 1 to arbitration.