P.E.R.C. NO. 77-40

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Respondent,

-and-

Docket No. CO-76-176-75

LOCAL 195, I.F.P.T.E. and LOCAL 518, S.E.I.U.,

Charging Parties.

SYNOPSIS

The Commission adopts the findings of fact and conclusions of law of the Hearing Examiner in an unfair practice proceeding and finds the exceptions filed by the Charging Parties to be without merit. The Charging Parties alleged that the State had unilaterally changed meal allowance and mileage reimbursement policies that adversely affected employees included within negotiating units represented by the Charging Parties while the Charging Parties and the State were still involved in negotiations concerning those issues. The Charging Parties argued that the State, in accordance with past Commission decisions, was required to maintain its pre-January 1, 1976 policies on meal and mileage reimbursement allowances at least until the Commission's impasse procedures, as set forth in N.J.A.C. 19:12-1.1 et seq., had been exhausted.

The Commission, in agreement with the Hearing Examiner, concludes that the record establishes that the Charging Parties and the State agreed that the issues of meal allowances and mileage reimbursements were to be resolved exclusively through the vehicle of bilateral negotiations between the State and the Charging Parties. The Commission further concludes that the parties agreed that such negotiations were to be conducted during the period between September 12, 1975 and December 31, 1975, and assuming that the negotiations were conducted in good faith on the meals and mileage issues, the State would be free to implement its proposed changes after December 31, 1975, in the absence of an agreement by that date. The Commission, again in agreement with the Hearing Examiner, finds that the State did negotiate in good faith with the Charging Parties in accordance with the agreed upon procedures for negotiations on the mileage and meal allowance issues. The Commission notes that in view of its determination in this instant case it need not pass upon the State's cross-exception in which the State argues that there should be no general obligation on public employers to initiate

Commission impasse procedures prior to instituting unilateral action.

The Commission therefore dismisses the complaint in the unfair practice proceeding in its entirety.

P.E.R.C. NO. 77-40

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

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Docket No. CO-76-176-75

LOCAL 195, I.F.P.T.E. and LOCAL 518, S.E.I.U.,

Charging Parties.

Appearances:

For the Respondent, William F. Hyland, Attorney General of New Jersey (Mr. Guy S. Michael, of Counsel)

For the Charging Parties, Rothbard, Harris and Oxfeld, Esqs. (Mr. Sanford R. Oxfeld, of Counsel)

DECISION AND ORDER

An Unfair Practice Charge (the "Charge") was filed with the Public Employment Relations Commission (the "Commission") on January 6, 1976, by Local 195, I.F.P.T.E. and Local 518, S.E.I.U. (the "Locals"). The Charge was amended by the filing of an Amended Unfair Practice Charge (the "Charge") on March 12, 1976 withdrawing the allegations set forth in paragraphs 1 and 2 of the original Charge. The Locals in their Amended Charge allege that the State of New Jersey (the "State") had engaged in certain unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act").

The Locals allege that the State had unilaterally changed emergency overtime as well as regularly scheduled overtime

meal allowance policies affecting employees in certified negotiating units represented by the Locals. The Locals also allege that the State unilaterally changed mileage reimbursement policies of the Department of Transportation affecting individuals in certified negotiating units represented by the Locals. The Locals allege that these actions of the State violate N.J.S.A. 34:13A-5.4(a) (1) and (5).[1/]

The Charge, as amended, was processed pursuant to the Commission's Rules and it appearing to the Commission's Executive Director,[2/] acting as the named designee of the Commission, that the allegations of the Charge, if true, might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on March 19, 1976.

A hearing was held on April 19, 1976 before Hearing Examiner Stephen B. Hunter at which time all parties were given an opportunity to present evidence, to examine and cross-examine witnesses, and to argue orally.

During the course of the hearing on April 19, 1976 the parties stipulated certain "relevant essential facts" with regard to the mileage reimbursement and meal allowance issues. The stipulated facts were supplemented by testimony offered at the hearing.[3/]

1/ These subsections prohibit public employers 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, or refusing to process grievances presented by the majority representative."

2/ Now Chairman, Jeffrey B. Tener.

3/ The stipulations are set forth fully in the Hearing Examiner's Report.

Following the receipt of post-hearing briefs by both parties, the Hearing Examiner on September 21, 1976 filed with the Commission and the parties his Recommended Report and Decision (H.E. No. 77-6, 2 NJPER 332). On September 28, 1976, a Supplement to Hearing Examiner's Recommended Report and Decision was issued. A copy of the Recommended Report and Decision and the Supplement thereto are attached hereto and made a part hereof.

After requesting and having been granted an extension of time in which to file exceptions pursuant to N.J.A.C. 19:14-7.3(a), the Locals on November 18, 1976 filed exceptions to the Hearing Examiner's Recommended Report and Decision. The State filed a response to the Locals' exceptions on November 30, 1976 and included therein a cross-exception to the Report.

The Commission, having carefully reviewed the exceptions and cross-exceptions, finds them to be without merit based upon its analysis of the facts set forth below. The Commission therefore adopts the findings of fact and conclusions of law rendered by the Hearing Examiner substantially for the reasons cited by him.

Essentially, the Hearing Examiner concluded, based upon the stipulation of facts and the supplemental record testimony, that the Locals and the State had agreed that the issues of meal allowances and mileage reimbursements, both of which were stipulated to be required subjects of negotiations, were to be resolved exclusively through the vehicle of bilateral negotiations between

the State and the Locals. He further concluded that the parties agreed that such negotiations were to be conducted during the period between September 12, 1975 and December 31, 1975, and assuming that the negotiations were conducted in good faith on the meals and mileage issues, the State would be free to implement its proposed changes after December 31, 1975, in the absence of an agreement by that date. The Hearing Examiner found that the State did negotiate in good faith with the Locals in accordance with the agreed upon procedures for negotiations on these issues and therefore recommended dismissal of the complaint.

The Locals specified three exceptions to the Hearing Examiner's Recommended Report and Decision. The first two exceptions relate to the doctrine of waiver upon which the Hearing Examiner relied in substantial part in reaching his conclusions. The Locals contend that the Hearing Examiner misapplied this doctrine and that there was no "clear and unequivocal" act on the part of the Locals which could be construed as a waiver.

After careful review, we find these exceptions to be without merit. We agree with the Hearing Examiner's application of the waiver doctrine and with his conclusion that the parties waived the normal obligation to exhaust the Commission's impasse procedures prior to taking unilateral action regarding the admittedly required subjects of negotiations which are the subject of the instant matter.[4/] The Hearing Examiner's finding of

4/ This obligation was set forth in our decision entitled In re Piscataway Township Board of Education, P.E.R.C. No. 91, 1 NJPER 49 (1975). See also note 4 of the attached Report.

a waiver was not based upon the September 12, 1975 Settlement Memorandum -- we recognize that that agreement was entered "...for the purpose of allowing the parties hereto sufficient time to negotiate the matter and take impasse resolution steps available under the law" -- but rather was based upon his conclusion that the parties subsequently agreed to exclude these matters from a concurrent fact-finding proceeding and to resolve them exclusively through negotiations. See pages 14 to 16 of the Report. Specifically, we find on the facts in this case that the State was under no obligation to invoke impasse procedures prior to implementing its last offer subsequent to December 31, 1975.[5/]

Furthermore, based upon our review of the evidence and testimony, we agree with the Hearing Examiner that the Locals did agree to limit the duration of the duty to negotiate in the case to December 31, 1975, after which the State was free to implement its last offer regarding the disputed items.[6/]

The third exception apparently reflects a misunderstanding of the Hearing Examiner's Report on the part of the Locals. The Locals contend that the extensive discussion and analysis[7/] offered by the Hearing Examiner regarding the negotiations

5/ In view of this determination, we need not pass upon the State's cross-exception to the Hearing Examiner's Report in which the State argues that there should be no general obligation on public employers to initiate Commission impasse procedures prior to instituting unilateral action.

6/ We note that this does not end the obligation of the State to negotiate in good faith with the Locals on these matters.

7/ Pages 19 to 33 of the Report.

between the parties between September 12, 1975 and December 31, 1975 are irrelevant to and cannot be utilized by the Hearing Examiner to support a finding of a waiver by the Locals. However, it is evident that the Hearing Examiner had already concluded in earlier sections of his Report that the Locals had waived certain rights discussed above. In this section of his Report, he analyzed the behavior of the parties during this period to determine whether there was good faith negotiations. This was necessary because the State, in spite of the waiver, was nevertheless obligated to negotiate in good faith with the Locals during this period. If the record had supported a finding of a refusal to negotiate in good faith during this period, we agree with the Hearing Examiner that a violation of the Act would have occurred. However, the evidence does not support this conclusion and we adopt the findings of fact and conclusions of law of the Hearing Examiner on this point substantially for the reasons cited by him.

ORDER

For the reasons hereinbefore set forth, the Commission hereby adopts the Hearing Examiner's recommended order and the instant Complaint is hereby dismissed in its entirety.

BY ORDER OF THE COMMISSION

Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Hartnett, Hurwitz and Parcells voted for this decision. Commissioner Hipp voted against this decision. Commissioner Forst abstained.

DATED: Trenton, New Jersey
February 17, 1977
ISSUED: February 18, 1977

H.E. No. 77-6

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Respondent,

- and -

Docket No. CO-76-176-75

LOCAL 195, I.F.P.T.E. AND LOCAL 518, S.E.I.U.,

Charging Parties.

SYNOPSIS

A Commission Hearing Examiner recommends the dismissal of a complaint in an unfair practice proceeding. The Charging Parties alleged that the State had unilaterally changed meal allowance and mileage reimbursement policies that adversely affected employees included within negotiating units represented by the Charging Parties while the Charging Parties and the State were still involved in negotiations concerning those issues. The Charging Parties argued that the State, in accordance with past Commission decisions, was required to maintain its pre-January 1, 1976 policies on meal and mileage reimbursement allowances at least until the Commission's impasse procedures, as set forth in N.J.A.C. 19:12-1.1 et seq., had been exhausted.

The Hearing Examiner concludes, on the basis of an extensive stipulation of facts as supplemented by record testimony, that the Charging Parties and the State agreed that the issues of meal allowances and mileage reimbursements were to be resolved exclusively through the vehicle of bilateral negotiations between the State and the Charging Parties. He further concludes that the parties agreed that such negotiations were to be conducted during the period between September 12, 1975 and December 31, 1975, and assuming that the negotiations were conducted in good faith on the meals and mileage issues, the State would be free to implement its proposed changes after December 31, 1975, in the absence of an agreement by that date. The Hearing Examiner finds that the State did negotiate in good faith with the Charging Parties in accordance with the agreed upon procedures for negotiations on the mileage reimbursement and meal allowance issues and therefore recommends dismissal of the complaint.

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Respondent,

- and -

Docket No. CO-76-176-75

LOCAL 195, I.F.P.T.E. AND LOCAL 518, S.E.I.U.,

Charging Parties.

SUPPLEMENT TO HEARING EXAMINER'S RECOMMENDED REPORT AND DECISION

The Hearing Examiner's Recommended Report and Decision in the above-entitled matter is hereby supplemented and corrected as follows:

PAGE	LINE	DELETE	SUBSTITUTE
16	24	December 31, 1975.	December 31, 1975, before the State could unilaterally change its policies on these issues.
18	4	after December 31, 1975.21/	after December 31, 1975, before the State could unilaterally change its policies on these issues.21/

Stephen B. Hunter
Hearing Examiner

DATED: September 28, 1976
Trenton, New Jersey

H.E. No. 77-6

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Respondent,

- and -

Docket No. CO-76-176-75

LOCAL 195, I.F.P.T.E. AND LOCAL 518, S.E.I.U.,

Charging Parties.

Appearances:

For the Charging Parties
Rothbard, Harris and Oxfeld, Esqs.
(Mr. Sanford R. Oxfeld, of Counsel)

For the Respondent
William F. Hyland, Attorney General
of New Jersey
(Mr. Guy S. Michael, of Counsel)

HEARING EXAMINER'S RECOMMENDED REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on January 6, 1976 by Local 195, I.F.P.T.E. and Local 518, S.E.I.U. (the "Locals"). This Charge was amended by the filing of an Amended Unfair Practice Charge (the "Charge") on March 12, 1976 which withdrew the allegations denominated as paragraphs 1 and 2 of the original Charge and clarified those allegations that were contained within paragraph 3 of the original Charge. The Locals in their Amended Charge alleged that the State of New Jersey (the "State") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act") in that the State had unilaterally changed emergency overtime as well as regularly scheduled overtime meal allowance policies affecting employees subsumed within certified negotiating units represented by the Locals. The Locals further alleged that the State had unilaterally changed mileage reimbursement

policies in effect within the Department of Transportation, again affecting individuals included within certified negotiating units represented by the Locals.[1/]

It appearing that the allegations of the Charge, as amended, if true, might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on March 19, 1976.

Pursuant to the Complaint and Notice of Hearing, a hearing was held on April 19, 1976 in Trenton, New Jersey at which time all parties were given an opportunity to examine witnesses, to present evidence and to argue orally. Post-hearing briefs were submitted on behalf of all the parties to this instant proceeding, all of which were filed by June 8, 1976. Upon the entire record in this proceeding, the Hearing Examiner finds:

1. The State of New Jersey is a Public Employer within the meaning of the New Jersey Employer-Employee Relations Act, as amended, and is subject to its provisions.

2. Local 195, I.F.P.T.E. and Local 518, S.E.I.U. are employee representatives within the meaning of the New Jersey Employer-Employee Relations Act, as amended, and are subject to its provisions.

3. An Unfair Practice Charge having been filed with the Commission alleging that the State of New Jersey has engaged or is engaging in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, a question concerning alleged violations of the Act exists and this matter is appropriately before the Commission for determination.

BACKGROUND

At the hearing held on April 19, 1976 the State and the Locals stipulated to the following "relevant, essential facts" with regard to the mileage reimbursement and meal allowance issues, which facts were supplemented

1/ More specifically, the Locals asserted that the actions of the State violated N.J.S.A. 34:13A-5.4(a)(1) and (5).

These subsections prohibit employers, their representatives or agents from "(1) Interfering with, restraining or coercing employees in the exercise of 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 or refusing to process grievances presented by the majority representative."

by testimony proffered at the formal hearing that followed the execution of these stipulations:[2/]

Stipulation of Facts Concerning
Mileage Reimbursement Issue

1. The State of New Jersey (the "State") is a Public Employer within the meaning of the New Jersey Employer-Employee Relations Act (the "Act"), as amended, and is subject to its provisions. Local 195, I.F.P.T.E. ("Local 195") and Local 518, S.E.I.U. ("Local 518") are employee representatives within the meaning of the Act, as amended, and are subject to its provisions.

2. Local 195 is the certified exclusive majority representative for collective negotiations of all individuals holding job titles subsumed within the State-wide negotiating unit known as the Operations, Maintenance and Services and Crafts unit. Local 195 and Local 518 is the certified exclusive majority representative for collective negotiations of all individuals holding job titles subsumed within the State-wide negotiating unit known as the Inspection and Security Unit.

3. Attached hereto and made a part hereof are the last two collective negotiations agreements covering the Operations, Maintenance and Services Unit and Craft Unit and the Inspection and Security Unit, both of which had expired as of the date of the original filing of the above-entitled unfair practice charge on January 6, 1976. These documents have been marked as Exhibits "A" and "B" respectively. Neither contract contains any clause with regard to mileage reimbursement.

4. Article 3.6(a) of the State of New Jersey Travel Regulations, set forth below, provides for mileage allowances for transportation by personally-owned cars.

> a. Mileage in lieu of all actual expenses of transportation is allowed an employee traveling by his own automobile on official business at the rate authorized by law, provided such mode of travel is previously approved by the Department Head or his authorized agent. Parking and toll charges are allowed in addition to mileage allowance. Reimbursement for travel to points outside the State by automobile shall not exceed the cost of standard - less than first class - air or rail fair, whichever is less expensive.

5. Article 3.6(c) of said Travel Regulations provides as follows: "Any department which authorized the use of personally-owned cars shall submit to the Director, Division of Budget and Accounting,for his approval its proposed plan for mileage reimbursement."

2/ These Stipulations of Fact have been reproduced in their entirety. The specific exhibits referred to in these Stipulations of Fact have not been appended to this recommended report and decision because of their bulk. The parties have received copies of all of these exhibits which constitute part of the record in the instant case [See N.J.A.C. 19:14-7.2].

6. The Department of Transportation adopted a mileage reimbursement policy effective January 20, 1972. Such policy entitled "Reimbursable Vehicular Mileage" is attached hereto and has been marked as Exhibit "C".

7. Effective July 1, 1975 the Department of Transportation issued a policy entitled "Reimbursement Mileage of a Private Vehicle" that modified its earlier policy concerning this subject referred to in Stipulation #6 and marked as Exhibit "C". This policy with an effective date of July 1, 1975 is attached hereto and has been marked as Exhibit "D".

8. By agreement dated September 12, 1975, attached hereto and marked as Exhibit "E", representatives of the State of New Jersey, Local 195 and Local 518, and CSA-SEA agreed to reconstruct, in part, the Department of Transportation mileage situation back to July 1, 1975. In fact this was done and all appropriate reimbursements were paid out in accordance with this agreement.

[Note - CSA-SEA is an employee representative within the meaning of of the Act that is the certified majority representative for administrative and clerical, professional, and primary level supervisory employees employed within the Department of Transportation].

9. In 1974 the mileage reimbursement rate was increased to 14 cents per mile by statute. A copy of this statute [N.J.S.A. 52:14-17.1] is attached hereto and has been marked as Exhibit "F".

10. Effective December 30, 1975 the Department of Transportation promulgated a policy entitled "Reimbursement Mileage of a Private Vehicle". This policy, attached hereto and marked as Exhibit "G", represented a modification of the policy previously in effect concerning this subject.

11. On January 9, 1976 a Memorandum from Raymond Colanduoni, Director of Administration for the Department of Transportation, was issued to all employees within the Department of Transportation that outlined the new mileage reimbursement policy. This memo is attached hereto and has been marked as Exhibit "H".

12. Pursuant to the Memorandum of Agreement designated as Exhibit "E", a representative of Local 195 and Local 518 requested negotiations on the mileage reimbursement issue.

13. Since the Department of Transportation mileage reimbursement issue involved all similarly situated employees within the Department and therefore cut across negotiating unit lines, all concerned parties [including Local 195, Local 518, CSA-SEA and the State] agreed at a September 12, 1975 meeting that negotiations concerning the Department of Transportation mileage reimbursement question would proceed on a combined basis, pursuant to the Memorandum of Agreement marked as Exhibit "E".

14. Negotiations were held on this combined basis on September 24, October 16, October 24, and November 13, 1975. Proposals and counter-proposals dealing with the question of mileage allowances were made by both parties and were rejected.

15. At a general negotiations session held on December 10, 1975 involving Local 195 and Local 518 and the State dealing with overall successor agreements for the three negotiating units referred to in Stipulation #3,

Robert Turner, President of Local 195, stated that he was moving the Department of Transportation mileage allowance issue back to the main bargaining table and would deal with the issue at the main bargaining table only. Turner affirmed that he would not continue negotiations on this issue on a combined basis with CSA-SEA or on any basis other than as a part of the general contract negotiations.

16. Barry Steiner, Deputy Director of the Office of Employee Relations, invited Turner to participate in the next joint negotiating session on the mileage issue and requested the fixing of a date to resume the joint discussions. Turner refused and did not participate in the next session dealing with the mileage issue attended by representatives of the State and CSA-SEA.

17. The parties also stipulate that the issue concerning mileage reimbursement relates to terms and conditions of employment and thus constitutes a required subject for negotiations.

Stipulation of Facts Concerning
Overtime Meal Allowance Issue

1. The State of New Jersey (the "State") is a Public Employer within the meaning of the New Jersey Employer-Employee Relations Act (the "Act"), as amended, and is subject to its provisions. Local 195, I.F.P.T.E. ("Local 195") and Local 518, S.E.I.U. ("Local 518") are employee representatives within the meaning of the Act, as amended, and are subject to its provisions.

2. Local 195 is the certified exclusive majority representative for collective negotiations of all individuals holding job titles subsumed within the State-wide negotiating unit known as the Operations, Maintenance and Services and Crafts unit. Local 195 and Local 518 is the certified exclusive majority representative for collective negotiations of all individuals holding job titles subsumed within the State-wide negotiating unit known as the Inspection and Security Unit.

3. The collective negotiations agreements referred to in Stipulation #3 of the "Stipulation of Facts Concerning the Mileage Reimbursement Issue" and designated as Exhibits "A" and "B" do not contain any provisions concerning meal allowances.

4. Meal allowances for overtime work [were] codified within Section 4.2 of the State of New Jersey Travel Regulations and [were] in effect as of June 30, 1975. A copy of this Section is attached hereto and has been marked Exhibit "1".

5. The policy concerning meal allowances for overtime was modified on or about July 1, 1975. A copy of the document enunciating these changes [is] attached hereto and has been marked as Exhibit "2".

6. The Memorandum of Agreement, dated September 12, 1975, referred to in Stipulation #8 of the "Stipulation of Facts concerning the Mileage Re-Imbursement Issue" and designated therein as Exhibit "E", in part established that the meal allowance situation would be reconstructed back to July 1, 1975. In fact this was done and all appropriate monies were paid out in accordance with this agreement.

7. Negotiations between the State and Local 195 and Local 518 took place with regard to the meal allowance issue pursuant to the Memorandum of

Agreement dated September 12, 1975 and marked as Exhibit "E". Proposals and counter-proposals dealing with the issue of meal allowances were made by both parties and were rejected.

8. On January 13, 1976 Circular Letter 76-8, attached hereto and marked as Exhibit "3", announced rule changes discontinuing regular overtime meal allowances for all State employees receiving overtime wages. These particular revisions to the State Travel Regulations were to be effective as of February 1, 1976.

9. The State, for the period between January 1, 1976 and January 31, 1976, will honor properly presented claims for meal allowances, in accord with the regulations in effect for that period as set forth in Exhibit "1" annexed to this document. These meal allowances claims, concerning overtime work performed between January 1, 1976 and January 31, 1976, will be paid after claims have been submitted by employees on the appropriate forms, at the meal rates set forth in the State Travel Regulations, subject to verification of eligibility under such regulations, provided that a meal was not otherwise provided to such employees by the State. It is understood that employees will not be required to submit receipts for their meals in order to be entitled to reimbursement.

10. The parties further stipulate that the issue concerning meal allowances relates to terms and conditions of employment and thus constitutes a required subject for negotiations.

MAIN ISSUE

Whether the State's actions, in changing its policies concerning meal allowances for employees being compensated for overtime hours and in changing its policies concerning mileage reimbursement allowances for Department of Transportation employees, unilaterally altered the terms and conditions of employment of certain of its employees, subsumed within negotiating units represented by the Locals, in violation of N.J.S.A. 34:13A-5.4(a)(1) and (5).

POSITION OF THE LOCALS

The Locals maintained that the State had unilaterally altered and/or abolished existing policies concerning (1) meal allowances for employees who were compensated for overtime hours and (2) mileage reimbursement allowances for Department of Transportation employees, without negotiating [to agreement] these changes or modifications in terms and conditions of employment with the Locals, in violation of N.J.S.A. 34:13A-5.3(a)(1) and (5).

The Locals asserted that it was beyond peradventure that the State had violated the expressed mandate of the Commission's Piscataway decision 3/

3/ See In re Piscataway Township Board of Education, P.E.R.C. No. 91, 1 NJPER 49 (1975), appeal dismissed as moot (June 24, 1976), petition for rehearing denied (July 16, 1976) [App. Div. Docket No. A-8-75], petition for certification pending [Supreme Court, Docket No. 12, 919].

in changing the status quo, with regard to issues that the parties stipulated to be required subjects for collective negotiations, while the State and the Locals were still involved in negotiations concerning those issues. The Locals argued that the State, pursuant to Piscataway and other Commission decisions, was required to maintain terms and conditions of employment [including its pre-January 1, 1976 policies on meal and mileage reimbursement allowances] at least until the Commission's impasse procedures, as set forth in N.J.S.A. 19:12-1.1 et seq., had been exhausted. The Locals concluded that the State violated the Act when it altered the status quo, concerning the matters at issue, without utilizing the Commission's mediation and fact-finding processes. The Locals affirmed that it was clear, based on relevant private and public sector precedent, that the Commission need not find evidence of bad faith or specific anti-union animus on the part of the State to hold that the State's unilateral actions in changing terms and conditions of employment of certain of its employees constituted an unlawful refusal to negotiate.

The Locals submitted that the State relied primarily on the private sector concept of "impasse" in support of the State's defense that it was free to implement changes in terms and conditions of employment once negotiations had broken down with the Locals. The Locals recognized that in the private sector an employer was generally [subject to certain conditions] free to make unilateral changes in wages, hours and other terms and conditions of employment, following a genuine impasse in negotiations. However the Locals maintained that the private sector's "law of impasse" was totally inapplicable to the public sector inasmuch "as there [was] no quid pro quo available to an employee organization [i.e. the legal right to strike] in the face of a public employer's reliance on impasse as a means of effectuating changes which would otherwise clearly be illegal." The Locals submitted that the Commission in prior relevant decisions, in prescribing that the obligation to maintain the status quo concerning terms and conditions of employment included the obligation to utilize and exhaust the Commission's impasse resolution procedures, had already rejected the applicability of the private sector law on impasse to the public sector, given the illegality of public sector strikes.

The Locals furthermore submitted that, even if the private sector law of impasse was held to be applicable to the public sector, no impasse had occurred which would trigger the public employer's right to make unilateral changes. The Locals maintained that the record established that no impasse existed, prior to the State's unilateral actions, since neither party had taken an absolute position on the substantive issues under discussion and the Locals, at least, were still willing to negotiate on the meal allowance and mileage reimbursement allowance issues. The Locals also argued that the State was obligated to go through mediation and fact-finding before it could declare a genuine impasse in any event.

The Locals sought a bargaining order from the Commission, coupled with the restoration of the status quo as of December 1, 1975, with regard to the meal allowance and mileage reimbursement issues. The Locals also sought an order that would make each individual affected by the State's actions whole for any monetary losses sufferred. Lastly, the Locals requested that the State be assessed the costs of the instamt suit together with any appropriate interest payments.

POSITION OF THE STATE

The State maintained that a thorough review of the record presented before the Commission, by way of stipulation and supplemental testimony, when viewed in light of established precedent in the private and public sectors, evidenced the fact that the State had acted in conformity with its negotiations obligations as set forth in the Act and as clarified in agreements executed by the parties. The State therefore submitted that the Charge filed in the instant case should be dismissed.

The State argued that courts have frequently determined that unilateral employer action vis-a-vis terms and conditions of employment did not represent a per se violation of a statutory obligation to negotiate or bargain in good faith, where the "totality of conduct" indicated that the unilateral action complained of resulted from a failure to reach agreement and not from any attempt on the part of the employer to circumvent its duty to negotiate in good faith.

The State asserted that under the circumstances in the instant matter there was no requirement that the State maintain the status quo, with

regard to the meal allowance and mileage reimbursement issues, until the Commission's impasse procedures as set forth in N.J.A.C. 19:12-1.1 et seq., had been exhausted.

The State first submitted that it was under no legal obligation to initiate the Commission's impasse resolution procedures before instituting unilateral action. The State then emphasized that the record [including the testimony of the Locals'own witnesses] clearly reflected the mutual understanding between the parties that the meal and mileage questions were to be dealt with exclusively at the negotiating table and were not to be resolved through the Commission's impasse resolution procedures.

The State contended that the parties had furthermore agreed, as part of the September 12, 1975 Settlement Agreement executed earlier, [with reference to other Charges filed by the Locals against the State on the subject of the meal and mileage issues], that absent the resolution of these issues prior to December 31, 1975, the State was free to implement its last proposals on these questions. The State maintained that it had negotiated in good faith concerning the meals and mileage issues, prior to the December 31, 1975 deadline, and had proposed meaningful proposals and counter-proposals in an effort to reach an acceptable compromise with the Locals.

The State alleged that the Locals had obstructed the State's efforts to negotiate on these issues by taking intransigent negotiations positions, by breaking off negotiations after reasserting positions that had long before been "removed from the table", be threatening to take job actions against the State [that later took place on January 5, 1976], and by otherwise failing to negotiate in good faith.

More specifically, the State pointed out that the Locals had agreed to negotiate together with the CSA-SEA on the Department of Transportation mileage issue, since the mileage policies cut uniformly across a number of different negotiating units represented by the Locals as well as CSA-SEA.

The State argued that the Locals insistence on December 10, 1975, after four meaningful "joint" negotiations sessions on the mileage issue, on moving that issue to an entirely different forum [i.e. the main bargaining table shared by the Locals and the State] evidenced the Locals' desire to effectively break off negotiations with the State.

With reference to the meal allowance issue, the State contended that on December 19, 1975 the Locals had entirely shifted its previous position on this issue and ended that negotiations session by walking out of the meeting,

threatening to strike on January 5, 1976. The State asserted that the Locals indicated to the State that it did not wish to meet to discuss the meal allowance issue, or any other issue for that matter, until after January 5, 1976 strike.

The State concluded that it could not be held to have negotiated in bad faith, inasmuch as the Locals were the parties that had expressed "something less than a willingness to reach agreement" on meal and mileage issues, despite the Locals' previous agreement concerning the December 31, 1975 negotiations deadline.

In summary, the State submitted that "given the time frame for negotiations which had been agreed upon by the parties and the intransigence of the Unions involved, including a walk out of negotiations and a strike, it is respectfully submitted that it cannot be said the State acted in bad faith in its implementation of any changes in the policies involved."

DISCUSSION AND ANALYSIS

The place to begin in analyzing whether the State's actions, in changing its policies concerning meal allowances for employees being compensated for overtime hours and in changing its policies concerning mileage reimbursement allowances for Department of Transportation employees, violated N.J.S.A. 34:13A-5.4(a)(1) and (5) is to examine apposite Commission decisions that have dealt with allegations of employer misconduct in unilaterally altering the status quo with regard to terms and conditions of employment while engaged in collective negotiations. These decisions have in part attempted to prescribe general guidelines concerning the often debated topic, in the public and private sectors, of the "duration of the duty to negotiate."

In the matter entitled In re Piscataway Township Board of Education, supra, note 3, the Commission adopted the view, generally adopted in both the public and private sectors, that an employer is normally precluded from altering the status quo regarding terms and conditions of employment while engaged in collective negotiations and that such an alteration would constitute an unlawful refusal to negotiate.[4/] The Commission also has held that, in the

4/ See also In re Township of Little Egg Harbor, P.E.R.C. No. 76-15, 2 NJPER 5 (1976); In re Galloway Township Board of Education, P.E.R.C. No. 76-31, 2 NJPER 182 (1976), appeal pending (App. Div. Docket No. A-3015-75); In re Galloway Township Board of Education, P.E.R.C. No. 76-32, 2 NJPER 186 (1976), appeal pending (App. Div. Docket No. A-3016-75); In re Galloway Township Board of Education, P.E.R.C. No. 77-3, 2 NJPER (1976), motion for reconsideration granted, P.E.R.C. No. 77-8, 2 NJPER (1976).

context of negotiations for a collective negotiations agreement, a public employer is generally precluded from taking unilateral action with regard to a required subject for negotiations at least until the Commission's impasse resolution procedures, set forth in N.J.A.C. 19:12-1.1 et seq., have been exhausted.5/

The Commission has thus recognized that normally the very act of unilaterally modifying a particular term and conditions of employment contradicts, in and of itself, the meaning of collective negotiations; inasmuch as one cannot unilaterally act and still collectively negotiate about the same subject. In a recent decision the Commission further elucidated its position on this topic in the following fashion:

> The Commission is attempting to maintain "those terms and conditions of employment in effect" regardless of whether those terms are derived from a contract or some other source. The status quo represents that situation which affords the least likelihood of disruption during the course of negotiations for the new contract. Because the status quo is predictable and constitutes the terms and conditions under which the parties have been operating, it presents an environment least likely to favor either Party. [In re Galloway Township Board of Education, supra, P.E.R.C. No. 76-32, 2 NJPER 186 at 186-187]

In the instant matter the parties stipulated that the issues concerning mileage reimbursements and meal allowances related to terms and conditions of employment and thus constituted required subjects for collective negotiations. It is also uncontroverted that the State did take unilateral action in altering its policies concerning said issues, while engaged in collective negotiations with the Locals for a successor contract, although the Commission's impasse procedures had not been exhausted vis-a-vis a potential resolution of the mileage reimbursement and meal allowance issues. Therefore the State's unilateral withdrawal of longstanding, non-contractual fringe benefits of employment, during the negotiations for a successor agreement, would constitute a violation of N.J.S.A. 34:13A-5.4(a)(5) and a

5/ See Piscataway, supra, 1 NJPER at 50, note 7 and other cases cited in footnote 4.

derivative violation of N.J.S.A. 34:13A-5.4(a)(1) as well, [6] unless the State can establish, as it contends, that the facts in the instant matter dictate against any mechanical application of the aforementioned Commission standards relating to the "duration of the duty to negotiate."

The State first contended that the record /including the testimony of the Locals' own witnesses/ evinced the mutual understanding between the State and the Locals that the meal and mileage questions were to be dealt with exclusively at the negotiating table and were not to be resolved through the utilization of the Commission's impasse resolution procedures. The State in its post-hearing brief concluded that the Locals had explicitly waived its right to avail itself of the Commission's fact-finding process, with regard to the mileage and meals issues, [7] despite the clear recognition in the aforementioned September 12, 1975 Memorandum of Agreement that the parties had agreed to the continuation of mileage reimbursement policies for Department of Transportation employees and applicable meal allowances until December 31, 1975, in accord with the regulations in effect for the period between July 1, 1974 and June 30, 1975, "for the purpose of allowing the parties...sufficient time to negotiate the matter and take impasse resolutions steps available under the law." [8]

The State again heavily relied upon the concept of "waiver" when it maintained that the parties had agreed, as part of the September 12, 1975 Settlement Agreement, that absent the resolution of the meal and mileage issues prior to December 31, 1975, the State was free thereafter to implement its last proposals on these matters.

6/ The Commission has held that an unfair practice under subsections (a) (2) through (7) of N.J.S.A. 34:13A-5.4 is a derivative violation of N.J.S.A. 34:13A-5.4 (a) (1) /See In re Galloway Township Board of Education, supra, P.E.R.C. No. 77-3 at page 9/.

7/ The State did not attempt to refute testimony that at least the meal allowance issue had been discussed during the course of mediation sessions conducted by mediator Leo M. Rose, who was appointed by the Commission on July 22, 1975 with regard to the contractual impasses declared between the State and the Operations, Maintenance and Services Unit, the Craft Unit, and the Inspection and Security Unit. The State contended, however, that the Locals' actions, after the September 24, 1975 Commission appointment of Charles Serraino as fact-finder in the contractual disputes between the State and certain negotiating units /including the three units represented by the Locals referred to above/, evidenced the Locals' understanding that the meals and mileage issues would not be part of any fact-finding process and would be dealt with exclusively at the negotiating table.

8/ Exhibit Jt-1 (Exhibit "E").

In the absence of any Commission decisions that have analyzed the concept of the possible waiver of statutory rights [e.g., the right of a majority representative to negotiate about "proposed new rules or modifications of existing rules governing working conditions"] as interpreted by the Commission [e.g.,the requirement that a public employer is generally precluded from taking unilateral action with regard to required subjects for negotiations at least until the Commission's impasse resolution procedures were exhausted], the undersigned has examined apposite federal private sector [9] and public sector judicial and administrative decisions that have dealt with the "waiver rule."

The National Labor Relations Board and the Courts have generally held, as a matter of legal principle, that majority representatives may waive certain rights guaranteed to employees by the NLRA, including the right to bargain over mandatory subjects for bargaining, if such a waiver is "clear and unmistakable" and indicates an acquiescence, agreement or conscious yielding to a demand.[10] This principle was said to have been grounded in the purpose of the NLRA "to encourage the practice and procedure of collective bargaining" and its corollary, that all substantial charges in existing terms and conditions of employment should be bargained out with the majority representative, unless there has been a specific waiver of bargaining on that particular matter.[11] In recent decisions the National Labor Relations Board has taken the position that while in some situations, the rule of "clear and unequivocal" waiver may be a realistic, practical appraisal of a bargain reached between an employer and a union, in other situations it may not be. The Board has stated that in determining the

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9/ The Courts of our State have specifically recognized that the New Jersey Employer-Employee Relations Act was patterned after the National Labor Relations Act, as amended, and that the latter may be utilized as a guide in resolving disputes arising under our Act [See Lullo v. Intern. Assoc. of Fire Fighters, 55 N.J. 409 (1970)]

10/ See, e.g., Beacon Journal Pub. Co. v. NLRB, 69 LRRM 2232 (CA 6, 1968), enforcing in part 65 LRRM 1126 (1967); Fafnir Bearing Co. v. NLRB, 62 LRRM 2415 (CA 2, 1966), enforcing 56 LRRM 1108 (1964); NLRB v. Item Co., 35 LRRM 2709 (CA 5, 1955), cert. denied 36 LRRM 2716 (1955), enforcing 34 LRRM 1255 (1954).

Also see, e.g., In the Matter of Schenectady Community College Faculty Assn., 6 PERB 4510 (1973); In the Matter of State of New York, 6 PERB 3020 (1973); In the Matter of City of Mount Vernon, 5 PERB 3100 (1972).

11/ See decisions cited in note 10 and National Labor Relations Act, Section 1, [49 Stat. 449 (1935), as amended by Pub. L. No. 101 80th Cong., 1st Sess., 1947, and Pub. L. No. 257, 86th Cong., 1st Sess., 1959; 29 U.S.C. §§ 151-68, F.C.A., 29 §§151-68.]

existence of a waiver of statutory rights prescribing bargaining responsibilities the Board will look to a variety of factors, including the precise wording of the relevant contractual clauses or agreements under consideration, the evidence of the negotiations that occurred leading up to the execution of the provisions that are being asserted as constituting a waiver, and the completeness of the clause or agreements, that are being scrutinized, as an "integration" /to determine the applicability of the parol evidence rule/. 12/ Although certain members of the NLRB have interpreted the consideration of the above-mentioned factors as a clear rejection of the "clear and unequivocal" rule, 13/ it is clear to the undersigned that the NLRB has merely clarified the "clear and unequivocal" standard to reflect the Board's concern that its waiver rule was being applied in too mechanical a fashion, without regard for the bargaining postures, proposals and agreements of the parties.

It is the undersigned's conclusion that the "clear and unequivocal" waiver test, as clarified by the aforementioned recent NLRB decisions, should be applied in the instant matter in order to determine whether the Locals by their actions waived, in part, statutory rights as interpreted by the Commission concerning negotiating duties and responsibilities. This waiver rule accommodates the obligation of public employers to negotiate in good faith with majority representatives of their employees concerning terms and conditions of employment with the right of the majority representative, as part of that negotiations process, to waive certain statutory protections if it chooses to do so. An examination of the merits of the State's particular contentions concerning the applicability of a waiver concept to the instant matter is in order and will be discussed seriatim.

1. THE ALLEGED WAIVER OF THE OBLIGATION TO EXHAUST THE COMMISSION'S IMPASSE RESOLUTION PROCEDURES BEFORE TAKING UNILATERAL ACTION WITH REGARD TO REQUIRED SUBJECTS FOR COLLECTIVE NEGOTIATIONS

The undersigned, after careful consideration of the foregoing and the record as a whole, finds that the Locals did fully concur with the State in agreeing that the meal reimbursement and mileage allowance issues should be left exclusively at the negotiating table, and were not to be considered within the context of the Commission's impasse resolution procedures, after Charles Serraino was designated as fact-finder on September 24, 1975. 14/

12/ See, e.g. Bancroft - Whitney Co. 87 LRRM 1266 (1974); Valley Ford Sales 86 LRRM 1407 (1974), petition to review Board order denied, 91 LRRM 2832 (1976); and Radioear Corp. 81 LRRM 1402 (1972).

13/ See Dissents of Members Fanning and Jenkins in Radioear Corp, supra, note 12 and Valley Ford Sales, supra, note 12.

14/ See footnote 7

The State in its post-hearing brief referred to the testimony of Robert Turner, President of Local 195, I.F.P.T.E., in support of its contention that the Locals waived its right to insist upon the exhaustion of the Commission's impasse resolution procedures, with regard to the meals and mileage questions, before the State could change the status quo concerning those issues. In this regard, the following testimony was elicited from Turner in response to the questioning of Deputy Attorney General Guy Michael, representing the State:

> Q During arrangements for the fact finding [conducted by Serraino], was there any discussion concerning what would be done with meal and mileage outside of the fact finding?
>
> A I believe it was to stay at the bargaining table. If the fact finder didn't want to entertain it, we had to entertain it somewhere and that was the only place I knew of.[15]

At a later point in the record the following exchange took place between Michael and Turner:

> Q So, it was your understanding then that those two issues [the meals and mileage issues] were to be excluded from fact finding and would be resolved through negotiations?
>
> A Yes.
>
> Q Exclusively through negotiation?
>
> A I did.[16]

The record also establishes that the Locals made no effort, once the September 12, 1975 Settlement Agreement was executed by the State and the Locals, to utilize, in any way, the Commission's mediation or fact-finding processes [with regard to the meal allowance and mileage reimbursement issues]

15/ Transcript, page 64. The record reveals that the Locals did not raise any objections to Serraino's statements that he would not entertain any testimony on the meals and mileage issues during the fact-finding hearing and would confine himself, in his fact-finder's report, to recommendations concerning salary schedules and certain fringe benefits, including a Prescription Drug Plan. [Transcript, pages 21-22, 37-38, 54]

16/ Transcript, page 65.

even though the September 12, 1975 agreement specifically referred to the right of either the State or the Locals to "take impasse resolution steps available under the law," in order to resolve the meals and mileage questions.[17] The following interchange between Michael and Donald Philippi, Business Manager of Local 195, I.F.P.T.E., is illustrative of the Locals' testimony in this regard:

> Q To renew the question, why did you [the Locals] not seek mediation and fact-finding on those questions [involving meals and mileage]?
> A I don't know why we didn't seek it.[18]

In summary, the undersigned concludes that the record reveals clearly and unequivocally that the State and the Locals agreed that the issues of meal allowances and mileage reimbursements would be resolved exclusively through the vehicle of bilateral negotiations between the State and the Locals. The undersigned further finds that the Locals, through its actions and conduct, did waive its right to insist upon the exhaustion of the Commission's impasse resolution procedures, with regard to the meals and mileage issues, before the State could change the status quo with regard to these required subjects for collective negotiations.

2. THE ALLEGED WAIVER OF THE LOCALS' RIGHT TO INSIST UPON FURTHER NEGOTIATIONS WITH THE STATE ON THE MEALS AND MILEAGE ISSUES AFTER DECEMBER 31, 1975

The undersigned, after careful consideration of the foregoing and the record as a whole, finds that the Locals, in signing the aforementioned September 12, 1975 Settlement Memorandum, clearly and unmistakably waived its right to insist upon further negotiations with the State on the meals and mileage issues after December 31, 1975. The undersigned further concludes, that assuming arguendo that the pertinent language of the Settlement Agreement concerning this waiver issue could be deemed to be ambiguous, an examination of the testimony of witnesses called in this matter [including the testimony of the three witnesses called on behalf of the Locals] supports the same conclusion concerning this particular waiver issue.

17/ See Exhibit JT-1 (Exhibit "E")

18/ Transcript, page 40.

The September 12, 1975 Memorandum of Agreement was executed by the State and the Locals in settlement of those aspects of earlier charges filed by the Locals against the State /Docket Numbers CO-76-57 and CO-76-15, 16, and 17/ relating to the State's action in unilaterally modifying its policies concerning mileage reimbursement allowances for Department of Transportation employees as well as its policies affecting meal allowances for overtime work, effective July 1, 1975. [19] This memorandum provided at paragraph (1)(a) that:

> The State, for the period, July 1, 1975 to December 31, 1975, will honor properly presented claims for meal allowances and Department of Transportation mileage reimbursement, in accord with regulations in effect for the period, July 1, 1974 to June 30, 1975. (emphasis supplied)

The memorandum also provided at paragraph (3) that:

> The continuation of such meal allowances and Department of Transportation mileage reimbursement situation until December 31, 1975, is for the purpose of allowing the parties hereto sufficient time to negotiate the matter and take impasse resolution steps available under the law. (emphasis supplied)

The above-cited portions of this September 12, 1975 Settlement Agreement clearly reflect the agreement of the parties concerning the framework for negotiations relating to the meals and mileage issues. It was recognized by the parties that, assuming that negotiations were conducted in good faith with regard to the meals and mileage issues, during the period between September 12, 1975 and December 31, 1975, the State would thereafter be free to unilaterally effectuate changes in the status quo relating to these matters in the absence of an agreement with the Locals. Inasmuch as there is substantial private and public sector precedent, as previously referred to, [20] holding that majority representatives could waive the right to negotiate over any aspects of specific required subjects for collective negotiations, it is evident that majority representatives can voluntarily enter into agreements in which the duration of the duty to negotiate over required subjects for negotiations is circumscribed. In the instant matter the Locals made no attempt to directly refute the State's arguments with reference to the significance of the December 31, 1975 date referred to in the Settlement Memorandum, nor did the Locals argue that they were coerced or misled by the State when they signed that agreement.

19/ See again the Stipulations of Facts reproduced on pages 3-6 of this decision.

20/ See fn. 10.

An examination of the testimony of all the witnesses in this instant matter further supports the conclusion that the Locals waived its right to insist upon further negotiations with the State on the meals and mileage issues after December 31, 1975. 21/

At one point in the record the following exchange took place between Donald Philippi and the attorney for the Locals concerning the relevance of the end of calendar year 1975, with specific reference to the Department of Transportation mileage issue:

> Q Could it be that this policy change [relating to the mileage issue] was effective December 30, 1975, to your recollection, Don?
>
> A The policy that was in the State travel regulations continued except in the Department of Transportation.
>
> Q But the change in the Department of Transportation, did that happen, to your best recollection, around December 30th?
>
> A That was part of the first settlement agreement that we reached that said that they would continue negotiating on this. The date of December of '75, the end of '75 was the date that they put on as the date that the change should take effect. (emphasis supplied) 22/

Robert Turner testified to the existence of a "time limit", concerning the negotiations on the meals and mileage issues, that was "put into this temporary proposal [the September 12, 1975 Settlement Memorandum] which [he personally] wasn't a party to." 23/

21/ An analysis of the relevant testimony of the witnesses who commented on this issue is in order inasmuch as it is arguable that the language in the September 12, 1975 Settlement Memorandum, relating to the significance of the December 31, 1975 date, is not totally free from ambiguity.

22/ Transcript, page 27.

23/ Transcript, page 65.

There are substantial errors contained in the transcript found on pages 65-66. The remaining pages of the transcript accurately reflect the testimony of witnesses that the Settlement Agreement was executed in September of 1975 and in part required negotiations on the meals and mileage issues to take place thereafter. The transcript on pages 65 and 66 inaccurately refers to the Settlement Agreement as being made around December 31, 1975 mandating negotiations which were to proceed thereafter. It is clear to the undersigned, based on an examination of the entire record in this matter, that Turner's testimony referred to above, acknowledged the existence of a December 31, 1975 "deadline", contained within the Settlement Agreement.

Gerardo Veltri, the First Vice President of Local 518, S.E.I.U., testified that he recalled that when the State and the Locals executed the September 12, 1975 Settlement Agreement at Kean College the State emphasized that the maintenance of the status quo, with regard to the meal allowance question, "would only go until January 1st or December 31st." Veltri also referred to a conversation that he had with Barry Steiner, Deputy Director of the Governor's Office of Employee Relations, in the early part of December 1975 "when the deadline was coming closer." 24/

Steiner later testified as to his understanding of the relevancy of the December 31, 1975 date, contained within the September 12, 1975 Settlement Memorandum, in the following manner:

> ...It is my understanding that while the fact finding was to incorporate all economic issues, two areas were excluded from that by mutual agreement of all participating parties, that being meal allowance and D.O.T. mileage, with the understanding being that these would be resolved exclusively within the frame work of the settlement agreement that there would be no fact finding on them. It was also understood that the State held a very restrictive position on those. We were willing to continue to negotiate up to December 31, but that the results of the negotiations would be the end of the situation. 25/

The undersigned thus concludes that the testimony of all the witnesses in this matter consistently reflects the understanding of the parties that, assuming that negotiations were conducted in good faith on the meals and mileage issues, during the period between September 12, 1975 and December 31, 1975, the State, in the absence of an agreement with the Locals on these questions, would be free to unilaterally effectuate changes in the status quo relating to these matters.

3. ANALYSIS OF THE NEGOTIATIONS BETWEEN THE STATE AND THE LOCALS, DURING THE PERIOD BETWEEN SEPTEMBER 12, 1975 AND DECEMBER 31, 1975, ON THE MEALS AND MILEAGE ISSUES

It is necessary to examine the negotiations that took place between the State and the Locals, on the meals and mileage issues before one can make a determination as to whether the State violated the Act in unilaterally

24/ Transcript, page 126.

25/ Transcript, pages 73-74.

modifying its policies relating to meal allowances (effective February 1, 1976) and Department of Transportation mileage reimbursements (effective January 1, 1976). It is evident that the efficacy of the December 31, 1975 "deadline", referred to in the Settlement Memorandum, was conditioned upon the State's fulfillment of its statutorily delineated negotiating responsibilities. The State could not for example, "hide behind" this deadline and simply go through the motions in negotiating on the meals and mileage issues seeking to avoid, rather than reach an agreement, pursuant to a predetermined plan.

The Appellate Division, in a recent decision sustaining an earlier Commission decision, affirmed that, in the absence of a per se violation of the duty to negotiate, 26/ it is necessary to subjectively analyze the totality of the parties' conduct in order to determine whether an illegal refusal to negotiate may have occurred. 27/

An analysis of the overall conduct and attitude of the State's designated agents and representatives, with regard to negotiations with the Association during the period between September 12, 1975 and December 31, 1975, relating to the Department of Transportation mileage reimbursement issue, reveals the following information: 28/

1. It is uncontroverted that all concerned parties [including the Locals, CSA-SEA and the State] agreed at a September 12, 1975 meeting, that resulted in the execution of the aforementioned Settlement Memorandum, that, since the Department of Transportation mileage reimbursement issue involved all similarly situated employees within the Department and therefore cut across negotiating unit lines, subsequent negotiations concerning that issue should proceed on a combined basis. Agents of the State would meet with representatives of the Locals and CSA-SEA in a series of negotiating sessions to negotiate exclusively the issue of Department of Transportation mileage reimbursement.

26/ For the reasons previously set forth in the earlier sections on the two "waiver" issues, the undersigned concludes that no per se violation of the Act may be found, under the circumstances in this instant matter.

27/ See In re State of New Jersey (Council of New Jersey State College Locals), E. D. No. 79, 1 NJPER 39 (1975) [affirmed P.E.R.C. No. 76-8 (1975); affirmed for the reasons cited in the Executive Director's decision, Appellate Division, Docket No. A-531-75, 2 NJPER 192 (decided May 17, 1976)]

28/ The facts referred to hereinafter, except where otherwise noted, are not in dispute.

allowances. 29/

2. Negotiations were held on this combined basis on September 24, October 16, October 24, and November 13, 1975. Apparently no party to these negotiations, conducted pursuant to the September 12, 1975 Memorandum of Agreement, expressed any reservations at these particular sessions about the particular format for negotiations that was being utilized. 30/

3. Proposals and counter proposals, dealing with the issue of mileage allowances were made by the participating parties on September 24, October 16, and October 24, 1975 and were rejected. 31/

4. At the November 13, 1975 combined negotiations session the State made a series of proposals concerning this Department of Transportation mileage question. The first two State proposals proffered that date were quickly rejected by the representatives of the Locals and the CSA-SEA.

After a caucus session the State made a third proposal on November 13, 1975 that was characterized by the State's representatives as "essentially being as far as the State could go in the area of mileage allowance." This was further characterized as an offer that would allow the Department of Transportation and the State to accomplish its fiscal objectives with minimum disruption and hardship to the affected employees.

It was uncontroverted that neither the Locals nor CSA-SEA rejected this proposal outright at the November 13, 1975 meeting. The employee organizations at the time expressed no objection to the State's offer to reduce its last proposal to writing and to disseminate said proposal to the Locals and CSA-SEA for their further examination. Another joint session would be scheduled thereafter to finalize the language on the mileage issue, if the employee organizations determined that they could accept the general parameters of the State's last proposal.

29/ See Stipulation of Facts, paragraph 13 and Transcript, page 74.

30/ Robert Turner testified that, although he was not sure, he may have contacted Barry Steiner after the November 13, 1975 negotiations to inform Steiner that the Locals no longer cared to be party to negotiations with another organization. /Transcript, page 57/

The undersigned does not credit Turner's equivocal testimony and finds that the record establishes that the State was not informed about the Local's objections to the joint negotiation format until December 10, 1975 when the State was so informed at a general negotiations session with the Locals.

31/ See Stipulation of Facts, paragraph 14.

In a letter dated December 2, 1975, the State enclosed a written version of the final proposal that it had made at the November 13, 1975 negotiations session in correspondence forwarded to representatives of the Locals and CSA-SEA. In part the letter stated the following:

> While it is our position that we have presented our best offer in these negotiations, which you have been reviewing, since you feel that one more meeting would be produce, I, [Barry Steiner] will be in touch to set up an early date. 32/

5. The State's position at the start of the series of combined negotiations sessions, as incorporated within the September 12, 1975 Settlement Memorandum, was that the approved Department of Transportation exceptions to the general State travel regulations, which permitted that department to operate in a different manner than other State departments in regard to mileage reimbursement for field personnel, be completely eliminated. More specifically this exception authorized Department of Transportation employees to receive mileage reimbursements [at the rate of fourteen cents ($.14) per mile - effective July 29, 1974] for the performance of field work, whenever these employees traveled from their homes to specific job sites rather than to their official work stations. These employees deducted, as a standard, 12 miles daily from reported round-trip "travel to job" mileage, or 6 miles daily from reported one-way travel between the employees' homes and their job sites. Travel from an employees' home to his official work station was not reimbursable as it was deemed to constitute "commutation." 33/

The State initially proposed at the start of negotiations [on a combined basis] on the Department of Transportation mileage issue that no reimbursement be allowed for the round-trip mileage from residence to job site in the case where the mileage to job site was less than or equal to the mileage to the official work station. The State contended that in actuality many Department of Transportation employees would be assigned to various construction projects at various

32/ Transcript, pages 75-78.

33/ The Department of Transportation has defined the terms "official work station" and "job site" in the following manner:

Official Work Station - An official station is the State office to which the employee is assigned by his Division Head. An official station shall be either the Departmental headquarters office or one of the major divisional field offices. Each employee shall be assigned to an official station on the basis of his divisional unit and the district or region to which he is assigned. For example, the official station of a construction employee assigned to Region 1 would be Far Hills.

Job Site.- The place at which an employee performs his assigned work.

[See Joint Exhibit Jt-1-Exhibit "C" and Transcript pages 100-102]

job sites for periods of months or years and would rarely travel to their official work stations. The State argued that the Department of Transportation exception to the general State travel regulations should be completely eliminated inasmuch as travel from "home to job site" was nothing more than daily commutation that should not be compensated for. 34/

After making various proposals during the course of negotiations with the Locals and CSA-SEA on the mileage reimbursement issue, the State made the following proposal on November 13, 1975 that was purported to represent the State's best offer on this mileage issue: 35/

> PROPOSAL as regards the Personal Vehicular Mileage Reimbursement Policy of the NEW JERSEY DEPARTMENT OF TRANSPORTATION:
>
> 1. There will be a system devised whereby employees will be reassigned, workload permitting, to temporary field locations in the closest possible proximity to residences, thus decreasing the effects of this agreement on any one individual. Incorporated within this system will be an expedited procedure whereby complaints and/or requests for reassignment will be promptly reviewed by the NJDOT Director of Administration.
>
> 2. Employees hired prior to January 1, 1976 will enjoy the current Policy, based on a twelve (12) mile deductible, through June 30, 1976.
>
> 3. Effective July 1, 1976, employees hired prior to January 1, 1976 will utilize a twenty-two (22) mile deductible.

34/ To illustrate how the Department of Transportation's policy on reimburseable vehicular mileage could have been affected if the State's original proposal on this issue had been agreed upon, the following hypothetical example can be used:

John Doe /hired on January 1, 1973/ has been assigned to a job site for a period of one year, during which time he commutes almost exclusively from his home directly to that job site, rather than travel to his Official Work Station /for which he would not be reimbursed/. Doe travels 50 miles round-trip to the job site; he would travel 45 miles round-trip to his assigned Official Work Station.

Pursuant to the Department of Transportation policy in effect, as of June 30, 1975, Doe would have deducted 12 miles daily from his 50 mile round-trip to and from his job site. He would have been reimbursed at the rate of fourteen cents ($.14) per mile and would have therefore received $5.32 as mileage reimbursement (38 miles x $.14) daily. If the State's original proposal, referred to above, had been adopted Doe would have deducted 45 miles daily from his 50 mile round-trip to and from his job site. He would have received $.70 (5 miles x $.14) daily.

35/ As set forth earlier in this decision, this "best" offer of the State was later reduced to writing and forwarded to representatives of the Locals and CSA-SEA on or about December 2, 1975.

4. Employees returning to the Department via Special Reemployment Lists in existence prior to January 1, 1976 will be treated exactly as those hired prior to that date.

5. All new employees hired after December 31, 1975 will use a thirty-two (32) mile deductible.

6. Deductibles are applied to commutation mileage only; on-the-job mileage being fully reimbursed.

7. The rate of reimbursement for approved travel will remain at fourteen cents ($.14) per mile, payable through the process currently utilized.

8. The agreement extending through June 30, 1977.

The State saw this proposal as accommodating their fiscal objectives, while only minimally affecting the present complement of Department of Transportation employees [those employees that were hired prior to December 31, 1975].[36]

6. When the State made its "last best offer", as reproduced above, its representatives indicated to the representatives of the Locals and CSA-SEA that the State did not want to break off negotiations on the mileage issue and was not making this proposal on a "take it or leave it" basis.[37]

In a letter, dated December 2, 1975, Barry Steiner, in part, informed representatives of the Locals and CSA-SEA that he would be in touch with them to set up another meeting date relating to the Department of Transportation mileage issue.

7. At a general negotiations session, held on December 10, 1975, involving only the Locals and the State, Robert Turner informed the State for the first time that he would deal with the Department of Transportation mileage allowance issue only at the main bargaining table only.[38] Turner asserted that he would not continue negotiations on this issue on a joint basis with CSA-SEA or on any basis other than as part of the general overall contract

36/ Pursuant to the above-mentioned proposal, using the John Doe hypothetical referred to in note 34, Doe would continue to receive $5.32 daily for mileage reimbursement until July 1, 1976, each time he traveled from his home to the job site and back. After July 1, 1976 Doe would utilize a 22 mile deductible and would receive $3.92 daily (28 miles x $.14) for mileage reimbursement.

37/ Transcript, page 77.

38/ See note 30.

negotiations relating to successor agreements for the three negotiating units represented by the Locals.

Steiner invited Turner to participate in the next joint negotiating session on the mileage issue and requested the fixing of a date to resume the joint discussions. Turner refused and did not participate in the next session dealing with the mileage issue [held on December 12, 1975] attended by representatives of the State and CSA-SEA. 39/

In response to Turner's statements, Steiner stated that he would construe Turner's statements as indicating that the Locals were breaking off negotiations on the mileage issue. Steiner further informed Turner that the State would thereafter take any action it deemed appropriate under the circumstances. 40/

8. On December 19, 1975 at a general negotiations session with the Locals, the State presented specific proposals that the State contended "filled out" its complete, comprehensive written contract proposal [that would in part, include the acceptance of the fact-finder's report] with reference to the successor agreements being negotiated with the Locals.

After fifteen to twenty minutes of discussion concerning the State's proposal, the Locals demanded a caucus that lasted from approximately 11:00 a.m. to 3:00 p.m.

When the State's representatives returned to the negotiating room, after the Local's caucus had been completed, they noticed that the words, "Strike, January 5" were written on a portable blackboard in the room.

At this time Donald Philippi, on behalf of the Locals, outlined a four point proposal for the State's consideration relating to the on-going negotiations. Philippi asserted that unless significant movement was made by the State on each of these four points there would be a strike on January 5, 1976. 41/

One of the points outlined by Philippi demanded that the Department of Transportation mileage reimbursement allowances be maintained in accordance fully with the policies in effect prior to June 30, 1975, i.e. the maintenance of the status quo on this issue. 42/ This was the Local's position on the

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39/ See Stipulation of Facts, paragraphs 16 and 17.

40/ Transcript, page 79.

41/ Philippi testified that he did not remember making the above-mentioned statement. [transcript pages 43-44] The undersigned does not however credit Philippi's testimony in this regard - testimony that was often too guarded and evasive, or contradictory to be convincing.

42/ The Locals further demanded that all apposite meal allowances be maintained in accordance with the policies in effect prior to June 30, 1975.

mileage reimbursement issue at the start of negotiations on this subject - a position that had apparently been modified to an extent by the Locals prior to December 19, 1975.

The State thereafter responded to the Local's four point proposal and, in apposite part, refused to accede to the Local's position on the mileage reimbursement issue. The Locals then totally rejected the State's response and announced that they were leaving.

Steiner again indicated that in light of this "walkout" the State would construe this as breaking off negotiations. Steiner further added that the State would have to take whatever action it deemed appropriate both in regard to whatever actions the Locals took on January 5, 1976 and in regard to the proposed changes in meal allowances and mileage reimbursements. 43/

9. At the December 19, 1975 meeting Steiner indicated to the Locals that the State was ready, willing and able to continue negotiations that day and any day therafter with reference, in part, to the mileage issue. One of the Local's representatives in reply stated "See you after January 5."

Subsequent to the December 19, 1975 meeting, Steiner had a telephone conversation with Turner at which time he asked Turner what the situation was like and whether he would want to meet again for the purposes of further negotiations. At that time Turner stated that the Locals did not want to meet before January 5, 1976. 44/ Turner added that the anticipated strike on that day was not about the on-going negotiations with the State but was intended to dramatize the necessity for getting legislative funding for the fact-finder's award.

No further negotiations sessions took place between December 19, 1975 and January 5, 1976, when certain employee organizations, including Local 195, participated in a "job action". 45/

10. In a letter, dated December 30, 1975, Barry Steiner used the following language to inform the Locals of the State's position on the mileage issue:

> This is to confirm our previous verbal notification to you that the State, having fulfilled its negotiations obligations in regard to the above matter,

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43/ Transcript, pages 89-92, 96-97.

44/ The undersigned again does not credit Philippi's testimony, for the reasons previously delineated, that the Locals may have requested that negotiating sessions be scheduled for the period between December 18, 1975 and January 5, 1976. /Transcript, pages 51-52/

45/ Transcript, pages 96-98.

> will implement the mileage reimbursement plan presented by the State at our last negotiating session. /November 13, 1975/
>
> The plan will be announced to employees by letter, a copy of which will be sent to you when it is ready for distribution.

Effective January 1, 1976, the State implemented its last proposal on the Department of Transportation mileage question. All affected employees were informed of the new policies on mileage reimbursements in a memorandum, dated January 9, 1976, from Raymond Colanduoni, Director of Administration. 46/

The undersigned concludes, on the basis of the foregoing and the record as a whole, that the State did negotiate in good faith with the Locals, within the parameters of the September 12, 1975 Memorandum Agreement, with regard to the Department of Transportation mileage reimbursement issue. I further conclude that, with regard to this mileage question, there is no evidence that the State interfered with, restrained or coerced employees in the exercise of rights guaranteed to them by the Act by implementing its last best offer on this issue, in the absence of an agreement on the subject. The record establishes that the State had fulfilled its statutory negotiating responsibilities relating to the mileage issue, under the unique circumstances of this case. The undersigned therefore does not find that the State's actions violated either N.J.S.A. 34:13A-5.4(a) (1) and (5).

The evidence supports the conclusion that the State did bring to the negotiating table "an open mind and a sincere desire to reach an agreement, as opposed to a pre-determined intention to go through the motions, seeking to avoid, rather than reach, an agreement." 47/ The State made a series of proposals on the mileage issue that reflect a genuine, continuing effort to achieve

46/ See Joint Exhibit Jt-1-Exhibit "H".

47/ See In re State of New Jersey (Council of New Jersey State College Locals), supra, note 27, E.D. No. 79 at page 8.

a compromise on this issue, pursuant to the timetable enunciated in the September 12, 1975 Settlement Memorandum. The inability of the State and the Locals to meet after November 13, 1975 to further negotiate substantively over aspects of the Department of Transportation mileage issue is largely reflective of the intransigence of the Locals' insistence on changing, at the eleventh hour, the forum for negotiations agreed upon previously by the parties.

An analysis of the overall conduct and attitude of the State's designated agents and representatives, with regard to negotiations with the Association during the period between September 12, 1975 and December 31, 1975, relating to the meal allowance issue, reveals the following information:[48/]

1. Pursuant to the September 12, 1975 Settlement Memorandum the State and the Locals agreed that, inasmuch as the meal allowance issue was a matter of general consequence that cut across departmental lines within each state-wide negotiating unit, negotiations would be resolved at the main negotiating table. It is uncontroverted that the State consistently took the position that it would not negotiate the meal allowance issue with the Locals at sessions wherein the mileage reimbursement issue was to be negotiated on a combined basis with the representatives of CSA-SEA.[49/]

2. A series of negotiating sessions took place involving the State and the Locals that related, in part, to the meal allowance issue. Proposals and counter-proposals dealing with this question were made by both parties and were rejected. Commission mediator Leo M. Rose, who remained actively involved in the continuing negotiations between the State and the Locals relating primarily to non-economic subjects for negotiations that were not the subject of Fact Finder Serraino's Report and Recommendations, attended certain of the meetings where the meal allowance issue was negotiated.[50/]

3. At the start of negotiations on the meal allowance issue it was the State's announced intention to discontinue regular overtime meal allowances, as codified within Section 4.2 of the State of New Jersey Travel Regulations,

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48/ The facts referred to hereinafter, except where otherwise noted, are not in dispute.

49/ Transcript pages, 24, 32, 41 - 42, 74.

50/ Transcript pages, 39 - 40, 59 - 60, Exhibit Jt-2-Paragraph 7.

for all State employees who received overtime wages. Only State employees with an NL (No Limit) hours designation, who did not receive overtime pay, would continue to receive meal allowances for overtime work. At the start of negotiations on the meal allowance issue the Locals proposed that the status quo relating to meal allowances for overtime work be fully maintained for all State employees. 51/

4. A few days prior to a scheduled November 24, 1975 general negotiations session between the State and the Locals, Steiner arranged a meeting with Turner, Philippi and another representative of the Locals that took place at the Office of Employee Relations in Trenton. It was the purpose of this meeting to expedite the conclusion of the overall negotiations for successor agreements, relating to the units represented by the Locals, by clarifying the parties' respective positions on the Serraino fact-finding report, that had been issued concerning outstanding economic issues, as well as the parties' positions as to the priorities assigned to the many other issues, primarily non-economic in nature, that remained unresolved.

Although the Locals' witnesses differed from Steiner in their recollections of exactly what transpired thereafter at this meeting, certain facts were essentially uncontroverted. It is first evident that Steiner asserted that the State would be the first party to acknowledge the fact-finder's report and would thereafter "lay that report on the table" /in settlement of the important economic issues discussed therein./ Steiner added that it was the State's specific understanding and that it should be the Locals' specific understanding that the issues of meal allowances and mileage reimbursements would ultimately have to be resolved in a way favorable to the State's interests as one of the "trade-offs" involved in the State's acceptance of the economic package recommended in the fact-finder's report. It is also evident that the Locals referred to two classifications of State employees that would be particularly aggrieved by the elimination of overtime meal allowances for individuals who were already receiving premium pay. More specifically, the Locals emphasized that Motor Vehicle Examiners would be dramatically affected by the anticipated change in meal allowances, inasmuch as they had had their paid supper hours eliminated previously by the State /approximately six to eight years before/ and at that time had been encouraged to thereafter apply for meal allowances, where appropriate, to compensate for the elimination of their paid supper hours. Now these examiners would have these meal allowances taken

51/ Exhibit Jt-1-Exhibit "E".

away from them. The Locals also asserted that meal allowances should be permitted when employees were involved in emergency work.

At the conclusion of this meeting Steiner stated that while he could not adequately respond to the Locals' proposals relating to "exceptions" for Motor Vehicle Examiners and emergency work, he recognized that these matters were certainly open to further negotiations. Steiner thereafter agreed to draft up formal contract language, on behalf of the State, that would essentially accept the fact-finder's report.52/

5. At the November 24, 1975 general negotiations session with the Locals, the State formally presented a document that was labeled, "State Response to Union Demands for State Acceptance of the Fact-Finder's Report." There were apparently no substantive discussions at this meeting relating to the meal allowance issue.53/

6. Sometime between November 24, 1975 and December 10, 1975 Steiner had a conversation with representatives of the Locals at which time he agreed to find out whether certain administrators within the Division of Motor Vehicles supported the elimination of meal allowances for Motor Vehicle Examiners. It had been related to Steiner by the Locals' representatives that the Division did not support the elimination of these allowances vis-a-vis the examiners. 54/

7. At the December 10, 1975 general negotiations session with the Locals, Steiner informed the Locals' representatives that the Motor Vehicle Division did not apparently support the creation of a "special exception" relating to meal allowances for Motor Vehicle Examiners. On that date, in response to inquiries from the Locals, Steiner spoke to the Director of the Division of Motor Vehicles about this "special exception". After conversing with the Director, Steiner informed the Locals that the State would remain firm on its position that the elimination of meal allowances for employees who were compensated for overtime hours would also extend to Motor Vehicle Examiners. Steiner also indicated that the State was not prepared, in the alternative, to restore paid supper hours to the examiners.

52/ Transcript, pages 25 26, 80 - 85, 108 - 110, 118 - 126.
53/ Transcript, page 84.
54/ Transcript, pages 84 - 85.

Steiner did state that, if the Locals approved, he would arrange a meeting with representatives of the Division of Motor Vehicles in an effort to try to work out more acceptable working hours for the examiners in order to ease the hardships that the Locals perceived would result from the elimination of the meal allowances. The Locals indicated to Steiner that they would consider this alternative.55/

8. As referred to previously, the State on December 19, 1975, at a general negotiations session with the Locals, presented specific proposals that the State contended would complete its comprehensive written contract proposal /that would, in part, include the acceptance of the fact-finder's report/ with reference to the successor agreements being negotiated with the Locals. Steiner, on behalf of the State, had indicated to the Locals that the State's general package offer was predicated upon a resolution of the meal allowance issue that would accommodate the State's desire to discontinue meal allowances for employees earning "premium pay." Steiner added that the State, in further response to the particular concerns expressed by the Locals relating to emergency work and Motor Vehicle Examiners, would be willing to discuss an exception for emergency work. Steiner also affirmed that the State would agree to separate local negotiations on the hours of work of Motor Vehicle Examiners in order to alleviate any hardships that the Locals anticipated would arise as the result of the elimination of meal allowances for these examiners.

After fifteen to twenty minutes of discussion concerning the State's proposal, the Locals demanded a caucus that lasted from approximately 11:00 A.M. to 3:00 P.M.

When the State's representatives returned to the negotiating room after the Locals' caucus had been completed, they noticed that the words, "Strike, January 5" were written on a portable blackboard in the room.

At this time Donald Philippi, on behalf of the Locals, outlined a four-point proposal for the State's consideration relating to the on-going negotiations. Philippi asserted that absent significant movement by the State on each of the four points there would be a strike on January 5, 1976.56/

55/ Transcript, pages 87 - 88.
56/ See note 41.

One of the points outlined by Philippi demanded that all meal allowance policies be maintained in accordance with the State Travel Regulations in effect prior to June 30, 1975, i.e. the maintenance of the status quo on this issue. This was the Locals' position on this question at the start of negotiations relating to meal allowances -- a position that had been modified by the actions and conduct of the Locals prior to the December 19, 1975 negotiations session.

The State thereafter responded to the Locals' four-point proposal and, in apposite part, refused to accede to the Locals' position on the mileage reimbursement issue. Steiner reiterated the State's desire to continue to discuss the possibility of adjusting the working hours of Motor Vehicle Examiners to accommodate perceived hardships. Steiner also emphasized that the State would be willing to continue to provide meals,in lieu of meal allowances,to employees in true emergency situations and suggested that he bring in at that time Jeff Bodholt, a representative to the negotiations from the Department of Transportation, to help draw up a specific exception for emergency work. The Locals rejected the State's proposal; stated that they would not wait for Bodholt; and shortly thereafter left the meeting.

Steiner again indicated that in light of this "walkout" the State would construe this as breaking off negotiations. Steiner further added that the State would have to take whatever action it deemed appropriate both in regard to whatever actions the Locals took on January 5, 1976 and in regard to the proposed changes in meal allowances and mileage reimbursements.[57/]

9. The chronology of events that was referred to earlier in this decision, with reference to the conduct of the parties relating to the mileage reimbursement issue after the Locals announced that they were leaving on December 19, 1975, is also relevant in analyzing the overall conduct and attitude of the State vis-a-vis the negotiations on this meal allowance issue.[58/]

10. On January 13, 1976 Circular Letter 76-8, forwarded to the Department Heads of all State Departments and Agencies, announced rule changes

57/ Transcript, pages 89 - 92, 95 - 97.
58/ See section 9 on page 26 of this recommended report and decision.

discontinuing regular overtime meal allowances for all State employees receiving overtime wages. These particular revisions to the State Travel Regulations were effective February 1, 1976. 59/

The undersigned concludes, on the basis of the foregoing and the record as a whole, that the State's conduct relating to the meal allowance issue, was not violative of either N.J.S.A. 34:13A-5.4(a)(1) or (5). It is well established that the duty to negotiate in good faith is not inconsistent with a firm position on a particular subject. The Commission has heretofore determined that "hard bargaining" is not necessarily inconsistent with a sincere desire to reach an agreement. 60/ The record in this instant matter establishes that, although the State maintained an adamant position that meal allowances be discontinued for employees receiving overtime wages, the State attempted at all times to reconcile its fiscal objectives with the legitimate concerns advanced by the Locals relating to the effects of the discontinuance of this meal allowance policy. The State's proposals, referred to hereinbefore, relating to possible scheduling adjustments of the working hours of Motor Vehicle Examiners and relating to exceptions for emergency work, indicate a sincere desire to reach an agreement on this issue, as opposed to a predetermined intention to go through the motions [of negotiating], seeking to avoid, rather than reach, an agreement. The evidence further reflects that the Locals' actions in refusing to meet with and negotiate with the State, in part over the meal allowance issue, for the period between December 19, 1975 and December 31, 1975, deprived the Locals of additional opportunities to negotiate further about this issue, pursuant to the timetable enunciated in the September 12, 1975 Settlement Memorandum, in order to seek adjustments of potential inequities relating to the effect of the proposed changes in meal allowances.

In conclusion, for the reasons set forth above, the undersigned does not find that the Locals have met their burden in proving the allegations of

59/ See Jt-2, Paragraphs 8 and 9.

60/ See In re State of New Jersey (Council of New Jersey State College Locals), supra, note 27, E.D. No. 79 at pages 9 and 10.

its charge by the preponderance of the evidence. 61/

ORDER

Accordingly, for the reasons hereinabove set forth, IT IS HEREBY ORDERED that the Complaint in this instant matter be dismissed in its entirety.

Stephen B. Hunter
Hearing Examiner

DATED: Trenton, New Jersey
September 21, 1976

61/ N.J.A.C. 19:14A-3.3.