P.E.R.C. No. 90-101

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY (OFFICE OF EMPLOYEE RELATIONS),

Respondent,

-and-

Docket No. CO-H-88-36

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

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the State of New Jersey (Office of Employee Relations) violated the New Jersey Employer-Employee Relations Act when it refused to negotiate with the Council of New Jersey State College Locals, NJSFT-AFT/AFL-CIO over terms and conditions of employment that were no longer preempted by civil service laws.

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

Charging Party.

Appearances:

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

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

DECISION AND ORDER

On July 24, 1987, the Council of New Jersey State College Locals, NJSFT-AFT/AFL-CIO ("Council") filed an unfair practice charge against the State of New Jersey (Office of Employee Relations). The charge alleges that the State violated the New Jersey Employer-Employee Relations Act, specifically subsections 5.4(a)(1) and (5),[1/] when the State Board of Higher Education

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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" and "(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...."

proposed regulations concerning a State College Classification Plan and a State College Compensation Plan. The Council claims that the State had to negotiate over all mandatorily negotiable subjects included in the proposed regulations.

On August 27, 1987, a Complaint and Notice of Hearing issued. On September 9, the State filed its Answer admitting that the Board proposed the regulations, but claiming that the Board acted consistently with its statutory authority. It further claimed that the proposed regulations were only submitted for publication and that the charge was premature and moot.

On March 21, 1988, we affirmed Hearing Examiner Richard C. Gwin's denial of the State's motion to dismiss. We held that we have jurisdiction to consider a claim that proposing regulations constitutes a refusal to negotiate in good faith. State of New Jersey (Office of Employee Relations), P.E.R.C. No. 88-89, 14 NJPER 251 (¶19094 1988). In a motion for reconsideration, the State argued that challenges to the Board's action should be directed to the Appellate Division; the adoption of the regulations made the matter moot; the regulations do not set terms and conditions of employment, and the Council can present demands over negotiable subjects in successor contract negotiations. We found no extraordinary circumstances warranting reconsideration. P.E.R.C. No. 89-96, 15 NJPER 255 (¶20104 1989).

On June 6 and 7, 1989, Hearing Examiner Arnold H. Zudick conducted a hearing. The parties examined witnesses and introduced exhibits. At the end of its case-in-chief, the charging party moved

to amend the Complaint to allege that the Board's final adoption of the regulations without prior negotiations violated the Act. The Hearing Examiner denied the motion but ruled that the propriety of the entire rulemaking process, including the rule adoption, had been fully and fairly litigated and was appropriately before him for consideration. See Commercial Tp. Bd. of Ed., p.E.R.C. No. 83-25, 8 NJPER 550 (¶13253 1982), aff'd App. Div. Dkt. No. A-1642-82T2 (12/8/83). At the end of the hearing, the parties waived oral argument, but filed post-hearing briefs.

On December 5, 1989, the Hearing Examiner issued his report and recommendations. H.E. 90-26, 16 NJPER 57 (¶21028 1989). He found that the State violated the Act when it did not negotiate over mandatorily negotiable subjects while the Board was engaged in its regulatory activities. Since he found that no existing terms and conditions of employment had been changed, he did not recommend rescission of any adopted regulations. Instead he recommended that the State be ordered to negotiate over matters it agreed were mandatorily negotiable and, on demand, over whether there are additional regulations that should be limited to non-unit employees.

On December 28, 1989, the State filed exceptions renewing its jurisdictional argument. It also claims that it would be illegal for the State to negotiate now over whether there are additional regulations that should be limited to non-unit employees; the State did not regulate any items it agreed to negotiate; it did not change any terms and conditions of employment, and under the

parties' collective negotiations agreement, it had no obligation to negotiate during the term of the agreement.[2/]

On January 3, 1990, the Council filed exceptions. It claims that the adopted regulations change the appeal procedures for classification and reclassification determinations and that those procedures had to be negotiated.[3/] The Council urges rescission of those aspects of the regulations pending negotiations.

We have reviewed the record. The Hearing Examiner's findings of fact (H.E. at 6-19) are accurate. We incorporate them here.

We reaffirm our jurisdiction to decide whether regulations adopted by the State Board of Higher Education preempt negotiations. We may also decide whether proposing regulations constitutes a refusal to negotiate in good faith. See Council of New Jersey State College Locals, NJSFT-AFT/AFL-CIO v. State Bd. of Higher Ed., 91 N.J. 18 (1982); UMDNJ, P.E.R.C. No. 85-106, 11 NJPER 290 (¶16105 1985), recon. den. P.E.R.C. No. 86-7, 11 NJPER 452 (¶16158 1985), aff'd App. div. Dkt. No. A-11-851T7 (4/14/86); State of New Jersey (OER).

We next address the Council's only exception. Before the Autonomy Law, the classification system, including appeal procedures, for unit employees was established by civil service

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2/ The State requested oral argument. The issues having been fully briefed, we deny that request.

3/ Before the State College Autonomy Law, N.J.S.A. 18A:3-14 et seq., unit employees were covered by civil service laws and could appeal classification determinations to the Department of Personnel. The Board's procedures instead provide for appeals to the Chancellor of Higher Education.

laws. Pursuant to the Autonomy Law, the Board proposed and adopted an appeal procedure substituting the Chancellor for the Department of Personnel. The Council argues that the State had to negotiate before making that substitution. We disagree.

We will assume for purposes of this discussion that the review procedures in the contested regulations[4/] are otherwise mandatorily negotiable. Council accorded a presumed, but not absolute, preemptive effect to regulations of the State Board of Higher Education because of its role as an employer/regulator. The Court stated that the presumption of preemption could be overcome by demonstrating that the regulations were arbitrary, adopted in bad faith, or passed primarily to avoid negotiation on terms and conditions of employment. 91 N.J. at 28. It then listed these relevant factors:

> (1) the extent to which the regulation was consistent with or necessary to effectuate the agency's statutory authority; (2) the relationship between the regulation and the exercise of the agency's regulatory jurisdiction; (3) the scope of the agency's employer role; (4) the agency's rationale for adopting the regulation; (5) the circumstances under which the regulation was adopted; (6) the scope and composition of the class of employees affected by the regulation; (7) the basic fairness of the regulation to the employees affected; and (8) the extent to which the employees or their representatives had the opportunity to express their views on the regulation during its formative stages. [Id. at 28-29]

4/ N.J.A.C. 19:6A-3.1(b)(2), 3.3, 3.5 and 3.6.

Applying the Council factors to all the circumstances of this case, we are not convinced that the adoption of these procedures constituted an abuse of the Board's regulatory power. With respect to factors one and two, N.J.S.A 18A:64-6(h) provides that the Board shall prescribe qualifications for various classifications. The contested provisions provide for appeals of classification determinations. As a whole, the regulations directly effectuate the Board's statutory mandate. With respect to factor three, the Board's employer role was secondary in light of its regulatory obligation to adopt a comprehensive classification plan. With respect to factor four, the Board had sound reasons to adopt these appeal procedures. An appeal procedure had been an integral part of the civil service classification system and the Board sought to carry that principle over into its substitute regulations. With respect to factor five, the regulations were adopted after the parties agreed that civil service rules and regulations should be continued unless changed by negotiation or regulation. There is no indication that hostility to negotiations motivated their adoption. With respect to factors six and seven, the contested regulations establish an appeal procedure available to all unit members on an equal basis. They appear reasonable and fair.[5/] With respect to factor eight, the Council expressed its views during the adoption

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5/ We express no opinion as to whether alternative procedures might also have been reasonable and fair.

process (J-2(2)). The Board responded that the majority of the proposed new rules maintained the status quo and represented legitimate issues for the Board to determine through rules. The Board modified many sections of the proposed rules to affect only non-unit employees and stated that it anticipated negotiating with the Council over a wide range of other issues. 20 N.J.R. 90. Consequently, we hold that the Council has not rebutted the presumptive validity of the regulations establishing appeal procedures or proved that proposing the regulations, in light of the Board's attempts to avoid any impact on unit employees, was an unlawful evasion of negotiations.

We next address the State's remaining exceptions. We agree that to the extent the regulations validly preempt negotiations, the State is under no obligation to negotiate limitations on the scope of those regulations. But we do not agree that the parties' contract insulated the State from an obligation to negotiate over matters that were no longer preempted by civil service laws pursuant to the Autonomy Law. Article 31 of the parties' agreement provides:

> A. This Agreement incorporates the entire understanding of the parties on all matters which were the subject of negotiations. During the term of this Agreement neither party shall be required to negotiate with respect to any such matter except that proposed new rules or modification of existing rules governing working conditions shall be presented to the UNION and negotiated upon the request of the UNION as may be required pursuant to the New Jersey Public Employer-Employee Relations Act, as amended.

This provision bars negotiations over matters which were the subject of contract negotiations--not matters which were not the subject of negotiations because they were preempted. Once the Legislature determined that civil service laws no longer applied to these employees, the parties were free to negotiate over mandatorily negotiable subjects not preempted by another regulatory scheme. Accordingly, we find the State violated subsection 5.4(a)(5) and, derivatively, subsection 5.4(a)(1) when it refused to negotiate over terms and conditions of employment no longer regulated by civil service and not preempted by Board regulations.6/

ORDER

The State of New Jersey (Office of Employee Relations) 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 this Act, particularly by refusing to negotiate with the Council of New Jersey State College Locals, NJSFT-AFT/AFL-CIO over terms and conditions of employment that were no longer preempted by civil service laws.

2. Refusing to negotiate in good faith with the Council concerning terms and conditions of employment that were no longer preempted by civil service laws.

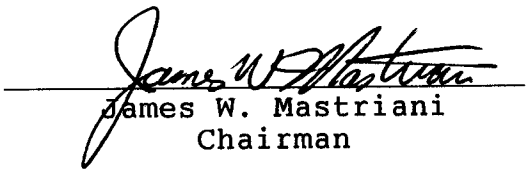
6/ The State conceded that a number of subjects were mandatorily negotiable and stated that it intended to negotiate over those matters during successor contract negotiations. Those negotiations have been completed. We express no opinion as to whether those negotiations fulfilled the State's negotiations obligation under our order.

B. Unless it has already done so, negotiate upon demand in good faith with the Council over mandatorily negotiable subjects not preempted by civil service or other laws and regulations.

C. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice shall, after being signed by the Respondent's authorized representative, be posted immediately and maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

D. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply with this order.

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: May 14, 1990
Trenton, New Jersey
ISSUED: May 15, 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 this Act, particularly by refusing to negotiate with the Council of New Jersey State College Locals, NJSFT-AFT/AFL-CIO over terms and conditions of employment that were no longer preempted by civil service laws.

WE WILL cease and desist from refusing to negotiate in good faith with the Council concerning terms and conditions of employment that were no longer preempted by civil service laws.

WE WILL negotiate upon demand in good faith with the Council over mandatorily negotiable subjects not preempted by civil service or other laws and regulations.

Docket No. CO-H-88-36

STATE OF NEW JERSEY

(Public Employer)

Dated: _____

By: _____

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 Street, CN 429, Trenton, NJ 08625-0429 (609) 984-7372

APPENDIX "A"

H.E. NO. 90-26

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

In the Matter of

STATE OF NEW JERSEY (OFFICE OF EMPLOYEE RELATIONS),

Respondent,

-and-

Docket No. CO-H-88-36

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

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends the Commission find that the State of New Jersey violated the New Jersey Employer-Employee Relations Act when it failed to negotiate with the Council over negotiable subjects while the State Board of Higher Education was engaged in its regulatory/rulemaking responsibilities.

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. 90-26

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

In the Matter of

STATE OF NEW JERSEY (OFFICE OF EMPLOYEE RELATIONS),

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-and-

Docket No. CO-H-88-36

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

Charging Party.

Appearances:

For the Respondent, Hon. Peter N. Perritti, Jr., Attorney General of New Jersey (Melvin E. Mounts, Deputy Attorney General, of counsel)

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

HEARING EXAMINER'S REPORT AND RECOMMENDED DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on July 24, 1987 by the Council of New Jersey State College Locals, NJSFT-AFT/AFL-CIO ("Council") alleging that the State of New Jersey (Office of Employee Relations) ("State") violated subsections 5.4(a)(1) and and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A.

34:13A-1 et seq. (Act).[1/] In Count I of the Charge the Council alleged that the State violated the Act by failing and refusing to negotiate, prior to approving a resolution for notification, over personnel regulations proposed by the State Board of Higher Education ("Board") setting terms and conditions of employment of full-time professional employees represented by the Council. In Count II the Council alleged that the State failed to negotiate over those proposed regulations affecting part-time employees which the Council had recently been certified to represent. Both counts request that the Board be ordered to rescind its resolution noticing the proposed regulations, stop public consideration of the proposed regulations, and negotiate with the Council about the regulations before implementation.

A Complaint and Notice of Hearing (C-1) was issued on August 27, 1987. The State filed an Answer (C-2) on September 9, 1987 admitting several facts, but denying having violated the Act. The State argued that proposing regulations for publication is within its statutory authority and did not violate the Act.

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."

Procedural Background

The Complaint and Notice of Hearing which issued on August 27, 1987 assigned the hearing to Hearing Examiner Richard Gwin and scheduled hearings for September 17 and 18, 1987. On September 8, 1987 the Council requested the opportunity to depose the Chancellor of Higher Education and sought the production of certain documents. The State opposed the request, and the Hearing Examiner cancelled the September hearing to resolve that issue and rescheduled the hearing for early October, 1987. On September 17, 1987 the Council filed a motion to compel the Chancellor's deposition and the State filed an opposing response on September 25, 1987.

On October 1, 1987 the State filed a motion to dismiss the Complaint and a request to stay the October hearing. The Hearing Examiner granted the stay request on October 2. In its motion the State argued that the Commission lacked jurisdiction to hear a challenge to the actions of a sister state agency (the Board); that only the Appellate Division had authority to invalidate regulations passed by a state agency; that the proposed regulations were authorized by Title 18A and developed to implement the State College Autonomy Law, N.J.S.A. 18A:64-1 et seq. ("Autonomy Law"); that the Charge was not ripe because the regulations had not been adopted; that the regulations will preempt negotiations when adopted; that the Charge is moot; and that the Council's requested relief cannot be granted. The Council opposed the motion and argued that the Commission had jurisdiction; that the case was ripe, the Charge not moot; and, that the regulations would not preempt negotiations.

On November 12, 1987 the Hearing Examiner issued an unreported decision (C-3). He treated the motion as a motion for summary judgment, and in reliance on Council of New Jersey State College Locals v. State Board of Higher Ed., 91 N.J. 18 (1982)(Council I), he concluded that the Commission had jurisdiction to hear disputes over the negotiations obligations of an employer/regulator such as the Board. The Hearing Examiner further concluded that the case was not moot, and that factual disputes existed warranting a hearing, thus he denied the State's motion.

On November 20, 1987 the State filed a request with the Commission for special permission to appeal the Hearing Examiner's decision and to further stay the hearing. The Chairman granted the requests. On March 18, 1988 the Commission issued a decision, State of N.J., P.E.R.C. No. 88-89, 14 NJPER 251 (¶19094 1988) (Council II), denying the State's motion and remanding the case to the Hearing Examiner. The Commission noted that although it lacked jurisdiction to review the validity or wisdom of either proposed or final regulations, pursuant to Council I, and UMDNJ and AAUP, P.E.R.C. No. 85-106, 11 NJPER 290 (¶16105 1985), recon. den. P.E.R.C. No. 86-7, 11 NJPER 452 (¶16158 1985), aff'd App. Div. Dkt. No. A-11-85T7 (4/14/86) (UMDNJ), it had jurisdiction to consider the alleged preemptive effect of adopted regulations.[2/] The

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2/ The Board formally adopted the proposed regulations on December 11, 1987. The State argued the adoption only affected its mootness argument.

Commission then concluded that it had jurisdiction to consider a claim that proposing regulations constituted a refusal to negotiate in good faith. Finally, the Commission held that a full record had to be developed to determine whether the rulemaking process followed here was an evasion of the States negotiations obligation.

On April 12, 1988 the State filed a motion requesting that this matter be held in abeyance pending its appeal of Council II to the Appellate Division. The motion was granted, but on November 17, 1988 a stipulation of dismissal was entered dismissing the appeal to the Appellate Division.

On February 3, 1989 the State filed a motion for reconsideration of the Commission's decision in Council II. The State argued that challenges to the Board's action should be directed to the Appellate Division; that adoption of the regulations made the matter moot; that the regulations do not set terms and conditions of employment; and, that the Council can present demands over negotiable subjects in successor negotiations. The Council filed a statement opposing the motion. Noting the lack of circumstances warranting reconsideration, the Commission denied the motion on March 9, 1989. See State of N.J., P.E.R.C. No. 89-96, 15 NJPER 255 (¶20104 1989) (Council III).

On April 18, 1989 Hearing Examiner Gwin issued an order rescheduling hearing for June 6 and 7, 1989. Pursuant to N.J.A.C. 19:14-6.1 this case was assigned to me on May 12, 1989 to conduct

the hearing and issue the decision. Hearings were held on the above dates.[3/]

Both parties filed post-hearing briefs, the last of which was received on September 13, 1989. Both parties filed reply briefs by September 29, 1989.

Near the end of the hearing on June 7, and after concluding its case, the Council moved to amend the Complaint to allege that the Board finally adopted and published the regulations without prior negotiations with the Council. The State opposed the motion. I denied the request to formally amend the Complaint, but held that testimony already on the record and relevant to the Charge would be considered (T123-T124).[4/]

Based upon the entire record, I make the following:

Findings of Fact

1. The State and Council were parties to a collective negotiations agreement (J-1) signed on October 21, 1986 but made effective July 1, 1986-June 30, 1989.

3/ Since the page numbering for the transcripts was continuous from June 6 to June 7 the transcripts will be referred to as "T" followed by the applicable page number. The June 7 transcript began with page 78.

4/ In its post-hearing brief the State indicated in a note that I refused to allow the amendment, and in its reply brief argued that this charge "concerns only" the regulations as noticed and that the Council never amended its charge regarding adoption of the regulations. The State's position apparently presumes that I limited this case to the events leading up to July 24, 1987. That was not the nature of my ruling. See the discussion in the ANALYSIS, infra.

J-1 contained the following pertinent articles.

Article XXI, Section A.1 (Salary and Fringe Benefit Agreement for July 1, 1986 to June 30, 1989)

> All salary adjustments will be made consistent with the provisions, practices and policies of the STATE and in accordance with the STATE Compensation Plan effective at the time.

Article XXXI, Section A (Maintenance and Implementation of Agreement)

> This Agreement incorporates the entire understanding of the parties on all matters which were the subject of negotiations. During the terms of this Agreement neither party shall be required to negotiate with respect to any such matter except that proposed new rules or modification of existing rules governing working conditions shall be presented to the UNION and negotiated upon the request of the UNION as may be required pursuant to the New Jersey Public Employer-Employee Relations Act, as amended.

Article XXXV (Applicability of Civil Service Rules and Regulations)

> The parties to this Agreement for the period July 1, 1986 to June 30, 1989 for the State Colleges Unit agree that the provisions of the State Compensation Plan and Civil Service Rules and Regulations, and the procedures provided therein, which establish terms and conditions of employment and which were applicable to the employees in the State College Unit on June 30, 1986, and which may have been or which may be affected by the enactment and application of A-1173 (S-1469) and A-1777 (S-1470) [The Autonomy Law] shall be continued unless changed by negotiation or regulation.

2. Negotiations leading to J-1 began in October 1985. The Autonomy Law, which became effective on July 9, 1986, removed professional members of the State Colleges' academic, administrative and teaching staffs from coverage under the Civil Service laws and empowered the Colleges to fix certain employee terms of employment in accordance with policies adopted by the Board. In anticipation

of the Autonomy Law the Council, on June 13, 1986 during negotiations leading to J-1, presented a comprehensive proposal to the State (CP-1) regarding terms and conditions of employment that were contained in the Civil Service regulations (T17). That proposal concerned various compensation issues as well as several other issues affecting employee terms and conditions of employment.

The State rejected that demand, preferring not to negotiate over specific items, and on July 10, 1986 submitted a counterproposal, CP-2, offering to apply the Civil Service Rules and Regulations until changes were made at which time it would negotiate over mandatorily negotiable subjects.[5/] The Council rejected CP-2, but on July 16, 1986 offered a new article (CP-3) proposing that the Civil Service Rules and Regulations be maintained unless changed by negotiation or regulation. That same day the State rejected CP-3 and offered CP-4 which was a revision of CP-3 and included two new sentences. The Council rejected CP-4, but on July 27, 1986, the parties agreed to CP-5 which was the language finally appearing in Article XXXV above.

After the Autonomy Law was passed, a transition team was appointed to deal with the issues that arose during the period when regulations were being developed to take the place of Civil Services

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5/ Also on July 10, 1986 the Chancellor of Higher Education sent the Board a memorandum (CP-8) concerning the transition from operating under the Civil Service system to full autonomy. The memo sought to establish a procedure for implementing autonomy, it discussed some specific areas that needed attention and recommended that a transition team be appointed.

rules and regulations. By letter of December 5, 1986 (CP-7), Jim Wallace, Chairman of the Transition Team, asked Judith Turnbull, the Board's Director of Employee Relations and Personnel Policies and a member of the Chancellor's staff, to chair the task force charged with developing a replacement to the Civil Service System. (T50-T57; T83-T91).[6/] No Council officials were on the task force or transition team.

3. On March 20, 1987 the Chancellor, T. Edward Hollander, sent the Board a report (C-1A) concerning the relationship between the State Colleges and the State Salary Adjustment Committee as a result of the Autonomy Law. The Chancellor also indicated that a draft of new regulations to replace the Civil Service regulations was being completed. In C-1A the Chancellor indicated that once a draft of the new regulations had been completed and comment solicited from groups including the AFT (the Council), the draft would be presented to the Board for adoption.

On March 23, 1987 the Chancellor sent a memorandum (CP-10 through CP-15) and a copy of the draft of the proposed regulations (affecting unclassified and non-aligned employees at the State Colleges) (J-4) to: Eugene McCaffrey, Commissioner of the Department of Personnel (CP-10 & J-4); Jean Bogle, Associate Counsel

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6/ During the first task force meeting a document entitled "Principles" (CP-9) was used to generate discussion (T86). The first item of CP-9 provided in pertinent part that the task force consider legal boundaries in establishing a framework for Board regulatory action including "contractual language."

to the Governor (CP-11); Michael Cole, Chief Counsel to the Governor (CP-12); Rich Keevey, Deputy Budget Director (CP-13); Frank Mason, Director, Office of Employee Relations ("OER") (CP-14); and Rick Mills, Special Assistant to the Governor for Education (CP-15). The memorandum provided in pertinent part:

> We are planning to present these regulations to the Board of Higher Education at its May meeting. Prior to that,we intend to disseminate this draft to various constituencies such as the State college presidents, the AFT union, and the Transition Team for review and input.

The Chancellor did not send the Council a copy of the draft regulations or solicit the Council's comments regarding the draft or input prior to June 1987 (T92, T100).

On April 6, 1987 Council President Marco Lacatena, citing the Chancellor's language in C-1A that he would solicit the AFT's input for the regulations, sent a letter (C-1B) to Frank Mason and the Chancellor demanding negotiations over the proposed new rules before they were established. Lacatena explained that soliciting comment was not sufficient to satisfy the negotiations obligation. The State did not respond to C-1B (T27), but Turnbull and the Chancellor discussed that letter and agreed to share the draft of the regulations with the Council prior to their being noticed by the Board (T94).

On May 6, 1987, in response to CP-10, McCaffrey sent a letter (CP-17) to the Chancellor explaining that they should review the draft regulations together before they were submitted to the Board. By memorandum on May 13, 1987 (CP-18) the Chancellor

responded to CP-17 and agreed to meet with the Commissioner before presenting the proposed regulations to the Board. Thus the regulations were not presented to the Board in May. By letter of May 15, 1987 (CP-19), George Pruitt, President of Edison State College, notified the Chancellor that all of the State College presidents were pleased with the proposed regulations and recommended that input from other sources be received in time so that the regulations could be presented to the Board for notification by its July meeting. Pruitt explained that the regulations should respond to those regulable issues, and reserve negotiable issues for the negotiations process, and that the presidents were prepared to negotiate negotiable issues.

On June 8, 1987 both the Chancellor and Turnbull sent out memorandums forwarding copies of the proposed regulations to interested parties for review and input. The Chancellor notified McCaffrey (CP-20) that the regulations would be reviewed by the Transition Team by June 30, 1987, and he notified the State College Presidents (CP-21) that final comments had to be received by June 24. Turnbull notified the Transition Team (CP-22) that comments would be received by June 24 so that the Team would consider the regulations on June 30, and she sent the following memorandum (C-1C) and a copy of the proposed regulations to Lacatena:

> The attached document represents the first phase of the work of the Task Force to Create a New Personnel System Under State College Autonomy. It is being offered for your review and input prior to submission to the Board of Higher Education for action.

> We invite your feedback and request that your comments be conveyed in writing or by other mutually agreeable arrangement to me by June 24th so that the task force may consider and incorporate it where possible.

Shortly after receiving C-1C Council representative Tom Wirth, telephoned Ed Evans of OER and told him the Council would not accept consultation or input as a substitute for negotiations and he renewed the Council's demand to negotiate. Evans did not make a commitment to engage in negotiations (T27).

By letter of June 23, 1987 (C-1D), Lacatena responded to C-1C and told Turnbull that review and input did not satisfy the State's negotiations obligation. He explained that several subjects, including grievance and appeal procedures, compensation, sick leave, vacation, and holidays were negotiable and that if the Board continued to proceed without negotiations the Council would pursue its legal rights. Lacatena renewed his demand to negotiate on all negotiable topics in the proposed regulations. By letter of June 24, 1987 (C-1E), Turnbull responded to C-1D and told Lacatena that she still wanted to "discuss" the regulations with him and that his input was helpful. She referred his demand to negotiate to OER.

By letter of June 30, 1987 (C-1F) Lacatena responded to C-1E and told Turnbull that in C-1B he had notified the Chancellor and OER of his demand to negotiate and that her referring the matter back to OER in C-1E was done in bad faith. Lacatena concluded with another demand to negotiate. After sending C-1F, Wirth again spoke to Evans and demanded negotiations. Evans did not agree to

negotiate, but responded by agreeing to hold a meeting on July 20, 1987 with the Council to discuss the negotiability of various topics (T28-T29).

Also on June 30, 1987 McCaffrey sent Hollander a memorandum (CP-23 and J-4) listing various problems he found in the proposed regulations. Then on July 1, 1987 McCaffrey and Richard Standiford, Director of the Division of Budget and Accounting, issued the new joint salary regulations (CP-6) pursuant to the annual State appropriations act.

On July 15, 1987 (J-4), Hollander responded to CP-23 and told McCaffrey that he would recommend the Board notice the regulations at its meeting on July 24, 1987. That same day (July 15) Hollander sent the Board the revised draft for the proposed regulations (C-1I and J-2(6)).

4. Between June 8 and July 20, 1987 there were no meetings between the State and Council (T97). On July 20, 1987 a meeting was held between the State, represented by OER and Board officials, and the Council, represented by Lacatena and Wirth. This meeting was not a negotiations session, it was a meeting to identify those subjects the Council believed were negotiable (T29, T101). The Council presented the State with a preliminary list of matters (C-1H) which it felt were negotiable dealing with the proposed regulations (T98). C-1H included the definition of various positions; grievance and appeal procedures concerning: classification and reclassification, and concerning salary

inequities; union representation on the State College Classification Advisory Board; assignment and reassignment of salary ranges to titles; the salary ranges and steps, increments and anniversary dates of the State College Compensation Plan; various salary related issues; sick leave issues; vacation and holiday issues; sick leave injury benefits; sexual harassment matters; and other issues. The State did not agree to negotiate over the items in C-1H. Mason, speaking for the State, indicated that some of the matters might be negotiable, but that the Board had a right to regulate in certain areas which was separate from its obligation to negotiate (T29). Mason indicated that the State would negotiate over the items it believed were negotiable, but that the Board was first going to exercise its right to regulate (T30).

During the hearing Turnbull responded to certain Council demands raised in C-1H. She explained that definitions in the regulations were limited to the regulations and not necessarily intended to apply to the definitions in the Council's contract (T106-T107); that the implementation of the State College Classification Advisory Board was only a formalization of what had already existed (T108-T109); that the language regarding the effective date of reclassification of positions was limited to managerial employees (T110); and that the State Compensation Plan would be adjusted in accordance with negotiations (T113-T114). But Turnbull also explained that there was a list of items that affect an employees salary and anniversary date, when they are promoted,

when they are reclassified, and when they have a lateral title change which the Board agreed were negotiable, but which it intended to negotiate over only in the next round of negotiations (T106).

At the end of the July 20 meeting, Turnbull gave the Council a copy of C-1I, the proposed regulations, and a copy of the tentative agenda for the July 24 Board meeting (C-1G) which included consideration of C-1I. The Council demanded that the consideration of C-1I be removed from the Board's July 24 agenda to allow the parties to negotiate, but Mason refused (T30). Later on July 20, Lacatena sent Mason a telegram (C-1J) demanding negotiations for all part-time employees.

On July 24, 1987 the Council asked the Board to table consideration of the draft regulations but the Board refused (T31). That day the Board approved the proposed draft of the new regulations for notification (T31). Later that day the Council filed the Charge.

5. On September 8, 1987 the proposed regulations were noticed in the New Jersey Register (J-2(5)). On September 21, 1987 a letter (J-2(4)) was sent on behalf on the State College Presidents to a Board official supporting the regulations. By letter of October 7, 1987 (J-2(2)) Lacatena argued to a Board official that several parts of the proposed regulations dealt with negotiable items including salaries, increments, appeal procedures, and more. The specific examples that he argued were negotiable included the "proof of illness" provisions in the proposed regulations; the

proposed appeal procedures concerning classification and reclassification of positions; salary inequities and title reevaluation requests; the proposed regulations dealing with sick leave accrual and vacation leave after resignation or retirement; proposed rules affecting reporting illness, unauthorized absence; and others. Lacatena urged the Board not to adopt the regulations that applied to employees in the Council's unit, and urged the Board to negotiate over negotiable issues.

On October 14, 1987 Hollander sent McCaffrey a memorandum (J-2(1) J-4(1)) confirming their agreement over the proposed regulations.

Hollander indicated, however, that while all matters pertaining to college employees formerly under civil service would now reside with the Board, sick leave injury affecting employees in the Council's unit would continue under the old regulations until a new contract was negotiated.7/

By letter of November 10, 1987 (J-2(2A)) Turnbull responded to Lacatena's October 7th letter. Turnbull rejected the accusation

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7/ The pertinent language in J-2(1) provides:
> The only exceptions will be the sick leave injury program for AFT bargaining unit members which will remain in force in civil service until we negotiate the new contract and the lump sum sick leave payout option currently available through the Department of Personnel. Employees currently eligible for participation in the latter program will continue to be eligible under your [Civil Service] regulations.

that the Board violated its duty to negotiate, rather, she emphasized that the Board anticipated negotiations with the Council over many issues. Turnbull also responded to the Council's specific examples of negotiable items. She explained that use and verification of sick leave and unauthorized absence have always been applied to unclassified employees; that classification and reclassification of positions, salary inequities and title reevaluation requests are the same as they had been; and accrual of sick leave and vacation leave after resignation or retirement would be clarified to apply only to non-unit employees.

On November 12, 1987 Hollander sent the Board members a memo and a copy of the revised draft of proposed regulations (J-2) which were being recommended for final adoption (T68). The memo contained several specific references to concerns raised by the Council. J-2 indicated that the Council believed that several proposed regulations dealt with terms and conditions of employment and that they were proposed in bad faith. The memo explained that in response to Council concerns many parts of the proposed regulations were modified to apply only to non-unit employees.

For example, proposed regulations related to title reevaluations, sick leave, vacation leave and holidays were limited to either managerial employees or employees not in negotiation units. Some regulations applied on condition it was permitted under a collective agreement J-2 (pp. 5 and 6). The memo (J-2) essentially limited the extent to which the regulations applied to the Council's unit. The pertinent language in J-2 is as follows:

Further, with respect to the specific examples in these regulations offered by the AFT as terms and conditions of employment which must be negotiated such as salaries, increments, anniversary dates, and sick leave, it is clear that the regulatory language applies either exclusively to managerial and non-bargaining unit employees or is part of the overall personnel structure authorized by the State College Autonomy Law. The other areas cited such as penalties for misconduct, non-discrimination and protection of employees against sexual harassment are areas of managerial policy and a responsibility of the Board to establish guidelines for all of the institutions under its jurisdiction.

Finally, with respect to AFT assertions of modifications to the status quo of affected employees, many of the examples offered are, in fact, wholly consistent with past practice and have always been applicable to employees in the unclassified service. Examples of this are the sections dealing with the use and verification of sick leave (5.2(b), (c), and (d)).

With respect to the proposed appeal procedures concerning classification and reclassification of positions, salary inequities and title reevaluation requests (Sections 3.1(b)(2), 3.3, 3.5 and 3.6) which the AFT asserts are entirely new, in fact the procedures are essentially unchanged except that the Chancellor is the final level of review rather that the Department of Personnel.

The AFT also cites the sections dealing with accrual of sick leave and vacation leave after resignation or retirement (Section 5.3(c) and 5.6(d) as being modifications of the status quo. In response to the union's concerns in these areas, we are recommending that these sections be clarified to apply only to non-bargaining unit employees. We are also recommending other clarifications to the proposed regulations in response to issues raised by the AFT in our meetings with them. We will highlight those changes later in this memo.

On November 20, 1987 Lacatena submitted an open letter (J-3) to the Board vehemently opposing adoption of the new regulations without negotiations, particularly over salaries.

Nevertheless, on December 11, 1987 the Board finally adopted the rules and regulations set forth in J-2(5) as modified by the clarifications in the J-2 memo.

Despite the demands to negotiate made by the Council, and despite the State's position that there were some matters appropriate for negotiations (T46, T106), the State did not negotiate with the Council over any of the matters it agreed were negotiable or over proposed regulations before either notification or final adoption by the Board (T45, T103).

ANALYSIS

The State violated subsection 5.4(a)(5) of the Act by failing and refusing to negotiate with the Council over certain terms and conditions of employment related to the regulations but which the State acknowledged were negotiable. The State raised several legal arguments including jurisdiction, ripeness, pre-emption and waiver, to support its contention that the Complaint should be dismissed. But those arguments were not persuasive. Here the State and Board admitted that there were issues related to the proposed regulations that were negotiable, yet the State refused or ignored the Council's demands to negotiate over those (and other) issues prior to ratification or final adoption of the regulations. The Board's regulatory responsibility to implement the Autonomy Law did not insulate it from meeting its negotiations obligations required by the Act.

The Charge and Attempted Amendment

The Charge was filed on July 24, 1987, the day the Board voted to notice the proposed regulations. The Charge, thus, only alleged that the State violated the Act by refusing to negotiate prior to approving a resolution for notification. The Charge was silent with respect to the final adoption of the regulations. Nevertheless, throughout the hearing neither party sought to limit the introduction of facts to those events occurring up to and on July 24, 1987. Rather, the parties fully litigated the facts leading up to the Board's final adoption of the regulations.

In Council II, the Commission held that in order to determine whether the instant rulemaking process was an evasion of negotiations required the development of a record and careful review of the facts. Id. at 253. The rulemaking process involved here did not end on July 24, nor did the Council's demand to negotiate and the State's refusal end on July 24. The rulemaking process began with the creation of the proposed rules J-4 on March 23, 1987, through notification of J-4 on July 24, and ended with final adoption of J-2(5), as clarified by (J-2), the revised proposed regulations, on December 11, 1987. It is necessary to consider the entire rulemaking process in deciding whether the State evaded its negotiations obligation, and if so found, to determine the appropriate remedy. I rejected the Council's formal request to amend the Complaint after it had completed its case only because it was procedurally inappropriate. However, I indicated that all of

the evidence would be considered. Given the fact that the events from July 24 through December 11, 1987, were fully and fairly litigated, Commercial Tp. Bd. of Ed., P.E.R.C. No. 83-25, 8 NJPER 550 (¶13253 1982), aff'd App. Div. Dkt. No. A-1642-82T2 (12/8/83), and that they were and are an integral part of the rulemaking process, I find that whether the State violated the Act up through the adoption of J-2 is appropriately before me for consideration.

The Jurisdiction Issue

The State argued that the Council, in its Charge, was challenging the Board's authority to pass a resolution noticing the proposed rules, and that only the Appellate Division, not the Commission, had jurisdiction to review such challenges. The Board's argument is not an accurate characterization of the Council's position. The Council argued that the State refused to negotiate over certain terms and conditions of employment prior to passing the resolution for notification. It did not challenge the Board's general authority to pass such resolutions, it only alleged that the Board failed to negotiate over what it believed were negotiable matters.

In Council I, the Supreme Court recognized that an agency such as the Board which is both a regulator and an employer could unlawfully use its regulatory power to insulate itself from its negotiations obligations. The Court said:

> When an agency performs dual roles as both regulator and employer, the possibility exists

> that the agency could use its preemptive regulatory power in an abusive or arbitrary manner to insulate itself from negotiations with its employees. The mere potential for such abuse is not grounds in and of itself to hold that preemption does not apply to regulations promulgated by such agencies. However, that possibility raises serious questions about the soundness of any rule that would accord absolute and unqualified preemption to a regulation affecting terms and conditions of employment when passed by an agency qua employer to govern the employment terms and conditions of its own employees. To effectuate fully the legislative policy of protecting the rights of State public employees, while at the same time encouraging the proper discharge of statutory responsibilities by State agencies, the preemption accorded to administration regulations governing the employment of an agency's own employees must be qualified. [Id. at 27-28]

The Court held that such regulations are presumptively preemptive, but the presumption could be overcome by showing "that the regulations were arbitrary, adopted in bad faith, or passed primarily to avoid negotiations on terms and conditions of employment." Id. at 28. See Council II, 14 NJPER at 253. Relevant factors to determine whether the presumption could be overcome include:

> (1) the extent to which the regulation was consistent with or necessary to effectuate the agency's statutory authority; (2) the relationship between the regulations and the exercise of the agency's regulatory jurisdiction; (3) the scope of the agency's employer role; (4) the agency's rationale for adopting the regulation; (5) the circumstances under which the regulation was adopted; (6) the scope and composition of the class of employees affected by the regulation; (7) the basic fairness of the regulation to the employees affected; and (8) the extent to which the employees or their representatives had the opportunity to express

> their views on the regulation during its formative stages. [Council I at 28-29]

The Commission applied those factors in UMDNJ.

The jurisdiction issue regarding this case has already been presented to the Commission and in Council II, the Commission held that it had jurisdiction. There is no basis for me to recommend a contrary result. The Commission held:

> Given our exclusive jurisdiction to review alleged refusals to negotiate and UMDNJ and AAUP, we have jurisdiction to develop a record on the Council factors and to consider the alleged preemptive effect of adopted regulations. See also Bernards Tp. Bd. of Ed. v. Bernards Tp. Ed. Ass'n, 79 N.J. 311, 316 (1979) (Commission's duties require reviewing other statutes). We stress that our unfair practice jurisdiction does not extend to reviewing a regulation's validity or wisdom directly. We limit ourselves to resolving whether the employer's duty to negotiate over terms and conditions of employment has been partially or wholly displaced. Compare State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984) (a mere breach of contract is not an unfair practice, but Commission may consider contract issues relevant to a party's negotiations obligations). (footnote omitted).
>
> We now consider whether our unfair practice jurisdiction permits us to entertain a claim that proposing regulations constitutes a refusal to negotiate in good faith. We answer this question yes.
>
> The Council case worried that an agency could abuse its regulatory power to insulate itself from negotiations. That concern exists when an employer/regulator proposes regulations as well as when it adopts them. Committing terms and conditions of employment to the rulemaking process rather than the negotiations table may have a present and adverse effect on an employee organization's authority as exclusive representative. Lullo v. IAFF, 55 N.J. 409

> (1970). Thus, we decline to hold that we never have unfair practice jurisdiction to consider an alleged refusal to negotiate based in part on proposed regulations involving terms and conditions of employment.
>
> 14 NJPER at 253.

The Ripeness Issue

The State argued that the Charge was not ripe because it was filed before the rulemaking process was completed; because the Commission lacks the authority to intrude on an agency's rulemaking authority; and because the Council did not amend its Charge after final adoption of the rules. Those arguments were not persuasive.

First, in Council II, the Commission held that it has jurisdiction to determine whether proposing regulations constitutes a refusal to negotiate in good faith. Id. at 253. Second, pursuant to Council I, the Commission has the authority to determine whether the Board is using its rulemaking authority to avoid its duty to negotiate, and third, I have already held that this case includes consideration of the facts through the adoption process.

The Preemption Issue

In Council I, the Court clearly held that regulations passed by an agency which is both a regulator and employer, are presumptively preemptive, but it also explained that the presumption can be overcome. Here, the issue is whether the Board used its rulemaking authority to avoid negotiations, and I find that, to a certain extent, it did.

The Merits

In UMDNJ the Commission applied the Council I factors and found that regulations preempted negotiations over the number of salary cap exemptions, but did not preempt negotiations over the allocation of those exemptions. In a more recent case, State of N.J., P.E.R.C. No. 89-129, 15 NJPER 343 (¶20152 1989) (Council IV), the Commission held that travel policies and procedures were not "regulations" and, thus, were not preempted by regulation.

This case presents a different scenario. Here, the State/Board agreed that there were negotiable issues related to its rulemaking authority, yet it refused to negotiate over those issues while engaged in the rulemaking process. In so doing, the Board used its regulatory authority to evade its negotiations obligation.

Turnbull admitted that there were negotiable matters affecting employee salary and anniversary dates, when employees are promoted, reclassified and have lateral title changes. Mason also admitted that there were negotiable matters. But despite those admissions, both Turnbull and Mason avoided negotiations and insisted that the Board was first going to exercise its right to regulate. The State did not demonstrate any substantial reason why it could not negotiate, at least over those areas it conceded were negotiable, while still proceeding with its rulemaking authority. Thus, its actions violated subsection 5.4(a)(5) of the Act.

The Council's submission of C-1H and the State's own recognition of negotiable matters, resulted in the State making

several changes to the regulations previously noticed in J-4 to limit them to employees not in the Council's unit. Exhibit J-2(1), for example, indicated that the sick leave injury program for employees represented by the Council would remain the same until a new one was negotiated, and the clarification of regulations in the J-2 memorandum was intended to limit portions of the rules to managerial or non-unit employees.

Although the State may have modified the J-4 proposed rules in good faith to avoid unilaterally changing negotiable terms and conditions of employment affecting employees in the Council's unit, and although in the final analysis the State may not have actually changed any terms and conditions of employment, that does not excuse its refusal to negotiate with the Council over negotiable matters in the first instance. By refusing to negotiate with the Council both before notification and final adoption, the Council minimally lost the opportunity to convince the State -- within the negotiations process -- that there were other rules, or parts thereof, besides those listed in J-2, which should be limited to non-unit employees.

The Waiver Issue

In point three of its post hearing brief the State seemed to argue that Article 35 of J-1 operated as a waiver of the Council's right to negotiate over terms and conditions of employment that were to be regulated. That Article provided that existing rules and regulations affecting terms and conditions of employment

of employees represented by the Council would be continued unless changed by negotiation or regulation.

That language, however, is not a clear and unequivocal waiver of the Council's right to negotiate over negotiable terms and conditions of employment. Red Bank Reg. Ed. Ass'n v. Red Bank Reg. Bd. of Ed., 78 N.J. 122, 140 (1978); State of N.J., P.E.R.C. No. 77-40, 3 NJPER 78 (1977); Deptford Bd. of Ed., P.E.R.C. No. 81-78, 7 NJPER 35 (¶12015 1980), aff'd App. Div. Dkt. No. A-1818-80T8 (5/24/82). It merely recognizes that changes can only occur through regulation or negotiations. Terms and conditions of employment set or changed by regulations are not negotiable unless, as expressed in Council I, they were arbitrary, adopted in bad faith, or passed to avoid negotiations. Here, the issue is not really whether the State/Board changed terms and conditions of employment, because by the limitations in J-2 they may have avoided such changes. Rather, the issue is whether the Board unilaterally refused to negotiate over negotiable matters because of its insistence that it first adopt new regulations. I concluded that it did, and Article 35 could not be relied upon as a defense to its actions.

Remedy

The Council is not entitled to the remedy actually set forth in the Charge because that remedy was limited to the events leading up to the notification of the regulations. Since that time, the regulations were available for public consideration and final

regulations were adopted. Since the adopted regulations were limited as set forth in J-2, the Council did not establish at this hearing that the adopted regulations actually changed terms and conditions of employment affecting its unit members. Thus, the Council is not entitled to a remedy rescinding the final adoption of the regulations.

However, since the Council did show that the State unlawfully refused to negotiate over certain negotiable matters, the Council is entitled to a cease and desist order and an order to negotiate over the items the State concedes are negotiable. The Council is also entitled to demand negotiations over whether there are additional final regulations or parts thereof that should be limited to non-unit employees. Where the State agrees to the negotiability of additional matters they should be negotiated forthwith. Where the State disagrees as to the negotiability of additional matters, the Council may file a scope of negotiations petition to determine the negotiability of those matters.

CONCLUSIONS OF LAW

The State violated subsection 5.4(a)(5) and derivatively (a)(1) of the Act by:

Failing to negotiate with the Council over negotiable terms and conditions of employment while exercising its regulatory responsibilities.

Based upon the above findings and analysis, I make the following:

RECOMMENDED ORDER

I recommend the Commission ORDER:

A. That the State/Board cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly by failing to negotiate with the Council over negotiable matters while engaged in the regulatory rulemaking process.

2. Failing or refusing to negotiate in good faith with the Council over negotiable terms and conditions of employment while engaged in the rulemaking process.

B. That the State/Board take the following affirmative action:

1. Negotiate in good faith with the Council over those terms and conditions of employment it agreed were negotiable while it was engaged in the rulemaking process.

2. Negotiate with the Council on demand over whether there are additional final regulations or parts thereof that should be limited to non-unit employees.

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 Respondent's authorized representative, shall be maintained by it for at least sixty (60) consecutive days.

Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

4. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply herewith.

C. That the remaining allegations be dismissed.

Arnold H. Zudick
Hearing Examiner

DATED: December 5, 1989
Trenton, New Jersey

Recommended Posting
Appendix "A"

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 our employees in the exercise of the rights guaranteed to them by the Act, particularly by failing to negotiate with the Council over negotiable matters while engaged in the regulatory rulemaking process.

WE WILL cease and desist from failing or refusing to negotiate in good faith with the Council over negotiable terms and conditions of employment while we are engaged in the rulemaking process.

WE WILL negotiate with the Council over those subjects we conceded were negotiable while engaged in the rulemaking process.

WE WILL negotiate with Council on demand over whether there are additional final regulations or parts thereof that should be limited to non-unit employees.

Docket No. CO-H-88-36

STATE OF NEW JERSEY
(OFFICE OF EMPLOYEE RELATIONS)
(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.