

P.E.R.C. NO. 2012-43

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY  
(KEAN UNIVERSITY),

Respondent,

-and-

Docket No. CO-2011-271

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

Charging Party,

SYNOPSIS

The Public Employment Relations Commission affirms the decision of the Deputy Director of Unfair Practices, D.U.P. 2011-7, 37 NJPER 156 (¶48 2011), refusing to issue a Complaint in an unfair practice case filed by the Council of New Jersey State College Locals, AFT, AFL-CIO against the State of New Jersey (Kean University). The charge alleges that the State violated the New Jersey Employer-Employee Relations Act, N.J.S.A., 34:13a-5.4A(1) and (5), when it informed the Council President that the salary for a newly-created position of lecturer at Kean would be negotiated at the local level rather than through the Governor's Office of Employee Relations. The Commission holds that the State may designate an authorized representative of its choosing to negotiate the issue.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Respondent, Paula T. Dow , Attorney General of  
New Jersey, (Geri Benedetto, Deputy Attorney General)

For the Charging Party, Bennett Muraskin, Staff  
Representative

DECISION

On May 2, 2011 the Council of New Jersey State College  
Locals, AFT, AFL-CIO ("Council") appealed a decision of the  
Deputy Director of Unfair Practices refusing to issue a complaint  
based on an unfair practice charge the Council filed against the  
State of New Jersey (Kean University) ("State"). D.U.P. No.  
2011-7, 37 NJPER 156 (¶48 2011). The charge alleges that the  
State violated the New Jersey Employer-Employee Relations Act,  
N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1) and (5),<sup>1/</sup> when

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1/ These provisions prohibit public employers, their  
representatives or agents from: "(1) Interfering with,  
restraining or coercing employees in the exercise of the  
(continued...)

it informed the Council President that the salary for a newly-created position of "lecturer" at Kean University would be "appropriately negotiated at the local level" rather than at the state level by the Governor's Office of Employee Relations (OER). The Council asserts that negotiations over the new position must take place with the State, rather than "locally" at Kean University.

N.J.A.C. 19:14-2.1 provides that the Director of Unfair Practices shall issue a complaint:

[I]f it appears . . . that the allegations of the charge, if true, may constitute unfair practices on the part of the respondent, and that formal proceedings should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues. . . .

D.U.P. No. 2011-7 recites the parties' positions, legal arguments and the undisputed facts, including a December 16, 2010 letter from the OER stating in pertinent part:

[I]t is appropriate in this instance that the terms and conditions be negotiated locally. [OER] does not generally negotiate for only one College/University; we

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1/ (...continued)  
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."

negotiate for the nine (9) State Colleges/Universities. . .

Thus, the negotiations, as may be required by law, regarding the terms and conditions of employment of the Lecturer position is appropriately negotiated at the local level.

The Council's arguments to us are essentially the same as those raised before the Deputy Director. See 37 NJPER at 157. In holding that the charge did not satisfy the Complaint issuance standard, the Deputy Director reasoned:

The parties do not dispute that the lecturer position will be used at Kean University only; that Kean University attempted to initiate negotiations and offered to meet as many times as necessary to reach an agreement; that the parties regularly enter into local agreements; and that OER provided a letter to the Council stating that Kean University was the appropriate negotiator for this issue. Accordingly, the Council's refusal to negotiate allegation apparently concerns its desire to negotiate with OER rather than Kean University. The Council however, cannot compel OER to negotiate this issue, as parties may lawfully choose their own representatives. Middletown Tp. Bd. of Ed., P.E.R.C. 96-46, 22 NJPER 35 (¶27017 1995); Matawan Reg. Bd. of Ed., P.E.R.C. No. 80-153, 6 NJPER 325 (¶11161 1980).

We also note that the Act expressly provides that a public employer may use "designated representatives" to carry out its obligations and can be held responsible for the actions of its "representatives or agents". See, respectively, N.J.S.A. 34:13A-

5.3 and 5.4a.<sup>2/</sup> Here, the Kean University officials who offered to negotiate with the Council, were and are the "designated representatives" of the OER authorized to negotiate terms and conditions of employment concerning the new position.

ORDER

The refusal to issue a complaint is sustained. The unfair practice charge is dismissed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Eskilson, Krengel, Wall and Voos voted in favor of this decision. Commissioner Jones voted against this decision.

ISSUED: January 26, 2012

Trenton, New Jersey

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<sup>2/</sup> Given the express statutory authorization to use designated representatives, we disagree with the Council's assertion that this dispute raises an issue of "first impression."