P.E.R.C. NO. 72

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY
Public Employer
and
PATERSON STATE FEDERATION OF COLLEGE TEACHERS (N. J. FEDERATION OF TEACHERS/ A.F.T./AFL-CIO)
Petitioner
and
ASSOCIATION OF N. J. COLLEGE FACULTIES, INC.
Intervenor

Docket No. RO-210

STATE OF NEW JERSEY
Public Employer
and
JERSEY CITY STATE FEDERATION OF COLLEGE TEACHERS (LOCAL 1839, AMERICAN FEDERATION OF TEACHERS)
Petitioner
and
ASSOCIATION OF N. J. STATE COLLEGE FACULTIES, INC.
Intervenor

Docket No. RO-221

NEWARK STATE COLLEGE
Public Employer *
and
NEWARK STATE FEDERATION OF COLLEGE TEACHERS, LOCAL 2187, A.F.T.
Petitioner
and
NEWARK STATE COLLEGE FACULTY ASSOCIATION
Intervenor

Docket No. RO-424

MONTCLAIR STATE COLLEGE
Public Employer *
and
MONTCLAIR STATE FEDERATION OF COLLEGE TEACHERS, LOCAL 1904, A.F.T.
Petitioner
and
MONTCLAIR STATE COLLEGE FACULTY ASSOCIATION
Intervenor

Docket No. RO-425

STOCKTON STATE COLLEGE
Public Employer *
and
STOCKTON FEDERATION OF COLLEGE TEACHERS, LOCAL 2275, A.F.T.
Petitioner
and
ASSOCIATION OF N.J. STATE COLLEGE FACULTIES, INC.
Intervenor

Docket No. RO-464

RAMAPO COLLEGE BOARD OF TRUSTEES
Public Employer *
and
RAMAPO FEDERATION OF COLLEGE TEACHERS
Petitioner

Docket No. RO-470

STOCKTON STATE COLLEGE, MONTCLAIR STATE COLLEGE, JERSEY CITY STATE COLLEGE, WILLIAM PATERSON COLLEGE OF N. J., TRENTON STATE COLLEGE, GLASSBORO STATE COLLEGE, RAMAPO STATE COLLEGE, NEWARK STATE COLLEGE
Public Employers *
and
N. J. STATE FEDERATION OF TEACHERS, A.F.T., AFL-CIO, through various locals,
Petitioner
and
ASSOCIATION OF N. J. STATE COLLEGE FACULTIES, INC.
Intervenor

Docket Nos. RO-517, RO-518, RO-519, RO-520, RO-521, RO-522, RO-523, RO-524

DECISION AND DIRECTION OF ELECTION

The above-captioned matters were consolidated and transferred to the Commission by order dated November 17, 1972. Previously, and in accordance with an Order of Remand dated September 10, 1971 from the Public Employment Relations Commission, hearings were held before Hearing Officer Martin R. Pachman on October 27 and December 8, 1971 and February 3 and February 10, 1972. In accordance with Section 19:14-3 of the Commission's Rules and Regulations, the Executive Director designated Jeffrey B. Tener as Hearing Officer before whom the hearing was concluded on March 7, 1972. This hearing concerned the first two above-captioned petitions (Docket Nos. RO-210 & 221), filed by Locals of the American Federation of Teachers; the first petition sought to establish a separate unit for the faculty at Paterson State College; the second petition

* The Commission takes notice of the fact that the public employer of all the concerned employees of the State Colleges is the Governor as the Chief Executive Officer of the State as determined in Association of New Jersey State College Faculties, Inc. v. Board of Higher Education, et al, 112 N.J. Super 237 (Law Div. 1970).

sought to establish a separate unit for the faculty at Jersey City State College. At the hearing all parties were given an opportunity to examine and cross-examine witnesses, to present evidence and to argue orally. Briefs were submitted by each party by June 22, 1972. The Hearing Officer's Report and Recommendations was issued October 2, 1972. No exceptions were filed to the Hearing Officer's Report and Recommendations.

Based upon the record as developed in Docket Nos. RO-210 and RO-221 the Commission finds:

1. The State of New Jersey is the public employer of the public employees concerned herein and is a public employer within the meaning of the Act.

2. The Paterson State Federation of State College Teachers, the Jersey City State Federation of College Teachers and the Association of New Jersey State College Faculties, Inc. are employee representatives within the meaning of the Act.

3. The public employer has refused to grant recognition to the petitioners as the exclusive representatives for certain of its employees; therefore, questions concerning representation exist and the matter is appropriately before the Commission for determination.

4. The Hearing Officer found that separate units of faculty members at Paterson and Jersey City State Colleges were inappropriate and he recommended that those two petitions be dismissed. The Commission adopts that recommendation as well as the findings and conclusions underlying it. To the extent this disposition is inconsistent with the Commission's earlier decision, PERC No. 1, regarding appropriate unit at the State College level, that earlier decision is overruled. These two petitions (Docket Nos. RO-210 and RO-221) are therefore dismissed.

5. Held in abeyance pending disposition of the above two cases were four petitions filed by various locals of the American Federation of Teachers seeking to establish separate faculty units at Newark State College (Docket No. RO-424), Montclair State College (Docket No. RO-425), Stockton State College (Docket No. RO-464) and Ramapo State College (Docket No. RO-470). For reasons which will become apparent below these petitions no longer represent the position of the Federation and are hereby dismissed as being inconsistent with the Federation's current position. That leaves for disposition the last eight captioned cases above, Docket Nos. RO-517 through RO-524.

6. Simultaneous with the issuance of the Hearing Officer's Report, the American Federation of Teachers, through various locals, filed eight petitions seeking separate faculty units at each of the eight State Colleges. Subsequently, the Federation modified its position and asked that these eight petitions be considered as a single petition for a single faculty unit embracing all eight colleges. During the course of this proceeding it has been the position of the Employer and the Intervenor that a single statewide faculty unit for all eight State Colleges is appropriate. Thus, by virtue

of the Federation's modification above, the positions of all three parties are in harmony as to both the scope and composition of the unit. This result is also consistent with the sense of the Hearing Officer's further recommendation that an election be conducted in a single state-wide college faculty unit.1/

Accordingly, in agreement with the parties as supported by the Hearing Officer's Report and Recommendations, the Commission finds appropriate for collective negotiations a unit embracing all eight State Colleges, the composition of which is described as follows:

Included:
1. Full-time teaching and/or research faculty
2. Department Chairmen
3. Administrative staff (non-managerial)
4. Librarians
5. Student Personnel staff
6. Demonstration teachers
7. Professional Academic Support Personnel (holding faculty rank)

Excluded:
1. College President and Vice Presidents
2. Deans, Associate and Assistant Deans and other Managerial Executives
3. Secretarial staff
4. Maintenance staff
5. Bookstore, Food Service, etc. staff
6. Adjunct and part-time professional staff
7. Graduate Assistants
8. All others

DIRECTION OF ELECTION

A secret ballot election shall be conducted among the employees in the unit described above. Those eligible to vote are employees in the above unit who were employed during the payroll period immediately preceding the date below including employees who did not work during that period because they were out ill, or on vacation, or temporarily laid off including those in military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not reen rehired or reinstated before the election date.

1/ It was the Hearing Officer's opinion that the unit should extend to at least six of the eight colleges. He reserved on the inclusion of the recently established Ramapo and Stockton College faculties, concluding that the record was inadequate for a determination. But he did recommend that these two faculties vote subject to challenge. Because all parties now agree on the unit, there is no occasion for a blanket challenge to all voters from these two faculties.

The election shall be conducted as soon as possible but no later than 30 days from the date set forth below. Those eligible to vote shall vote on whether they desire to be represented for the purposes of collective negotiations by the N. J. State Federation of Teachers, AFL-CIO, by the Association of New Jersey State College Faculties, Inc., or by neither organization.2/

BY ORDER OF THE COMMISSION

John F. Lanson

John F. Lanson
Acting Chairman

DATED: November 30, 1972
Trenton, New Jersey

2/ Section 19:11-10 of the Commission's Rules and Regulations requires the posting of a notice by the public employer for at least ten (10) days and a certification to the Executive Director that this notice has been posted for the necessary time period. The period for intervention is related to the posting of this notice. The Executive Director has received a certification from the public employer that the notice in Docket Nos. RO-517 through RO-524 has been posted as of November 27, 1972. Accordingly, an employee organization which files a timely motion to intervene in this matter in accordance with Section 19:11-13 of the Commission's Rules and Regulations and supported by the requisite showing of interest will be permitted to appear on the ballot.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY, [1]

Public Employer

and

PATERSON STATE FEDERATION OF COLLEGE TEACHERS
(N. J. FEDERATION OF TEACHERS-A.F.T.-AFL-CIO)

Petitioner

Docket No. RO-210

and

ASSOCIATION OF NEW JERSEY STATE COLLEGE FACULTIES, INC. [2]

Intervenor

STATE OF NEW JERSEY [1]

Public Employer

and

JERSEY CITY STATE FEDERATION OF COLLEGE TEACHERS
(LOCAL 1839, AMERICAN FEDERATION OF TEACHERS)

Petitioner

Docket No. RO-221

and

ASSOCIATION OF NEW JERSEY STATE COLLEGE FACULTIES, INC. [2]

Intervenor

Appearances

Edward F. Ryan, Esquire
for the Public Employer
Thomas L. Parsonnet, Esquire
for the Petitioners
William S. Greenberg, Esquire
for the Intervenor

1/ The designation of the Public Employer is that which appears on the Order of Remand.

2/ The case caption has been amended in accordance with a motion made and accepted at the hearing.

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

BACKGROUND

Petitions were filed by the Paterson State Federation of College Teachers on November 9, 1970 and by the Jersey City State Federation of College Teachers on November 30, 1970 requesting certifications of public employee representatives. Pursuant to an Order Consolidating Cases and a Notice of Representation Hearing, a hearing was held before a Hearing Officer of the Commission on March 9, 1971. On April 30, 1971, the Report and Recommendations of the Hearing Officer issued. The Hearing Officer found that the petitions were timely filed and that the Commission rules on timeliness should not be applied liberally and he recommended that the matter be remanded in order to take evidence on the issue of the unit question. Timely exceptions were filed by the Public Employer and the Intervenors. On September 10, 1971, the Commission issued an Order of Remand. In accordance therewith, a Notice of Representation Hearing On Remand was issued September 30, 1971. Hearings were held before Hearing Officer Martin R. Pachman on October 27 and December 8, 1971 and February 3 and 10, 1972. By letter to the parties dated February 28, 1971 and in accordance with Section 19:14-3 of the Commission's Rules and Regulations, the Executive Director designated the undersigned as Hearing Officer in this matter. The hearing was concluded before the undersigned March 7, 1972. At the hearing, all parties were given an opportunity to examine and cross-examine witnesses, to present evidence and to argue orally. Briefs were filed by all parties by June 22, 1972, the agreed date for receipt of such briefs. 3/

3/ Exhibits introduced during the hearing conducted by Hearing Officer Golob were marked "E" for Employer, "I" for Intervenor, "P" for Petitioner and "C" For Commission. Exhibits introduced in the subsequent hearing before Hearing Officers Pachman and Tener were marked "II C" for Commission, "IIPE" for Public Employer, and "IIP" for Petitioner.

ISSUE

The above-mentioned Order of Remand dated September 10, 1971 specified the issue in this matter:

> IT IS HEREBY ORDERED that the above-named cases be remanded for the purpose of taking testimony with respect to the issue of what, on the facts in this case, constitutes an appropriate unit or units. For purposes of this remand order, the timeliness issue is considered closed. 4/

Accordingly, the Commission having already decided the issue of timeliness, the only issue before the undersigned concerns the appropriate unit or units.

POSITIONS OF PARTIES

The parties are in agreement regarding the composition of the negotiating unit or units. All parties stated on the record 5/ that they agreed with the unit description contained in Exhibit E-1 6/:

B. The employees included are:
1. Full-time teaching and/or research faculty
2. Department Chairmen
3. Administrative staff (non-managerial)
4. Librarians
5. Student Personnel staff
6. Demonstration teachers
7. Professional Academic Support Personnel (holding faculty rank)

The employees excluded are:
1. College President and Vice Presidents
2. Deans, Associate and Assistant Deans and other Managerial Executives
3. Secretarial staff
4. Maintenance staff
5. Bookstore, Food Service, etc. staff
6. Adjunct and part-time professional staff
7. Graduate Assistants
8. All others

Therefore, the sole issue relates to the scope of the unit.

4/ Order of Remand, September 10, 1971, p. 4.
5/ Tr. 395.
6/ Agreement Between the State of New Jersey and Association of New Jersey State College Faculties, Inc., pp. 1 and 2.

Petitioners seek separate units at Jersey City State College and Paterson State College. Their contention that each of the two colleges separately constitutes an appropriate unit is supported by several arguments: (1) the Public Employment Relations Commission, in P.E.R.C. No. 1, directed elections "...at each state college..."[7/] and, in accordance therewith, issued certifications to a majority representative at each of the colleges;[8/] (2) negotiations took place, in accordance with one of the aforementioned certifications, at Glassboro State College and resulted in an agreement signed on September 15, 1970 by the respective chairmen of the Glassboro State College Board of Trustees Negotiating Team and the Glassboro State College Faculty Association Negotiating Team;[9/] (3) the instant petitions were filed in November 1970 after the Glassboro agreement had been entered into and before any effort had been made to repudiate that agreement and prior to any effort by the Public Employer and the Intervenor to execute a contract establishing any different kind of unit;[10/] (4) at the time the instant petitions were filed, the extant units were separate and the determinations herein must be based upon the facts as they existed at the time of the filing of the instant petitions; there was no past history of anything other than separate units at the time the instant petitions were filed; (5) the contention that a single unit is appropriate is based upon considerations of employer convenience rather than upon the interest of the employees as the Act requires.

7/ In the Matter of the State Colleges of New Jersey, P.E.R.C. No. 1, April 9, 1969, p. 4.

8/ The certifications were issued in June and July, 1969. At this time, there were six state colleges: Trenton, Glassboro, Newark, Montclair, Paterson and Jersey City. There are now two additional state colleges: Ramapo and Stockton. This will be discussed below.

9/ Exhibit P-2 in evidence. This was a factor in support of Petitioner's contention that the instant petitions were timely filed. As counsel recognized in his brief, this issue has been resolved.

10/ See footnote above.

The position of the Public Employer is that the most or the only appropriate unit for the employees in question is a single unit of all those employees throughout all of the state colleges in the State. This position, given the structure of the state colleges within the Department of Higher Education, it is argued, is based upon the fact that the levels of effective control and decision-making are essentially at the Department of Higher Education concerning the significant items that are traditionally dealt with in collective negotiations. The degree of local autonomy is not sufficient to allow for meaningful bargaining at the local level. The Public Employer cites P.E.R.C. No. 50 [11/] as endorsing the concept of statewide units. It is the position of the Public Employer that the faculty members at the two new state colleges listed in footnote 2 above should be included within the single, statewide negotiating unit.[12/]

The Intervenor states that the only appropriate unit for the employees in question is a statewide unit. The unit should include all eight state colleges.[13/] Intervenor contends that P.E.R.C. No. 1 contemplated an arrangement such as developed between the Public Employer and the Intervenor which culminated in a single agreement.[14/] The Intervenor argues that the Glassboro agreement, referred to above, is consistent with the position. Thus, the Intervenor seeks a determination that a statewide unit is the appropriate unit.

SCOPE OF UNIT

The Commission is mandated to determine appropriate negotiating units

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11 State of New Jersey (Neuro Psychiatric Institute, et al), P.E.R.C. No. 50

12/ & 13/ The record indicates only a statement of positions regarding the two new colleges. (Tr. 19, 20, 24) There is not sufficient evidence in the record to permit a resolution of this ussue. However, it should be noted that petitions subsequently were filed on May 22, 1972 by Local 2275, Stockton Federation of College Teachers (Docket No. RO-464) and on June 12, 1972 by the Ramapo Federation of College Teachers (Docket No. RO-470). These matters have not been heard.

14/ Exhibit E-1.

"...giving due regard for the community of interest among the employees concerned..."[15/] This would seem to require considerable although less than total reliance on "community of interest".

In considering the community of interest among the employees sought in the instant petitions, a number of factors emerges from the record. First, there are currently eight state colleges in New Jersey. The general purpose of the state colleges, as specified in the statute, is to provide "...higher education in the liberal arts and sciences and various professions including the science of education and the art of teaching at such places as may be provided by law."[16/] Thus, the general purpose of all the colleges is the same. The Board of Higher Education, in accordance with statutory authority, is empowered to:

> Set policy on salary and fringe benefits, and establish general personnel policies for the public institutions of higher education. 17/

An examination of other powers and duties enumerated in this section of the statute reveals a very broad and comprehensive area of authority which the Board of Higher Education exercises over the colleges.[18/] This conclusion is buttressed by a review of the statute as it applies to the state colleges.[19/] While N.J.S.A. 18A:64-1 speaks in terms of "...a higher degree of self-government" for the colleges and that "...decentralization of authority...in the areas of personnel, budget execution, purchasing and contracting will enhance the ideal of self-government," N.J.S.A. 18A:64-6, Powers and Duties, provides:

> The board of trustees of a State college shall, subject to the general policies, guidelines and procedures set by the Board of Higher Education, have

15/ N.J.S.A. 34:13A-5.3
16/ N.J.S.A. 18A:64-1
17/ N.J.S.A. 18A:3-14(h)
18/ N.J.S.A. 18A:3-14
19/ N.J.S.A. 18A:64-1 et seq.

> general supervision over and shall be vested with the conduct of the college. /Emphasis supplied/

It is specifically provided that compensation and terms of employment shall be fixed:

> ...in accordance with salary ranges and policies adopted by the Board of Higher Education, and concurred in by the Governor which policies shall prescribe qualifications for various classifications and shall limit the percentage of the education staff that may be in any given classification.20/

The statutory limits placed upon the individual colleges are clear.

Second, the employees at Paterson State College and Jersey City State College are, in may respects, indistinguishable from employees at the other state colleges. The job titles sought by petitioners herein are not unique to those institutions but are found throughout the state college system.

Third, in accordance with the statutory provisions cited above regarding the power of the Board of Higher Education to set policy on salary and fringe benefits and to establish personnel policies, the Board of Higher Education adopted a document entitled "An Academic Personnel Policies Guide for New Jersey State Colleges."21/ The authority of the Board of Higher Education to adopt and implement such a guide is unquestioned and testimony of President Mullen of Jersey City State College (Tr. 144-148), President Olsen of Paterson State College (Tr. 269, 279, 280), and President Richardson of Montclair State College (Tr. 323, 348, 349) indicates acceptance of this fact by the three college presidents who testified. The Personnel Policies Guide is not just a general statement; it is a rather detailed guide covering, inter alia, a statement of tenure law, qualifications for rank, criteria for promotions, teaching

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20/ N.J.S.A. 18A:64-6(h)
21/ Exhibit II PE-1 in evidence.

load and leaves, sick leave, sabbaticals,[22] salary schedule regulations and retirement. In several of these areas - tenure and retirement - the Personnel Policies Guide refers to the appropriate statutes.[23] All employees at each of the state colleges have an interest in each of these matters and these interests would generally appear to be consistent.

Fourth, the employer of all the concerned employees of the state colleges is the Governor as the Chief Executive of the State. This matter was resolved in an action brought by the Intervenor against the Board of Higher Education.[24] Thus, all employees of the state colleges have a common employer. We shall return to this point below. As the Public Employer, the Governor issued Executive Order No. 3[25] and Executive Order No. 4.[26] These two orders resulted in the development of a centralized labor relations function established by the Employee Relations Policy Council and implemented by the Office of Employee Relations. Thus, the labor relations function has been highly centralized. Additionally, as Judge Feller discussed in the decision referred to above, the budget-making process is centralized, culminating in a submission by the Governor to the Legislature.

Fifth, in line with the above, the same salary schedule applies to all colleges. (Tr. 48) Thus, occupants of the same job title at the different

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22/ The President of Paterson State College testified that although the college adopted a policy on sabbaticals, this policy was superceded by order of the budget director and a request for a sabbatical leave was disapproved in Trenton even though there was sufficient money at the local level. (Tr. 273-275) In fact, sabbaticals were discontinued. (Tr. 289) Thus, the local policy could not stand when contrary to a policy from above.

23/ Because the authority of the Board of Higher Education to control such areas was uncontroverted, it is unnecessary to cite additional specific testimony in each of these areas.

24/ Association of N. J. State College Faculties, Inc. v. Board of Higher Education, et al 112 N.J. Super 237 (Law Div. 1970)

25/ Exhibit E-5 in evidence.

26/ Exhibit E-6 in evidence.

colleges are all on the same salary range. Additionally, approval to hire above a certain step on the salary range is beyond the capacity of the local colleges and must be approved by the Salary Adjustment Committee (Tr. 92). Such approval is not always granted (Tr. 437-438).

Sixth, the records reveals several other areas where things which affect employees at the state colleges are controlled at a level above the individual colleges: insurance and vacations are uniformly established throughout the State college system according to the uncontradicted testimony of the Vice Chancellor of the Department of Higher Education (Tr. 57). The same witness testified that the hours of work are uniform throughout the system although the load may vary depending upon circumstances (Tr. 85-86). Requests for out-of-state travel must be submitted to the Department of Higher Education where they are frequently rejected according to the unchallenged testimony of the special assistant to the chancellor for employee relations (Tr. 104-105). The same individual also testified that there is an appeals procedure concerning controversies over education law from decisions of local boards of trustees to the Chancellor and, if necessary, to the Board of Higher Education (Tr. 105). The number of hours per week or semester that a faculty member will be required to teach is subject to policies of the Board of Higher Education. (Testimony of President Mullen, Tr. 148) President Mullen also testified that no benefits are lost if a teacher transfers from one college to another (Tr. 156) although the record indicates that such transfers are uncommon. The Personnel Policies Guide covers this subject, also.[27/]

In summary, all of the state colleges are part of a highly centralized structure with the Governor as the employer at the top and with the Board of

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27/ Exhibit II PE 1, p. 15.

Higher Education which is authorized to establish policies concerning salaries, fringe benefits and personnel at all of the state colleges at a level below the Governor. The major areas of concern to employees qua employees are subject to the policies of the Board of Higher Education. These employees are all on the same salary schedule and ranges depending upon title. Pensions, insurance, vacation, sick leave, qualifications for promotion, evaluation procedure, tenure, etc. are uniform throughout the system.

This is not to say that the employees in question have no interests as employees that are within the control of the individual colleges. It is recognized that each college recruits, appoints, evaluates and promotes employees but these actions must be done in accordance with the minimum standards established by the Board of Higher Education. These standards provide precise requirements or their equivalent and each college determines equivalency (Tr. 64-65). The Vice Chancellor testified that each college can adopt its own personnel policies within the limits of the Board of Higher Education guidelines and subject to review by the Board of Higher Education (Tr. 34-35). President Mullen testified that the college presidents may permit faculty members to work less than a full load (Tr. 191). Paterson State College prepares its own calendar without regard to the calendars of the other colleges according to the President (Tr. 249). The President of Montclair State College testified that the length of classroom sessions is fixed locally (Tr. 430). The record also reveals that the number of days that a faculty member is required to be on campus varies somewhat between colleges e. g. three days per week at Paterson State College (Tr. 528) and four days per week at Jersey City State College (Tr. 501).

What emerges from the preceding rendition of components of community

of interest among the employees concerned herein is a highly centralized structure external to the individual colleges which sets, determines, and controls many major aspects of employment. Among the items set or regulated at a level superior to the individual colleges are the following: salaries, pensions, health insurance, requirements for hiring, requirements for promotion, the evaluation procedure applied to non-tenure faculty, tenure, work load, leaves of absence, approval of hiring above the third step on the salary range, sick leave, vacations, an appeals procedure to the Chancellor and ultimately to the Board of Higher Education from decisions of the local boards of trustees, transfer rights, and sabbaticals.

It is true that it is the local board of trustees, subject only to virtually automatic approval by the Civil Service Department and/or the Department of Higher Education, which decides whether to hire a particular applicant, retain him, or promote him but this action must be done in accordance with the policies and standards of the Board of Higher Education. The individual institutions also recruit candidates for employment in accordance with their needs and within the confines of their budgets. In addition, the local colleges can exceed the standards for hiring and promotion specified by the Board of Higher Education and personnel policies can be established at each institution subject to review by the Board of Higher Education. Each college establishes its own calendar as well as the lengths of classroom sessions. The number of days per week that a faculty member must be on campus is locally determined. Release time is worked out locally. These factors plus several others including the fact that the colleges are physically separate, that there is virtually no interchange between colleges, that the amended statute contemplated "...a decentralization of authority and decision-making to the boards of trustees and

administrators of the State colleges in the areas of personnel, budget execution, purchasing and contracting..."[28] convince the undersigned that there is an important function to be performed at the local level. Any statewide contract undoubtedly would require application, enforcement and administration at the local level initially.[29]

However, none of the above is inconsistent with the appropriateness of a statewide unit and, taken in toto, convinces the undersigned of the inappropriateness of individual units. Statewide negotiations might be supplemented by local negotiations on those items within the control of the separate institutions.

Several N.L.R.B. cases cited by Petitioner in support of its position presented facts which differ from the instant circumstances.[30] In one case, no union sought representation on a broader basis in contrast to the present case where the Intervenor not only seeks but already claims to be representing employees on a system-wide basis. In another case,[31] the Board found in favor of separate units upon concluding that to do otherwise would effectively deny employees an opportunity to be represented. Again, this does not square with the instant facts.

The conclusion reached herein is different from the decision of the

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28/ N.J.S.A. 18A:64-1

29/ The contract, Exhibit E-1 in evidence, which was signed by the Public Employer and the Intervenor subsequent to the filing of the two petitions herein provides for a grievance procedure in which the grievant first discusses his grievance with his department chairman or immediate supervisor, then presents it in writing to his dean or appropriate vice president, and then may appeal to the college president. Not until the fourth and fifth steps does the grievance leave the local institution if still unresolved. pp. 7 and 8.

30/ Sav-On-Drugs, Inc., 51 LRRM 1152

31/ Quaker City Life Insurance Co., 49 LRRM 1281

Commission in PERC No. 1 in which the Commission directed separate elections at each of the then six state colleges. In the opinion of the undersigned, the present conclusion is justified on several grounds. First, as noted earlier, in PERC No. 1, the Commission made a finding that the six colleges were public employers. This finding would seem to be inconsistent with the decision in Association of New Jersey State College Faculties, Inc. v. Board of Higher Education, et al, 112 N. J. Super 237 (Law Div. 1970).

Second, the decision in PERC No. 1 contained the following statement:

> However, nothing in this Decision shall be construed as precluding joint negotiations by some or all of the exclusive employee representatives with the New Jersey Board of Higher Education or with other appropriate authorities. (p. 5)

Additionally, the Hearing Officer stated that, "If an election to determine their choice of organization indicates identical choices at all colleges, a single unit would be the practical resut."[32/] Thus, both the Hearing Officer and the Commission foresaw the possibility of something other than separate local negotiations.[33/]

Third, one of the elements cited by the Commission in support of the conclusion that separate units are appropriate[34/] was the fact that the colleges are geographically separated. While this is still true, the Commission subsequently found appropriate several statewide units of employees in which the appointing authorities were far more numerous and scattered than in the instant matter.[35/] Thus, geographical dispersion is not controlling. We shall consider the decision in PERC No. 50 further shortly.

32/ Hearing Officer's Report and Recommendations, February 19, 1969, p. 7

33/ Exhibit E-1 in evidence indicates that, subsequent to the filing of the instant petitions a system-wide contract was signed by the Public Employer and the Intervenor.

34/ PERC No. 1, p. 2

35/ State of New Jersey (Neuro-Psychiatric Institute, et al), PERC No. 50

Fourth, the undersigned would accord greater weight to the policy control which the Board of Higher Education exercises over the colleges than did the Commission in PERC No. 1. Finally, the undersigned has concluded that the factors cited by the Commission in PERC No. 1 - a measure of local autonomy, day-to-day supervision from the individual colleges, and the fact that each college affects the tenure of its staff and each governs their working conditions - can be accommodated within the structure of a statewide bargaining unit; that is, these factors of interest to employees need not be ignored.

It is submitted that the conclusion herein is totally consistent with the decision of the Commission in PERC No. 50 where a very strong case was made for statewide units. As in PERC No. 50, it is the State of New Jersey which is the employer. In certain fundamental areas, benefits are established legislatively e.g. pensions. In both cases, the Governor must submit a budget which contains recommendations for economic benefits and which requires legislative authorization for implementation. Labor relations have been centralized in the Office of Employee Relations and the Employee Relations Policy Council in accordance with Executive Order No. 3 and Executive Order No. 4 as discussed above.

It might be useful to provide a rather lengthy quotation from PERC No. 50.

> No doubt, a kind of community of interest can be said to exist among blue collar employees at a single institution if for no other reason than because they perform similar duties at one location under the direction of a local administrator. But that does not negate the possibility of a stronger, broader and higher level of common interest which threads through various administrative units and which derives from the fact that employee terms and conditions in greatest measure are established by a central authority superior to the local administrator, in councils to which he is a

> stranger and in response to conditions and requirements that transcend the parochial. This "possibility" is, in fact, essentially the case here. To establish units which ignore this more substantial community of interest would, in effect, be an attempt to reform the administrative behavior of the Employer. One of the basic arguments advanced in support of separate institutional units is that local authority can effectively respond to the demands of a majority representative. Whether he can or not is almost academic in view of the fact that traditionally the principal terms and conditions of employment have been established outside the sphere of his authority and influence. 10/ Unit determination should not be the vehicle for attempted reform. Community of interest measures conditions as they are, not as they might be.
>
> 10/ The records disclose several occasions where employee organizations have been able to force, through the threat and/or fact of a strike, certain institutions or departments to accede to the demands of their employees. Other instances are offered to show that satisfaction of employee demands was achieved through legislative action. In their most favorable light, these situations are little more than aberrations. Generally, whatever gains were achieved for the employees involved in exerting the pressure resulted in favorable modifications for uninvolved employees who were nevertheless similarly situated.

That quotation appears to be as apposite in the instant matter as it was in its original context.

PERC No. 50 envisioned the possibility of a resolution of local frictions through local negotiations (assuming the existence of a majority representative). Again, that possibility exists in the instant matter.

In short, the logic of PERC No. 50 is applicable here. Those matters cited by the Commission in PERC No. 50 as being reserved to the Civil Service Commission have been assigned to the Board of Higher Education, subject to necessary approval from the Governor, in the case of the professional academic,

administrative and teaching staffs of the state colleges.

FINDINGS

Based upon all of the above and the record in its entirety, the undersigned finds:

1. The State of New Jersey is a public employer within the meaning of the Act[36/] and is subject to its provisions.

2. Paterson State Federation of College Teachers, Jersey City State Federation of College Teachers, and Association of New Jersey State College Faculties, Inc. are employee representatives within the meaning of the Act.

3. The State has refused to recognize either the Paterson or Jersey City State Federation of College Teachers as the exclusive representative for certain of its employees; therefore, a question concerning representation exists and the matter is appropriately before the undersigned for Report and Recommendations.

4. Giving "...due regard for the community of interest among the employees concerned,..."[37/] the undersigned finds that the units sought by Petitioners are inappropriate and that an appropriate unit for negotiating is one composed at least of six state colleges: Paterson, Jersey City, Newark, Montclair, Trenton and Glassboro.

5. The record as developed is inadequate for making a finding on the appropriateness of including Ramapo and Stockton State Colleges within the larger unit. However, as noted, the position of the Public Employer and the Intervenor is that these two colleges should be included.

36/ As noted above, this finding is contrary to the finding of the Commission in PERC No. 1 wherein it was found that the six State Colleges were public employers.

37/ N.J.S.A. 34:13A-5.3

6. The employees in the unit found appropriate have never had an opportunity to vote for a bargaining representative in that unit. The vote conducted in 1969 was for a representative of the group at each of the six colleges separately.

RECOMMENDATIONS

It is respectfully recommended that the instant petitions be dismissed. It is further recommended that an election be conducted among the employees of each of the six state colleges[38/] to determine whether they wish to be represented for purposes of collective negotiations in a statewide bargaining unit by the Association of New Jersey State College Faculties, Inc. or by a parent body, council, etc. of the petitioning locals of the American Federation of Teachers, AFL-CIO[39/] or by neither organization. It is recommended that the election be conducted in accordance with the Rules and Regulations of the Commission.

38/ Employees in inlcuded job titles at Stockton and Ramapo State Colleges should be permitted to vote subject to challenge unless the parties agree that the unit should include these employees. As noted in footnote 12 above, the Intervenor and Employer are on record favoring their inclusion. If the AFT affiliate agrees, then they presumably would vote without challenge.

39/ Section 19:11-19(b) provides a procedure whereby the AFT affiliate may remove its name from the abllot if it so desires.

ADDENDUM

The undersigned recognizes that the only petitions before him are the two petitions filed by AFT locals seeking representation at Jersey City State College and Paterson State College. Having found the units sought to be inappropriate and having recommended their dismissal, the Hearing Officer could have refrained from further findings, discussion, and recommendations. However, the situation seems to require more.

There are several reasons for this conclusion. First, the petitions in the instant matter were filed in November, 1970. This intermediate report is issuing in October, 1972, a lapse of twenty-two months. In the meantime, the Public Employer and the Intervenor have executed two collective bargaining agreements - one, Exhibit E-1 in evidence, signed February 5, 1971 covering the period from July 1, 1970 until June 30, 1972, and one signed May 4, 1972 extending that agreement to June 30, 1973.[40/] If that agreement is regarded as a second contract, then a petition, to be timely filed, would have to be filed 120 to 150 days before the budget submission date which falls within the contract term. It appears that, by the time this matter has been decided by the Commission, the period for timely filing will have lapsed and yet another agreement signed by the Public Employer and the Intervenor. This would extend for another year or perhaps longer the time during which a petition could not be timely filed or an election conducted.[41/] This, in the opinion of the undersigned, would have the unreasonable effect of denying the employees any

40/ The undersigned takes official notice of that agreement, a copy of which was received from the Director of the Office of Employee Relations as an attachment to a letter dated June 21, 1972 to the Executive Director. A copy of the contract was filed in accordance with N.J.S.A. 34:13A-8.2.

41/ See N.J.A.C. 19:11-15(c) and (d).

opportunity to express their preference for a majority representative until 1974 or later even though the last vote took place in May, 1969 when the voting was for representatives at each institution separately.[42/]

Second, as indicated above, the 1969 vote was for separate representatives at each of the state colleges. In view of the recommendation herein that the appropriate unit is not each college separately but is a single unit of the first six state colleges,[43/] the employees should have an opportunity to vote on their representative, if any, in the reconstituted unit.[44/]

Third, the Order of Remand specifically calls for "...taking testimony with respect to the issue of what, on the facts in this case, constitutes an appropriate unit or units."[45/] This mandate is broader than normal. In line with this is the position taken at the hearing and in the brief by counsel for the Intervenor whose brief concludes with the statement that, "For the reasons stated, the Association respectfully urges a determination that a unit composed of eight State Colleges is appropriate."[46/] This report meets that request to

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42/ That the AFT has a substantial interest in this matter is evidenced by the fact, to which official notice is taken by the undersigned, that in addition to the petitions covering employees at Jersey City and Paterson, other AFT locals have filed petitions at Newark (Docket No. RO-424) filed March 1, 1972, Montclair (Docket No. RO-425) filed March 1, 1972, Ramapo (Docket No. RO-470) filed June 12, 1972, and Stockton (Docket No. RO-464) filed May 22, 1972. These petitions are on file in the public docket maintained by the Executive Director in accordance with Section 19:11-11 of the Commission's Rules and Regulations.

43/ As noted above, the record is not adequate to determine whether the two new state colleges also should be part of the unit. As recommended, however, employees at these colleges could vote subject to challenge absent agreement of the parties to include them in the statewide unit.

44/ The representative of the locals of the AFT has not indicated an unwillingness to participate in such an election. As noted, Section 19:11-19(b) of the Commission's Rules and Regulations provdes a mechanism for the removal of a party from the ballot.

45/ Order of Remand, September 10, 1971, p. 4.

46/ Page 23 of Intervenor's brief, June 22, 1972.

the extent possible.[47]

Fourth, as recounted above, this matter has been unresolved for twenty-two months. A finding limited to the appropriateness of the two petitioned-for units would not resolve this situation. As noted on several occasions, the status of the two new colleges could be resolved by agreement of the parties or by the normal challenge procedure (with a subsequent hearing if challenges were determinative).[48] Also, as noted above, other locals of the AFT have filed petitions seeking certification at Montclair State College and Newark State College. Thus, dismissal of the two instant petitions alone would leave open four other active petitions covering employees similar to those sought herein. Resolution of these petitions would require additional time with the concomitant uncertainty and instability for employees as well as the employer. Because the record as developed herein is adequate, in the opinion of the undersigned, for a determination of the appropriate unit at the first six state colleges, it would be unfair to all parties, contrary to the policy of the Commission and inconsistent with the intendment of the statute--the promotion of employer-employee peace[49]-- to conduct duplicate hearings on this matter.

For all the foregoing reasons, the undersigned has not confined his findings and recommendations to the petitions at Jersey City and Paterson State Colleges.

Jeffrey B. Tener
Hearing Officer

DATED: October 2, 1972
Trenton, New Jersey

47/ The Public Employer contends that the petitions should be dismissed because the units sought are inappropriate in view of their merger into one unit.
(Continued)

47/ Continued
Even assuming that units once found appropriate can be rendered inappropriate when merged into a singel unit, the facts in this matter do not require such a finding for here, if the units have been merged, such merger was consumated in the form of a collective agreement in February 1971, several months after the filing of the instant petitions which the Commission previously found to have been timely filed. Behavior of other parties subsequent to the filing of timely petitions should not control. (See Midwest Piping and Supply Co., Inc. 17 LRRM 40 (1945) for support for this statement.)

48/ Petitions have been filed by locals of the AFT indicating their interest at these two colleges.

49/ N.J.S.A. 34:13A-2

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY
Public Employer 1/
and
PATERSON STATE FEDERATION OF COLLEGE TEACHERS
(N.J. FEDERATION OF TEACHERS - AFT-AFL-CIO)
Petitioner
and
ASSOCIATION OF NEW JERSEY STATE COLLEGE
FACULTIES, INC.
Intervenor

Docket No. RO-210

STATE OF NEW JERSEY
Public Employer
and
JERSEY CITY STATE FEDERATION OF COLLEGE TEACHERS
(LOCAL 1839, AMERICAN FEDERATION OF TEACHERS)
Petitioner
and
ASSOCIATION OF NEW JERSEY STATE COLLEGE
FACULTIES, INC.
Intervenor

Docket No. RO-221

APPEARANCES

Edward F. Ryan, Esq. of Newark, N.J., Special Counsel
and George F. Kugler, Jr., Attorney General of New Jersey
By Robert A. Goodman, Esq., Deputy Attorney General, of
Trenton, N.J. for the Public Employer

Parsonnet, Parsonnet and Duggan
by Thomas L. Parsonnet, Esq. of Newark, N.J. for
the Petitioner

Sterns and Greenberg
by William S. Greenberg, Esq. of Trenton, N.J. for
the Intervenor

REPORT AND RECOMMENDATIONS OF HEARING OFFICER

Pursuant to an Order Consolidating Cases and a Notice of Representation Hearing dated February 3, 1971 and an Order Rescheduling Hearing dated February 23, 1971, a hearing was held on March 9, 1971 before the undersigned. At the hearing the State of New Jersey, hereinafter called the State, and the Association of New Jersey State College Faculties, Inc.,

1/ See Association of New Jersey State College Faculties, Inc. v. The Board of Higher Education, et. al. 112 N.J. Super 237 (Law Division, 1970)

hereinafter called ANJSCF, moved to dismiss the instant petitions contending that the filings are barred by a certification bar. ANJSCF also contends that there is a recognition bar. The State also contends that petition should be dismissed because the units are inappropriate in view of the merger of the six individual units into a statewide bargaining unit.

The undersigned afforded the parties the opportunity to call, examine and cross-examine witnesses, to present evidence and to submit briefs on this procedural question. Decision was reserved. No evidence was accepted as to the unit question other than as to the State's contention that the petition should be dismissed as it was not for a recognized multi-college unit.

THE FACTS

The facts are not in dispute. They will be handled seriatim.

September 13, 1968 - Chapter 303, Laws of 1968, the New Jersey Employer-Employee Relations Act, was enacted.

December 18, 1968 Governor Hughes created a state employee relations policy council to deal with employee relations problems.

February 19, 1969, Commission Ad Hoc Hearing Officer Benjamin H. Wolf issued his Report and Recommendations in the Matter of the Representation Proceedings concerning the State Colleges of New Jersey recommending an election in each appropriate unit, which he found to be the full time professional staff at each individual State college. Mr. Wolf in his report states in part as follows:

> If an election to determine their choice of organization indicates identical choices at all colleges, a single unit would be the practical result.

April 9, 1969, the Commission issued its decision (PERC No. 1) affirming the Ad Hoc Hearing Officer's Report and Recommendations. The Commission also concluded that the appropriate negotiating unit was each individual college. No mention is made of the effect of one organization receiving the majority of the ballots cast in each unit other than stating that the decision does not preclude multiunit bargaining

May 8 and May 9, 1969 elections were held at each campus to designate the majority representative.

June 13, 1969, ANJSCF - Jersey City State College Faculty Association was certified by the Commission as the exclusive representative of the full-time professional staff at Jersey City State College for the purpose of collective negotiations.

July 14, 1969 ANJSCF - Paterson State College Faculty Association was certified by the Commission as the exclusive representative of the full-time professional staff at Paterson State College for the purpose of collective negotiations.

July 1969, ANJSCF was also certified as the representative at the other state colleges.

July 1969 ANJSCF formed a negotiating team composed of a representative of each college and a representative of ANJSCF and commenced bargaining with representatives of the New Jersey Board of Higher Education.

July 28, 1969 the parties agree to Article I Paragraph A of a proposed agreement. The clause states as follows:

Article I

A. The New Jersey Board of Higher Education hereby recognizes the Association of New Jersey State College Faculties representing the Faculty Associations of the below named colleges for the purposes of state-level negotiations for all members of the certified professional bargaining units of those colleges. Such negotiations shall include and be limited to those terms and conditions of employment for which the Board of Higher Education has statutory responsibility.

1. Glassboro State College
2. Jersey City State College
3. Montclair State College
4. Newark State College
5. Paterson State College
6. Trenton State College

August 29, 1969 - The Rules and Regulations and Statement of Procedure of the Commission took effect.

December 16, 1969 ANJSCF filed Notice of Impasse with Commission contending that an impasse exists in negotiations between it and the New Jersey Board of Higher Education. PERC Docket No. I-27.

January 1970 Governor Cahill succeeds Governor Hughes.

January 30, 1970 the Executive Director approves ANJSCF's request to withdraw the Notice of Impasse.

February 18, 1970 ANJSCF again files Notice of Impasse contending that negotiations have broken down and that impasse exists between it and the N.J. Board of Higher Education.

February 19, and March 7, 1970 parties negotiate with assistance of a mediator (PERC Docket No. I-172).

May 8, 1970 as the impasse was not resolved after mediation the Executive Director invoked fact-finding with recommendations for settlement. PERC Docket No. FF-87.

May 26 and May 27, 1970 fact-finding hearings took place.

June 7, 1970 the fact-finder's report was issued.

On June 25, 1970 the ANJSCF filed an action in lieu of prerogative writs in the Superior Court, requesting, among other things, summary judgment commanding the Board of Higher Education to meet at reasonable times and negotiate in good faith with the Association, seeking to enjoin Frank Mason, Director of the State Office of Employee Relations, from interfering with the negotiations between the Board of Higher Education, seeking a judgment declaring the Office of Employee Relations and the Governor's Employee Relations Policy Council to be illegal and void.

July 1, 1970 the Hay Report was issued.

September 15, 1970 Board of Trustees of Glassboro State College and Glassboro State College Faculty Association executed a memorandum of agreement. It does not include a salary schedule nor does it other than defining "faculty" including a recognition clause.

October 7, 1970 Judge Feller of the Superior Court of New Jersey, Law Division - Union County issued its decision in Association of New Jersey State College Faculties, Inc. v. The Board of Higher Education, et. al. supra. The gravamen of the case was ANJSCF's contention that the Board of Higher Education and not the Governor, the Chief Executive Office of the State of New Jersey, was the employer of the faculty at the respective State colleges. Judge Feller ruled against ANJSCF. He stated in part:

> The Board of Higher Education is not a legal entity, but rather it is one of the principal departments of the Executive Branch of said government. Furthermore, as is stated in Art.V sec. I,par. 1 of the Constitution, supra, each principal department shall be under the supervision of the Governor, so it is evident that the Governor of the State of New Jersey is the public employer of all public employees in any of the principal departments of the Executive Branch of the government which are under his supervision.

October 1970 negotiations commenced again now between ANJSCF and the State of New Jersey.

October 28, 1970 agreement was reached as to a preamble of a contract. It provided that the New Jersey Board of Higher Education recognizes ANJSCF as the bargaining agent for a state-wide college unit.

November 6, 1970 Paterson State Federation of State College Teachers, (N.J. Federation of Teachers - AFT, AFL-CIO) filed the petition docketed as RO-210.

November 30, 1970 Jersey City State Federation of College Teachers (Local 1839, American Federation of Teachers) filed the petition docketed as RO-221.

January 15 , 1971 Frank Mason, State Director of Employee Relations wrote ANJSCF Representative Haywood rejecting the validity of the 9/25 Glassboro memorandum of agreement.

February 3, 1971 the Executive Director of the Commission issues an order consolidating cases and a Notice of Representation Hearing.

February 5, 1971 ANJSCF and the State of New Jersey entered into a collective negotiations agreement, which provides for, among other things, recognition in a state wide state college unit.

II. POSITIONS OF THE PARTIES

A. Petitioner: Petitioner contends that the sole issue in the proceeding is the question of appropriate unit. It relies upon the Commission's decision in PERC No. 1 and contends that there has been no change in the administrative status or in the status of the faculties of the colleges since the adoption of PERC No. 1 and therefore PERC No. 1 should control the instant petition.

It also contends that 19:19-1 of the Commission's Rules and Regulations 2/ should not be applied as it would work an injustice or unfairness upon the petitioner and not the State or ANJSCF.

B. The State:

1. Certification bar. The State admits that under a strict reading of Section 19:11-15(b) of the Commission's Rules and Regulations there could not be a certification bar in the instant case. It argues that a relaxation of the Rules pursuant to Section 19:19-1 of the Rules is appropriate and necessary in the instant matter. It contends this case is not the ordinary case as (1) at the time of the initial hearing the State in effect was not prepared for bargaining and various State agencies were not strictly accountable to the Office of Employee Relations which was set up to deal with employee relations; (2) A transitional period occurred between the time Governor Cahill was elected in November 1969 until May 1970 when the Director of the Office of Employee Relations took over negotiations and the new administration had an opportunity to take over the reins of government and to evaluate its employee relations policy in light of overall State budgetary problems; (3) the new administration was now awaiting the Hay Report; (4) The parties were negotiating under a cloud as the status of the Office of Employee Relations was being attacked in the courts. The States position is summarized as follows:

> It therefore becomes apparent that there are several factors present in this case, which set it apart from the ordinary case, and which militate towards the Commission relaxing its one-year certification rule. If one adds the seven-month transitional period and the four-month delay caused by the complaint brought by the Association leading to Judge Feller's decision, to the normal one-year period, the certification bar would be deemed to be in effect when the contract was signed. Even without including the four-month period of delay caused by the pending decision the certification bar rule would still apply. Therefore the contract bar provisions of 19:11-15(c) and (d) would be in effect and the motion to dismiss should be granted.

2/ 19:19-1 Rules to be Liberally construed - Whenever the Executive Director or the Commission finds that unusual circumstances or good cause exist and that strict compliance with the terms of these Rules and Regulations will work an injustice or unfairness, it shall construe these Rules and Regulations liberally to prevent injustices and to effectuate the purposes of the law.

When an act is required or allowed to be done at or within a specified time the Executive Director or the Commission may at any time, in its discretion, order the period altered where it shall be manifest that strict adherence will work surprise or injustice or interfere with the proper effectuation of the Act.

The State goes on:

> It is recognized by the Employer that the interests of the employees who were responsible for filing the instant petition must be taken into consideration, but it is patently clear that the arguments for extending the bar, and the Commission's interest in maintaining the stability of the collective bargaining relationship which is in existence far outweighs the interests of these employees. The chaos and further delay which necessarily would be caused by permitting the petitions to stand would work a far greater injustice to the faculties of the six State colleges who are signatories to the agreement, then would a decision to extend the certification bar.
>
> For the foregoing reasons, therefore it is submitted the petitions should be dismissed as untimely filed.

2. The appropriateness of the unit. The State also argues in effect that PERC 1 should be overruled and the instant petition dismissed. It contends that Ad Hoc Hearing Officer Wolf envisioned that a statewide unit would become the eventual appropriate unit, ANJSCF bargained on a statewide basis from the inception of negotiations. (It discounts the signing of an agreement in Glassboro, arguing that it was intended to serve solely as a local guide for the statewide contract.) It argues, "In these [cited] cases the Board, [NLRB], in effect, found inappropriate, those individual units it had originally found to be appropriate, because of a history of the merger of single plant units into one multiplans unit, represented by the same collective bargaining representative."

It also argued that the State has now changed its position from that presented in the hearings leading to PERC 1 from single location units to statewide units and that this later concept has been upheld by the Commission in PERC 50 and that this position i.e. statewide unit, was the whole content and import of Judge Feller's decision.

3. As a third alternative, the State takes the position that the matter should be remanded for a further hearing to allow a full exposition of the issue concerning the appropriateness of the unit.

C. Association of New Jersey State College Faculties

1. Certification Bar.

ANJSCF makes a two fold argument. First the time in which it spent in court to resolve the issues of who may bargain for the employer should be added to the certification year and second, if not, then unusual circumstances exist within the meaning of 19:19-1 and the 19:11-15 should be liberally construed in order to effectuate the purposes of the Act and to prevent any obvious injustice.

To support its first point the intervenor suggests that we look to the Federal Labor administrative and judicial proceedings for guidance. It then cites several cases where the NLRB or the courts spoke of presumption of majority after the certification year and the fact the certification year is extended where there is a finding of a Refusal to Bargain against the employer.3/

3/ With regard to the latter point, he analogizes cases heard by Judge Feller to a form of an unfair labor practice.

With regard to 19:19-1, the intervenor argues:

1. The certification of the intervenor was the first under a brand new public law in the State of New Jersey;

2. Everyone believed that the wrong person was the public employer;

3. There was a lame duck governor who did not want to bind the new governor;

4. The new governor took the position in April of 1970 that he, through his representatives, would bargain for all state employees; and that

5. The question as to who was the public employer was never settled until October 28, 1970 when Judge Feller issued his decision.

The intervenor also argues, as the certification and the start of negotiations occurred prior to the effective date of the Rules, pursuant to 19:19-2 of the Rules,4/ the twelve-month provision of the Rule 19:11-15(b) is not applicable and the test of reasonableness as interpreted in the private sector under the NLRB should be adopted.

2. Recognition Bar.

ANJSCF argues in effect that it was again recognized by the employer after Judge Feller's decision and "looking to the underlying purposes of this Rule [19:11-14] we find that they have been fully met, although the public employer did not comply with the procedural requirements of the rule.
Accordingly, the governing precept is contained in Rule 19:19-2, with respect to the valid recognition of the intervenor during July, 1969, before the effective date of these Rules."

4/ 19:19-2 Application of Rules and Regulations of the Rules reads as follows:

Any valid action by parties prior to the effective date of the Rules and Regulations will not be held invalid because of a failure to comply with the procedural requirements set forth herein.

III. ANALYSIS AND FINDINGS

A. Unit

With regard to petitioner's first argument that PERC No. 1 is controlling as nothing new has occurred, I reject this argument. Something new has occurred. Soon after the individual certifications the employer recognized the employee representative on a state-wide basis and commenced bargaining.

With regard to the public employer's argument that the petition be dismissed because it is for less than a state-wide unit, I reject this argument. The cases cited by counsel speak of a history of negotiations after the merger of single plane units into a multiplant unit. In my opinion, 17 months is not sufficient "history" in labor relations. As to its argument that PERC No. 50 is controlling, I reject this argument also. One of the cornerstones of that decision is the fact that local authority of the institution in the more significant aspects of labor-relations is preempted principally by operations of the provisions of Title 11, N.J.S.A., Civil Service. As there was no testimony or evidence on this subject, it is my opinion that the case is not on all fours with this decision and is not controlling.

B. Certification and Recognition Bar

With regard to intervenor's argument that theirs is a continuing presumption of majority which should be extended because of the litigation as to who is the public employer, I reject this argument. The cases cited by counsel attempt to analogize the State's change of horses in mid-stream from the Board of Higher Education to the Governor as an unfair labor practice. Assuming arguendo that the Commission had unfair labor practice regulations, the court in effect said there was no unfair labor practice; the governor was right; he is the employer; and you, intervenor, were wrong in insisting upon bargaining with the Board of Higher Education, PERC and a Hughes' Deputy Attorney General notwithstanding. The gravamen of the Board's doctrine concerning an extended certification year is that the wrongdoer, i.e. the employer, may not gain by his own wrongdoing. That is not present here. The person contending an inappropriate delay acts at his own peril.

Moreover, the issuance of a Notice of Representation Hearing by the Executive Director on February 3, 1971 is prima facie evidence that a question concerning representation exists.

Concerning intervenor's second argument that the second recognition occurred in October of 1970, I find nothing in the record to support its contention. The only recognition in the record in October of 1970 was a recognition by the Board of Higher Education, not the Governor, of a state-wide unit. In any event the contended recognition admittedly occurred after the Rules and Regulations were effective and was not in compliance with these Rules.

Concerning 19:19-2 I find that 12 month period is a reasonable period of time and that this period should not be extended for the reasons set forth above.

Concerning the delay caused by the issuance of the Hay Report, this is immaterial. The Hay Report findings were not binding on anyone, neither the Governor nor the employee representative. All the report could be considered as was management's own wage survey from which it could develop negotiating strategy.

C. Section 19:19-1

Now we come to the blood and the guts of the case - Will a strict compliance of the rules work an injustice or unfairness or interfere with the proper effectuation of the Act. Admittedly, the instant petitions were filed timely unless such a ruling would create an injustice. Would it create an injustice for anyone when the petitions were filed three months before the contract was executed? Would it create an injustice for all of professional employees of the state colleges? for the professional employees at two of the state colleges? or would it create an injustice to the Act itself?

The important question in my mind is the later one. Should bargaining be delayed because it was the first decision under the statute. I think not. It is unfair to all employees granted rights under the statute for anybody to be able to delay because it had not made policy as of yet and had not brought into line its constitutent subordinates.

Should bargaining be delayed because of a change of administration? I think not. The rights of any person in labor relations especially an employee should not be delayed by a change in administration. Any political division should not stop business just because of a change in administration. It can not. An incoming administration lives with the budget emanating from the previous administration for the first six months of his administration. It could live with decisions made by a lame duck administration. If all labor relations including contract proposals would have to wait for the guidance and decisions by a new chief executive, it would be even a travesty to the rights of employees for collective bargaining. Magnify such an argument by the number of political subdivisions in the state including school boards and the number each of them change every year and the Employer-Employee Relations Act may be as meaningless, as some people now contend.

Accordingly, I find that the petitions were timely filed for an appropriate unit and Section 19:19-1 is not applicable as on balance strict compliance with the terms of these Rules and Regulations will not work an injustice or unfairness or work surprise or interfere with the proper effectuation of the Act.

RECOMMENDATION

Accordingly, based on the foregoing, considering arguments made by counsel, I recommend that the motion that the instant petitions be dismissed be denied. I further recommend that the matter be remanded to a Hearing Officer for a decision on the merits.

Howard M. Golob
Hearing Officer

DATED: April 30, 1971
Trenton, New Jersey