

P.E.R.C. NO. 95-41

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RUTGERS, THE STATE UNIVERSITY,

Respondent,

-and-

Docket No. CO-94-112

RUTGERS COUNCIL OF AAUP CHAPTERS,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies an appeal of D.U.P. No. 94-29 filed by the Rutgers Council of AAUP Chapters. In that decision, the Director of Unfair Practices refused to issue a Complaint based on an amended unfair practice charge filed by the AAUP against Rutgers, the State University. The charge alleges that the public employer refused to negotiate over terms and conditions of employment for a new series of clinical professor titles. The Commission finds that it appears that a new charge incorporates the allegations of the charge the Director dismissed as premature. Accordingly, whether a Complaint should have issued on the allegations in CO-94-112 -- allegations that are incorporated in the new charge -- is moot.

P.E.R.C. NO. 95-41

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RUTGERS, THE STATE UNIVERSITY,

Respondent,

-and-

Docket No. CO-94-112

RUTGERS COUNCIL OF AAUP CHAPTERS,

Charging Party.

Appearances:

For the Respondent, John B. Wolf, Employment and Labor Counsel

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

DECISION AND ORDER

On March 25, 1994, the Rutgers Council of AAUP Chapters appealed D.U.P. No. 94-29, 20 NJPER 161 (¶25073 1994). In that decision, the Director of Unfair Practices refused to issue a Complaint based on an amended unfair practice charge filed by the AAUP against Rutgers, the State University. The charge alleges that the public employer refused to negotiate over terms and conditions of employment for a new series of clinical professor titles.

The Director found that the employer had not yet created the positions and that the charge was premature. The AAUP contends that a Complaint should issue where a charge alleges that a public employer has refused to negotiate over negotiable aspects of a proposal to create titles. It further contends that it should not have to wait for implementation of the established term of "no tenure" for the new positions before it can seek a remedy. Finally, the AAUP contends

that the Director impermissibly engaged in factfinding when it rejected the allegation in the charge that the administration intended to implement its clinical faculty proposal "as is." It argues that it is for a Hearing Examiner, not the Director, to determine the truth of the allegations in the charge.

The employer responds that if an employer has not "established" a mandatorily negotiable term and condition of employment, it cannot be found to have violated the Act. Rutgers contends that since it had not done so, the Director correctly refused to issue a Compliant.

Before addressing the merits of this appeal, we note that the AAUP has since filed another unfair practice charge (CO-94-310). It appears to allege that Rutgers has created the disputed clinical faculty titles as non-tenure track positions. It further alleges that Rutgers has refused to negotiate over whether these positions are tenurable and over a cap on rank and salary. The charge states, in part:

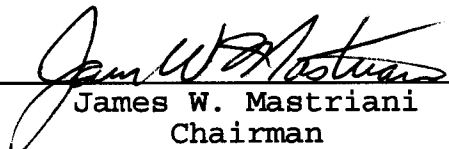
By withholding from the union its position that tenure for these jobs was nonnegotiable; by delaying even its willingness to engage in further discussion until March 29; by rushing to place the resolution adopting the nontenurable clinical series on the Board of Governors agenda for April 15, 1994; and by including in the resolution the provision "that nontenurable clinical appointments may be made immediately," the administration has denied the AAUP the benefit of its bargain and has impeded and blocked meaningful and timely access to contractually agreed-upon methods for dispute resolution.

It appears that the new charge incorporates the allegations of the charge the Director dismissed as premature. The Director issued a Complaint and Notice of Hearing on the new charge. Under these circumstances, it appears that the AAUP has both the opportunity to prove its allegation that Rutgers is now refusing to negotiate in good faith and the opportunity to prove its allegation that, given what has since happened, the alleged refusal to negotiate dates back to September 1993. Accordingly, whether a Complaint should have issued on the allegations in CO-94-112 -- allegations that are incorporated in the new charge -- is moot.

ORDER

The appeal is denied because of mootness.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Klagholz and Ricci voted in favor of this decision. None opposed. Commissioner Wenzler was not present.

DATED: December 16, 1994  
Trenton, New Jersey  
ISSUED: December 19, 1994