

P.E.R.C. NO. 2016-80

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Petitioner,

-and-

Docket No. SN-2015-031

COUNCIL OF NEW JERSEY STATE  
COLLEGE LOCALS, AFT,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the State of New Jersey's motion for reconsideration of P.E.R.C. No. 2016-14. In that decision, the Commission denied the State's request for a restraint of binding arbitration of a grievance filed by the Council of New Jersey State College Locals, AFT. The grievance alleged that the State violated the parties' agreement when it refused to negotiate over procedures relating to tenure upon hire. The Commission concludes there are no extraordinary circumstances warranting reconsideration.

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 Petitioner, Robert Lougy, Acting Attorney  
General (Nicole M. DeMuro, on the brief; Sally Ann  
Fields, of counsel)

For the Respondent, Mets Schiro & McGovern, LLP,  
attorneys (Kevin P. McGovern, of counsel and on the  
brief)

DECISION

On October 22, 2015, the State of New Jersey (State) moved for reconsideration of P.E.R.C. No. 2016-014, 42 NJPER 181 (¶45 2015). In that decision we declined the State's request to restrain binding arbitration of a grievance filed by the Council of New Jersey State College Locals, AFT (Council). The grievance asserts that the State violated the parties' collective negotiations agreement (CNA) when it refused to negotiate over procedures relating to tenure upon hire. The State has filed a letter brief in support of its motion. The Council has filed a letter brief opposing the State's application.

Reconsideration will be granted only under extraordinary circumstances. N.J.A.C. 19:13-3.11; 14-8.4. Such circumstances are not present here.

The State asserts that in P.E.R.C. No. 2016-014, we did not address its assertion that because "tenure upon hire" chronologically arises before someone becomes a state college employee, tenure-upon-hire procedures are "pre-employment" matters and cannot be considered terms and conditions of employment. It argues that this omission constitutes extraordinary circumstances under the reconsideration rule.

We disagree. Even if we had failed to address an assertion made by the State, we would not consider the lack of an overt response to a party's argument to necessarily constitute extraordinary circumstances warranting reconsideration.<sup>1/</sup>

However, as the State acknowledges, our opinion noted the negotiability of initial salary guide placement of incoming employees. In addition, we have recognized that tenure on hire and other issues relating to job security for incoming employees are not automatically outside the sphere of collective negotiations. New Jersey Institute of Technology and Newark Coll. of Engineering Prof. Staff Ass'n, P.E.R.C. No. 83-72, 9 NJPER 33 (¶14016 1982), aff'd NJPER Supp.2d 141 (¶126 App. Div.

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<sup>1/</sup> We note that the court rules specifically permit an appellate court to omit discussing arguments that it finds lack sufficient merit. R. 2:11-3(e)(1)(E).

1984) involved the substantive decision of whether to grant tenure or multi-year contracts to incoming NJIT faculty members.<sup>2/</sup> Although after applying the balancing test set forth in Local 195, IFPTE v. State, 88 N.J. 393, 404-405 (1982) we held that NJIT had a nonnegotiable right to decide which, if any, candidates for employment would receive tenure upon appointment or multi-year agreements, we reasoned:

[T]he decision of NJIT to offer multiple year contracts or tenure to certain applicants intimately and directly affects the work and welfare of public employees. This decision provides job security, one of the most important concerns of an employee, for some employees while arguably lessening the job security of other employees.

[9 NJPER at 35.]

On appeal, the Appellate Division of the Superior Court affirmed our determination for the reasons set forth in our decision.

NJPER Supp.2d. at 142.

ORDER

Reconsideration is denied.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau and Voos voted in favor of this decision. Commissioner Jones voted against this decision. Commissioner Eskilson recused himself. Commissioner Wall was not present.

ISSUED: May 26, 2016

Trenton, New Jersey

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<sup>2/</sup> Unlike this case, procedural issues were not in dispute in NJIT, P.E.R.C. No. 83-72.