

P.E.R.C. NO. 89-96

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

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

Respondent,

-and-

Docket No. CO-H-88-36

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

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies a motion to reconsider P.E.R.C. No. 88-89, 14 NJPER 251 (¶19094 1988) filed by the State of New Jersey (Office of Employee Relations). In that case, the Commission denied a motion to dismiss an unfair practice charge filed by the Council of New Jersey State College Locals, NJSFT-AFT/AFL-CIO. The charge alleges that the State violated the New Jersey Employer-Employee Relations Act when, without negotiations, the State Board of Higher Education proposed regulations setting terms and conditions of employment for employees represented by the Council. This motion does not present any extraordinary circumstances warranting reconsideration.

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Appearances:

For the Respondent, Cary Edwards, Attorney General
(Melvin E. Mounts, Deputy Attorney General)

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

DECISION AND ORDER
ON MOTION FOR RECONSIDERATION

On February 3, 1989, the State of New Jersey (Office of Employee Relations) ("State") moved for reconsideration of P.E.R.C. No. 88-89, 14 NJPER 251 (¶19094 1988) where we denied a motion to dismiss an unfair practice charge filed by the Council of New Jersey State College Locals, NJSFT-AFT/AFL-CIO ("Council"). The charge alleges the State violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when, without negotiations, the State Board of Higher Education proposed regulations setting terms and conditions of employment for employees represented by the Council. The State now claims that: challenges

to the Board's action should be directed to the Superior Court, Appellate Division, but Council's appeal there has been dismissed; adoption of the regulations makes this matter moot; the regulations do not set terms and conditions of employment, and the Council can present any demands over mandatorily negotiable subjects in successor contract negotiations.

On February 17, 1989, the Council filed a statement opposing the motion. It claims that the determination as to whether the regulations set terms and conditions of employment should only be made after a hearing and the charge is not moot simply because the parties are in negotiations.

We have jurisdiction to develop a record to consider the alleged preemptive effect of regulations proposed by the State Board of Higher Education. Council of New Jersey State College Locals, NJSFT-AFT/AFL-CIO v. State Bd. of Higher Ed., 91 N.J. 18 (1982); University of Medicine & Dentistry, P.E.R.C. No. 85-106, 11 NJPER 290 (¶16105 1985), recon. den. P.E.R.C. No. 86-7, 11 NJPER 452 (¶16158 1985), aff'd App. Div. Dkt. No. A-11-85T7 (4/14/86). Contrast State of New Jersey (Dept. of Personnel), P.E.R.C. No. 89-67, 15 NJPER 76 (¶20031 1988). As we stated in P.E.R.C. No. 88-89:


Committing terms and conditions of employment to the rulemaking process rather than the negotiations table may have a present and adverse effect on an employee organization's authority as exclusive representative. Lullo v. IAFF, 55 N.J. 409 (1970). Thus, we decline to hold that we never have unfair practice jurisdiction to consider an alleged refusal to negotiate based in part on proposed regulations involving terms and conditions of employment [14 NJPER at 253].

This motion does not present any extraordinary circumstances warranting reconsideration of our holding. N.J.A.C. 19:14-8.4.^{1/}

ORDER

Reconsideration is denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Reid, Ruggiero and Smith voted in favor of this decision. None opposed. Commissioners Bertolino and Wenzler were not present.

DATED: Trenton, New Jersey
March 9, 1989
ISSUED: March 10, 1989

^{1/} Any claim that the proposed regulations do not affect unit employees can be addressed at hearing or in a summary judgment proceeding.