P.E.R.C. NO. 92-100

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

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

Respondent,

-and- Docket No. CO-H-91-28

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

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge filed by the Council of New Jersey State College Locals, NJSFT-AFT/AFL-CIO against the State of New Jersey (Office of Employee Relations), Trenton State College. The charge alleges that the employer violated the New Jersey Employer-Employee Relations Act when, in July 1990, it unilaterally offered housing to prospective negotiations unit employees and did not respond to a request from the union for information about the College's policy. The Commission finds that the employer began renting to unit employees in 1989, the union knew about it in 1989, and the union cannot challenge the decision through an unfair practice charge filed in August 1990. The Commission also finds that under the circumstances of this case, the employer's initial failure to provide information to the union did not violate the Act.

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Docket No. CO-H-91-28

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

Charging Party.

Appearances:

For the Respondent, Robert J. Del Tufo, Attorney General (Melvin E. Mounts, Deputy Attorney General)

For the Charging Party, Bennett Muraskin, Council Staff Representative

DECISION AND ORDER

On August 2, 1990 and February 6, 1991, the Council of New Jersey State College Locals, NJSFT-AFT/AFL-CIO filed an unfair practice charge and amended charge against the State of New Jersey (Office of Employee Relations), Trenton State College. The charge, as amended, alleges that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1) and (5),[1/] when, in July

1/ These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

1990, it unilaterally offered housing to prospective negotiations unit employees and did not respond to a request from the union for information about the College's policy. The union's request for interim relief was denied because there were material facts in dispute. I.R. No. 91-6, 16 NJPER 499 (¶21219 1990).

On December 20, 1990, a Complaint and Notice of Hearing issued. The employer filed an Answer and Amended Answer denying that it had violated the Act, asserting that it had complied with the union's request for information, and claiming that any contractual dispute should be deferred to the negotiated grievance procedure.

On May 7 and 8, 1991, Hearing Examiner Arnold H. Zudick conducted a hearing. The parties examined witnesses and introduced exhibits. They waived oral argument but filed briefs by August 9, 1991.

On December 10, 1991, the Hearing Examiner issued his report and recommendations. H.E. No. 92-15, 18 NJPER 12 (¶23005 1991). He found that in 1989, the union acquiesced to the employer's renting employer-owned housing to unit employees. He concluded that the continuation of that practice in 1990 was not a unilateral change in a term and condition of employment. He also concluded that by not responding to the union's request for information on the housing program, the employer had violated its negotiations obligation and repudiated the parties' collective agreement.

On January 31, 1992, after an extension of time, the union filed exceptions. It claims that: the Hearing Examiner improperly applied the burden or standard of proof in determining that the union waived its right to negotiate over renting to unit employees; the exhibits do not support the conclusion that the union acquiesced to rentals pending negotiations; the Hearing Examiner's determination that the union acquiesced to the rentals is inherently implausible; the 1990 house rentals were qualitatively and quantitatively different from the 1989 rentals and therefore violated the Act; the Hearing Examiner's credibility determinations are based on a misreading of the testimony; the Hearing Examiner rejected conclusive evidence that the rents set by the College were below market rates; and the Hearing Examiner made factual findings on irrelevant matters which prejudiced his position on the unfair practice issue.

On February 3, 1992, after an extension of time, the employer filed exceptions. It claims that it was arbitrary to conclude that it violated the Act and repudiated the parties' contract. It characterizes the dispute as six weeks of summer during which an overbroad request for information was not complied with and during which the union suffered no prejudice.

On February 28, 1992, after an extension of time, the employer filed a reply to the union's exceptions. It claims that the exceptions do not comply with our rules' specificity

requirements. Nevertheless, it responds to each exception and urges that they be rejected.

We have reviewed the record. The Hearing Examiner's findings of fact (H.E. at 3-25) are accurate. We incorporate them.

The issues are narrow. The decision to rent housing to unit employees is, in the abstract, mandatorily negotiable. Since the subject is mandatorily negotiable, the employer has an obligation to negotiate before changing that term and condition of employment. N.J.S.A. 34:13A-5.3. The Hearing Examiner made extensive credibility determinations and found that in 1989, the employer began renting housing to unit employees and informed the union of that fact. He concluded, therefore, that when the employer continued renting to unit employees in 1990, it had not changed any terms and conditions of employment. If the union wanted to negotiate over the subject, it had the burden to demand negotiations. Negotiations over this issue in fact continued through the fall of 1989.

We have no basis to disturb the Hearing Examiner's credibility determinations or legal conclusions based on those determinations. Those determinations and conclusions were thoughtfully made and are supported by the record. We need not find that the union waived its right to negotiate over rental housing. We simply find that the employer began renting to unit employees in 1989, the union knew about it in 1989, and the union cannot

challenge the decision through an unfair practice charge filed in August 1990.

We now turn to the employer's failure to provide information about its housing practices when requested to do so by the majority representative. Under the circumstances of this case, we find that the employer's initial failure to provide that information did not violate our Act.

On May 31, 1990, Council President Marcoantonio Lacatena sent the employer a request for information on the status of its houses and apartments. The employer did not provide a written response. On July 18, Lacatena sent another letter seeking the information and advising that the Council might file with us if the information was not provided. The employer then provided the requested information. The parties' contract provides that information will be provided within a reasonable time, 15 working days where practicable.

We distinguish between a refusal to supply information and this single instance of initially failing to provide information. The cases relied on by the Hearing Examiner all involved refusals to supply information. Here, the employer failed to provide the information after the first request. It provided the information after the second request. Absent other evidence of bad faith, we will not find that the delay in providing the information breached the employer's statutory duty to supply information. Nor will we find a repudiation of the contract based on this one incident.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo, Regan and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Smith abstained.

DATED: March 30, 1992
Trenton, New Jersey
ISSUED: March 31, 1992

H.E. NO. 92-15

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY (OER),
TRENTON STATE COLLEGE,

Respondent,

-and-

Docket No. CO-H-91-28

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

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends the Commission find that the State of New Jersey/Trenton State College violated the New Jersey Employer-Employee Relations Act by failing to timely respond to a request for information by the Council of New Jersey State College Locals, and thereby also repudiating a section of the parties' collective agreement. The Hearing Examiner also found, however, that the State/College did not violate the Act by offering and renting Employer owned housing to unit employees. The Hearing Examiner concluded that the Council acquiesced to such offers and rentals in 1989, thus, they became the status quo which the State/College merely continued in 1990.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

H.E. NO. 92-15

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

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

Charging Party.

Appearances:

For the Respondent, Robert Del Tufo, Attorney General
(Melvin E. Mounts, Deputy Attorney General)

For the Charging Party, Bennett Muraskin, Council Staff
Representative

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (Commission) on August 2, 1990 and amended on February 6, 1991, by Council of New Jersey State College Locals, NJSFT-AFT/AFL-CIO (Council) alleging the State of New Jersey, Trenton State College (State or College) violated subsections 5.4(a)(1) and (5) of the New Jersey Employer-Employee

Relations Act, N.J.S.A. 34:13A-1 et seq. (Act).[1/] In the original charge the Council alleged that: 1) the State failed to respond to its May 31, 1990 request for information concerning College housing programs available to unit members, 2) in July 1990, the College unilaterally offered to rent housing units to prospective unit members and 3) the State failed to respond to its's July 18, 1990 second request for information. The Council concluded by alleging that the State unilaterally implemented a new term and condition of employment. In the amended charge the Council made the same basic allegations while clarifying some items, but broadened the charge to cover all housing programs that the College offered to unit members. The Council seeks an order requiring the College to rescind any actions taken implementing housing programs for unit employees, and to provide the requested information.[2/]

1/ These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

2/ When it filed its charge the Council also filed a request for interim relief seeking to restrain the College from implementing a housing program affecting unit employees. A show cause hearing was held on August 23, 1990, and on August 24, 1990 a Commission designee issued a decision, I.R. No. 91-6, 16 NJPER 499 (¶21219 1990), denying the requested relief. The designee found there were disputed factual issues that prevented the Council from meeting the likelihood of success standard for interim relief.

A Complaint and Notice of Hearing (C-1) was issued on December 20, 1990. The State filed an Answer (C-2) and Amended Answer (C-2A) on January 27 and March 11, 1991 respectively, denying it violated the Act and raising affirmative defenses. It asserted that it complied with the Council's request for information, and that any contractual dispute should be deferred to the grievance procedure in the parties' collective agreement which contains a binding arbitration clause.

Hearings were conducted on May 7 and 8, 1991 in Trenton, New Jersey.[3/] The parties filed post-hearing briefs, and the State a reply brief, all of which were received by August 9, 1991.

Based upon the entire record I make the following:

Findings of Fact

1. In December 1987 the Trenton State College Corporation (Corporation) was created, in part, to acquire, manage and administer properties (J-4).[4/] In April 1988 the College published its Long Range Financial Plan (Plan)(J-13) in which it proposed the creation of a Property Acquisition Fund needed to obtain faculty and staff housing.[5/] The Plan recommended the

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3/ The transcripts will be referred to as 1T and 2T, respectively. An Appendix of pertinent exhibits is attached to this decision for easier reference.

4/ The Corporation was approved by the State Board of Higher Education in April 1988 (J-9).

5/ The College believed that the high cost of local housing made it difficult to attract permanent faculty and staff.

creation of both rental and purchase option programs to be offered to new faculty hired on tenure-track appointments, and to staff whose responsibilities necessitated living close to campus. The Plan included sections on rental eligibility and terms of occupancy; assignments to available housing; and details on the purchase option program.

Section 15 of the Plan set forth rental guidelines including that the rental rate would initially be fixed at 5% of the market price, and rise each year based upon the rise in market price. That amount/method was selected so that rent would not be considered a taxable fringe benefit under IRS regulations (2T77-2T78, R-2).[6/]

In April or May 1988, Peter Mills, College Vice President for Administration and Finance (and President of the College

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6/ J-13 as admitted into evidence did not actually contain Section 15 of the Plan, the section concerning rental guidelines, thus, I do not have the actual 5% language recommended by the Plan. However, during negotiations in August 1989 the parties reached a tentative agreement on the following 5% language:

> (Tentative Agreement) The initial annual rental rate for properties included in the Program will be 5% of the Corporation asking price (maximum sale price) as defined in Paragraph 9 above. Annual rental increases effective each July 1 shall be based on an annual market assessment to be completed each April, with notification of any increase to be transmitted to the lessee by May 1. A signed lease for the next fiscal year shall be returned by the lessee to the Corporation by June 1. (J-15 ¶12, J-16 ¶13)

The 5% figure was never a problem for the Council (1T96), and I believe the above language is essentially the same as recommended by the Plan.

Corporation), met with the Council's executive committee, and, subsequently, with the Council's vice president, briefed them on the Plan and answered their questions (2T68-2T69). The Plan was approved by the College Board of Trustees on June 16, 1988 (J-5, 2T11).

Following the Plan's approval, Bernice Rydell, then College Associate Vice President for Administrative Services (now Vice President of the College Development Corporation), discussed the Plan with Council Local President, Arthur Steinman, who requested an opportunity to discuss the Plan's programs. Rydell held three meetings with Steinman in the fall of 1988 with the last meeting in December that year (2T12-2T13).

The parties gathered information during those meetings. Council representatives indicated their primary interest was with the purchase option program and that they would not focus on the rental program at that time (2T14). Rydell explained that the College was willing to negotiate over faculty eligibility and procedures for the program (2T13, 2T15). The rental program was not discussed, nor were unit employees living in College housing at that time (2T15, 2T19). Those discussions ended in December 1988 with

the understanding that Mills would meet with Steinman to negotiate over elements of the purchase option program (2T16).[7/]

In early spring 1989, after Mills had scheduled meetings with Steinman but prior to the actual start of negotiations, Robert Drake, Mills' assistant (Assistant to the Vice President for Administration and Finance)[8/] had a discussion with Steinman about sending a cover letter and questionnaire to two faculty groups, those hired the previous year and those about to be hired for the upcoming academic year, soliciting their interest in either purchasing homes or renting apartments (2T45, 2T48). Drake began sending those letters as early as May 5,1989 when Suborna Samanta, a one-year employee, was sent her letter (R-1A). Drake sent new employees Ching-Tai Shih and Carlos Serra Alves similar letters on June 27, 1989 (R-1B) and July 7, 1989 (R-1C), respectively. Unlike

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7/ On direct examination Steinman testified that his discussions with Rydell also covered rentals. "So we covered both rental and purchase." (1T102). I do not credit that testimony. Early in his testimony Steinman was asked if he recalled the first time he discussed the Plan with a College administrator, he said "No." (1T101). When asked if he had discussions with Rydell in the fall of 1988 he did not directly respond. Rather, he said he recalled raising some issues. When asked if it was accurate to say his concern was with the purchase option program and negotiable aspects concerning unit members, he gave an affirmative response (1T102). Steinman recalled the discussion of rentals for employees who were required to live on or near campus. But that discussion was with Mills, not Rydell (1T103-1T105). Rydell's testimony on not discussing rentals with Steinman was clear and unequivocal. I credit it here. Steinman's testimony on that point was, at best, inconclusive.

8/ Drake is now Assistant Vice President for Human Resources (2T44).

R-1A, R-1B and R-1C were mailed with a list of available homes and their purchase prices, and those letters also specifically explained that annual rental rates were fixed at 5% of the combined purchase price and improvement costs.9/

Steinman did not oppose the letters and questionnaires being sent to employees but raised two concerns. First, he thought existing faculty, those employed for over one year, should have the opportunity to respond to the questionnaire. Drake was not opposed, but they agreed the letter to all other faculty should be sent under joint signature and Steinman agreed to draft the letter (1T105-1T108, 1T110; 2T46, 2T72). No such letter was sent, however, because Steinman did not provide a draft (1T110; 2T47). Second, Steinman did not oppose rentals on an interim basis pending the outcome of negotiations, but maintained that the College/Corporation should make no commitments to renters about purchasing the properties (2T53, 2T71-2T72). Drake communicated that information to interested employees (2T53).

Steinman's testimony on these matters was not consistent with Drake's. First, he testified that he recalled a discussion with Drake about canvassing "retained" faculty and new hires about rental housing, but then could not recall what Drake said during

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9/ On May 8, 1989 Mills sent a letter (J-3) to a neighborhood association near the College in response to their concerns about the Corporation's property acquisition program. That letter explained that properties were being shown to employees and some properties would be available in June, others in late summer.

that discussion (1T105). Then he changed his testimony saying he recalled discussing canvassing "retained" faculty, but did not recall discussing canvassing new faculty (1T107-1T108). He did not recall the outcome of the discussion nor have a "perception" of whether the College was going to do the canvassing (1T108). He recalled discussing sending a letter to all faculty and co-signing such a letter, yet could not recall the "gist" of the discussion (1T108, 1T110). He neither recalled Drake asking him to draft such a letter nor preparing or signing such a letter (1T110). Steinman's changed testimony and lack of recollection made this area of his testimony unreliable. Drake exhibited a clear and concise recollection of the events and I credit it here.

Steinman also disagreed with Drake's testimony over whether rentals would take place during the negotiations process. Drake testified that no Council official stated there should be no rentals to unit members. He explained that Steinman told him not to make commitments to any individuals for purchase. Drake further explained that, in other words, if the College were renting on an interim basis pending negotiations, it would make no commitment for purchases (2T53). Steinman testified that the "perception" he had about rentals was that nothing would take place until the parties completed negotiations on the whole housing package. Steinman also testified that neither Mills nor Drake told him that unit employees were already renting College apartments or that the College intended to rent homes to staff (1T123). He said Drake assured him there would be no rentals until an agreement was reached (1T104).

I credit Drake's testimony on this point. His testimony was delivered in a direct and logical manner. Steinman's testimony was evasive and confused. Steinman was asked if he discussed the mandatory housing program (for employees required to live on or near campus) with College officials and said he vividly recalled having that discussion with Mills and Drake. But he could not recall when that was, then said it was before formal negotiations began, then said it may also have been during negotiations, then said he did not recall the exact time (1T103-1T104). He then testified that the parties discussed rentals to employees required to live on or near campus, and was asked (on direct examination) if he formed a "perception" as to whether those kinds of rentals were going to occur. His response began: "The perception I had about rentals..." and went on to say they were not to occur during negotiations (1T104).

Steinman's answer was not directly responsive to the question which was typical of his answers throughout the hearing. He was specifically asked about rentals to employees required to live on or near campus, but I find he broadened his answer to refer to all rentals.

Steinman testified that Drake assured him there would be no rentals until an agreement was reached, but he could not recall when that discussion occurred, then he said it was after formal negotiations began (1T104-1T105). I find that Steinman, at best, is confusing different discussions, and his testimony is not reliable

to prove what Drake said. I credit Drake's testimony that Steinman told him not to allow employees to purchase properties, and agree with Drake that the context of that discussion presupposes an understanding that rentals would take place but not lead to an opportunity to purchase property. Mills corroborated Drake's testimony (2T71-2T72).

2. Formal negotiations between the parties over housing programs began in late May 1989 (2T69). Mills, as chief spokesperson, assisted by Drake, represented the College/Corporation. Steinman, as chief spokesperson, assisted by Ralph Edlebach, his local vice president, and Thomas Wirth, State Council Senior Staff Representative, represented the Council (1T67-1T68, 2T50).

At the first session Steinman asked Mills to sign a statement that he had authority to bind the College. Mills signed the statement, Steinman did not (1T112, 2T71). But Mills believed that Steinman had the authority to bind the Council (2T71).[10/]

10/ Steinman did not contradict Mills' assertion that he understood Steinman to have the authority to bind the Council. Rather, Steinman testified that it was not until close to the end of negotiations before he remarked that he did not have the authority to bind (1T113). But Steinman could not recall when he said it, or whether he said it at the table or to a management representative (1T113-1T115). Steinman's testimony was, again, unreliable. I credit Mills' testimony. Drake corroborated Mills' testimony when he testified that Steinman told Mills that he (Steinman) was authorized to sign any agreement as President of the local (2T60).

At the second or third session which occurred in June 1989, Steinman sought information on all of the available College housing, and which employees were assigned to those locations (2T50, 2T54, 2T73, 2T83, 2T112).[11/] That discussion began when the Council came to the session with its own list of College-owned housing and Steinman asked for information on housing acquisitions and who was occupying them (1T122, 2T112). Drake wanted to make certain the Council's list was consistent with College information. Thus, the parties discussed each property and Drake informed Steinman (and the other Council representatives) which employee, by name, was in -- or intended to be in -- the property, and whether they were in the Council's unit (2T50-2T55, 2T73, 2T112-2T113). Drake gave the Council representatives the names of unit members assigned to rent apartments and houses, and explained the College's rationale for each employee's position being assigned to this housing (2T53-2T54, 2T73, 2T112-2T113).

Drake first discussed four apartment units that were scheduled to be renovated then rented to unit employees. The Council representatives were informed that unit employees Jane Zamborski and Frank Cooper worked in the admissions office, Ann Marie Vasile was in the College relations office, and Sharon Brooks was student center manager (2T51). Drake told Steinman he expected

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11/ On June 15, 1989 the College Board of Trustees passed a resolution (J-7) authorizing the Corporation to acquire real estate near or contiguous to the campus for lease or conveyance to faculty and staff.

those employees to occupy their apartments by September 1, 1989, Zamborski and Vasile did, but Cooper and Brooks did not take occupancy until early October (2T52). Drake also informed the Council that another unit employee, security officer Cathy Leverton, was renting a house beginning June or July 1989 (2T54). Drake's office prepared the leases for these employees to run from July 1989 through June 1990 (2T19-2T20).

All of these employees were in the Council's unit at the time of this negotiations session, but by hearing time Cooper, Vasile and Leverton were no longer in the unit. Brooks and Zamborski are still in the unit (2T51-2T52, 2T55, 2T86). During the negotiations process none of the Council's representatives raised an objection to unit employees renting College-owned housing (2T52-2T54).

Both Steinman and Wirth contradicted Drake's testimony. They denied being told that unit employees were renting or about to rent College apartments or homes (1T62-1T63, 1T123, 2T101, 2T104-2T105). But I do not credit their testimony. Steinman's testimony was often self-contradictory, evasive, and unresponsive to the questions. Wirth's testimony, at best, was confusing and unreliable.

On direct examination Steinman said he asked for a list of the College housing acquisitions and who occupied them, and when asked if he received that information he responded, "I believe so." (1T122). Yet on cross-examination (Steinman was called as a State

witness on direct, thus cross-examination was by Council's representative), which occurred shortly after Steinman made the above remarks, he denied that Drake or Mills told him that unit employees would be renting College-owned apartments or homes (1T123). I find that denial incongruent with the earlier testimony. Steinman admitted asking for and receiving the above rental information. If Drake did not provide the requested information, what was it that Steinman recalled Drake provided to him? Steinman did not logically explain. Drake's explanation was both logical and clear. Mills corroborated it. I credit their testimony.[12/]

12/ When Steinman was called by the Council as a rebuttal witness he said he did not recall reviewing a list of names or the specific names Drake mentioned (2T99-2T100). But on cross-examination by the State, Steinman was unresponsive and combative (2T101-2T103). For example, when asked if he recalled any discussion of any names of unit employees he responded: "I think what you're asking, did I get a list of names orally or in writing of unit members; if that's the question you're asking, the answer is not, I did not get it" (2T102). I find that answer unresponsive to the question. As Drake explained in his rebuttal testimony, he never provided a written list of names to the Council, they brought their own list to negotiations (2T112). I find that Steinman knew that, and he rephrased the question to evade the direct response. Thus, the response to the rephrased question was not literally inaccurate, but was misleading.

In its post-hearing brief the Council alleged that Mills contradicted Drake's testimony on the home rental issue. It alleged at p. 11, that Mills stated that general information on the home rental issue was provided <u>later in negotiations without any details regarding the identity or unit status of the affected employee</u>, and cited (2T74). The underlined words

Footnote Continued on Next Page

On cross-examination of his rebuttal testimony, Steinman again admitted that the Council inquired who was occupying apartments and houses and that he was supplied with a list of names (2T106). At first he denied being given the names of unit members, then testified he was having difficulty answering the question, then said he did not recall the names. He concluded by saying he did not recall it "registering" that there were unit members, and he left with the "understanding" that no unit employees were renting

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12/ Footnote Continued From Previous Page

were not in quotations, but by underlining them Council gave the appearance that those were Mills' words. In fact, they were not. Mills made no such remarks. After testifying at (2T73) that Drake provided the Council with the information on every home and on every person scheduled to go in the homes, Mills was asked (at 2T74) if after that point: "was there any discussion during the negotiations of rental to individuals" he responded:

> After that point, there was a point in the discussion where we clarified that which homes would not be would be excluded from the purchase option program. And, those homes were rental homes. So, to that extent, it was discussed, but not in any detail as to what, you know, the people who specifically the people would be or that type of thing. (2T74)

That response neither contradicted, nor was inconsistent with, Drake's, or Mills' own, prior testimony. Mills corrected himself during that response to show he was referring to homes which "would be" excluded from the purchase option program and indicated they were rental homes. He did not give any more detail on those homes or their occupants. The Council's above underlined words in its brief were misleading, and did not accurately reflect Mills' testimony. I credit Mills' testimony which corroborates Drake's testimony that he provided Steinman with the names of unit members who were scheduled to rent homes, homes which the College intended to include in the purchase option program.

properties (2T106-2T107). I credit Steinman's admission that the Council asked for and received information on available apartments and homes and employees assigned to rent those units. His denials of -- and inability to recall -- receiving the names of unit members is based on evasive and unreliable testimony and not credited here.

Wirth denied that the College told him that it had rented apartments or houses to unit employees (1T62-1T63). But then he admitted that apartment rentals were discussed during negotiations and that the union (Council) learned that some housing would be rented to unit employees (1T65). He admitted he learned that the College had rented homes or apartments to unit employees but could not remember when (1T67). Since Wirth only participated in these negotiations until mid-August 1989 (1T67), I find he had to know about the rentals to unit members prior thereto, which was still during the negotiations process. Since his latter testimony is inconsistent with his former testimony, and since he could not recall when he learned the rental information, I cannot rely on his testimony to prove the Council was not told about unit employees renting College housing. Drake's testimony on these issues is the most plausible, is corroborated, thus is credited here.

During the latter part of the third negotiations session, but after the parties had discussed rentals to unit employees, Mills proposed an interim agreement to allow two returning faculty members, Raj Majuran and Clarence Rodrigues, to rent homes with the

option to purchase (2T48-2T49, 2T71).[13/] Mills and Drake explained that both employees were interested in College housing but were only willing to rent homes if they had a subsequent option to purchase (2T49, 2T71). The Council considered but rejected that proposal and those employees did not rent homes (1T64, 1T122, 2T50, 2T72-2T73).[14/]

3. Negotiations continued between the parties into mid-August 1989. On August 14, 1989, the College submitted its proposals and areas of agreement (J-15) for the Faculty/Staff

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13/ Steinman testified that the discussion about employees renting College housing occurred after Mills had requested the interim agreement for two employees (1T122). But Mills testified that the discussion and release of information on employee rentals occurred at the second or third meeting (2T73), and the interim agreement proposal occurred at the third meeting (2T71). Similarly, Drake testified that the discussion about employee rentals occurred before the discussion on the interim agreement (2T50). Since I have consistently found Steinman's recollection of the facts to be unreliable, I cannot credit his testimony. I credit Mills' and Drake's explanation for when these discussions occurred.

14/ Although Wirth acknowledged the College offered an interim rental/purchase option for some employees, he said four faculty members were mentioned (1T63). Drake and Mills testified there were only two employees mentioned for that proposal (2T48, 2T71). They had a better recollection of the events and I credit their testimony. I find that Wirth was confusing the discussion over those two employees with the discussion over renting College apartments to four employees, Zamborski, Cooper, Vasile and Brooks. (See 2T48-2T51).

Similarly, I find that when Steinman testified that:

> "...Mills requested our agreement to allow houses to be rented, and we...declined to allow it," (1T122) he was referring to Mills' proposal for Majuran and Rodrigues, not to the College's renting to other unit members (see credibility determinations, supra, and 1T105; 2T48-2T50).

Purchase Option Program. On August 15, 1989, Wirth submitted the Council's proposals and areas of agreement (J-16) for the same program (1T71). Shortly thereafter Wirth was replaced by Council staff representative Barbara Hoerner (1T67, 1T73).[15/]

Based upon J-15 and J-16, the parties had reached tentative agreements on numerous issues related to the Program. The most significant agreement J-15 ¶12 and J-16 ¶13 was the 5% formula to determine the initial and annual rental rate. By late August 1989, several unit employees began renting College housing (2T52, 2T85).

Negotiations continued into September with another session held on September 26, 1989.[16/] On that day, but prior to the start of that session, Drake faxed Hoerner a copy of the tentative agreements the parties had reached to that point on the proposed

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15/ On direct examination Hoerner testified that while she was involved in negotiations no College official told her that the College had rented or was about to rent College housing to unit employees before negotiations concluded (1T73-1T74). She said she did not learn the College had rented apartments and houses to unit employees until after negotiations over the Program ended (1T75). Hoerner, however, was not involved in the June negotiations, thus, even if I credit her above testimony, it does not outweigh Drake's testimony that he told Steinman, Wirth and Edelbach the names of unit employees who were renting or about to rent apartments. Hoerner's testimony only shows her own knowledge of the events beginning sometime after mid-August 1989. But Hoerner also testified that apartment rentals was an item in the negotiations (1T75), thus Hoerner was not unfamiliar with the concept of renting to unit employees.

16/ On September 14 and 17, 1989 the College Board of Trustees approved resolutions, J-8 and J-14, respectively, authorizing the Corporation to acquire additional residential properties for staff housing.

Faculty/Staff Purchase Option Program (J-17). Hoerner made notations on her copy of that document (which became R-3) prior to the session to know what to review (2T95-2T96, 2T108-2T110). That session ended with several items still in dispute.

The next session was held on October 2, 1989, with the final session held on October 18, 1989. Steinman and Hoerner were at those meetings (2T57-2T58, 2T76).[17/] On October 2 the parties resolved -- and reached tentative agreement -- on all but one issue: whether the agreement should reference the College or the Corporation. Both Hoerner and Mills wanted to consult with their respective attorneys on that point. Thus, the parties scheduled a meeting for October 18 to resolve that issue and sign an agreement (2T57-2T58, 2T75).

On or about October 12, 1989, Drake prepared a proposed agreement (J-18) for the Faculty/Staff Purchase Option Program which included the tentative agreements the parties had reached and incorporated most of the remarks or concerns Hoerner had written on R-3 (2T109-2T110). Steinman and Hoerner were provided with a copy of J-18 on or before October 18.

17/ Hoerner testified that the last session was held on September 26 and that the College broke off negotiations at that point because an agreement had not been reached. She claimed she was unaware of meetings on October 2 or 18, 1989 (1T83-1T84, 1T90, 2T93, 2T95). Steinman could not recall the October meetings (1T117-1T119). Drake and Mills testified to what occurred at the October meetings. Hoerner's testimony was unreliable and is not credited. See note 18 and discussion infra. Drake's and Mills' testimony is more consistent and plausible and is credited here.

J-18 was offered for signature on October 18 (2T110). But at the beginning of that meeting Hoerner listed several concerns with J-18 which were really new issues not previously raised in negotiations. Mills and Drake argued that Hoerner was breaking the understanding the parties had reached on October 2. At that point Steinman indicated that regardless of the issues, he no longer had authority to sign the agreement, it had to be approved by the Statewide Council. The meeting ended at that point without a formal agreement on the Program (2T58-2T59, 2T76).[18/]

Hoerner reported the results of that meeting to Council President Marcoantonio Lacatena (1T89-1T90), and on October 19, 1989 Mills received a copy of Lacatena's October 18 letter (C-1B) to the State insisting that negotiations over a purchase or rental program take place on a statewide level (2T76). That brought an end to local negotiations over that issue. On November 3, 1989, the State sent a letter to Lacatena (J-2), agreeing that negotiations over purchase or rental programs should be conducted on a statewide

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18/ Steinman claimed he did not recall the October 18 meeting, but seemed to recall receiving J-18 (1T117). Hoerner denied receiving J-18 (1T85) and denied being at a meeting on October 18 (2T93, 2T95). Drake was certain he sent J-18 to Steinman on October 12, and thought he faxed it to Hoerner (2T58). In any case, he and Mills were certain Steinman and Hoerner were at the October 18 meeting at which J-18 was discussed (2T58, 2T76). Steinman's recollection of the facts has proved to be unreliable, and Hoerner's insistence that there were no October meetings is simply wrong given the date of J-18 and her involvement with C-1B which was sent to Mills after the meeting on October 18. See discussion infra. Thus, I credit Drake's and Mills' testimony on this point.

basis.[19/] There were no further negotiations on such programs in 1989.

Although Hoerner denied attending negotiating sessions after September 26 (2T95), I cannot credit her testimony. First, she relied on her notes from September 26 (CP-5), but those notes say nothing about when negotiations ended (2T95) and are self-serving at best. Second, Hoerner's explanation of the events is neither plausible nor reliable. Despite her denials on direct and rebuttal, on cross-examination Hoerner said she did not recall meetings on October 2 and October 18, but said she could be wrong (1T90-1T92). On rebuttal she insisted negotiations ended on September 26, yet on cross-examination admitted that C-1B, written on October 18, 1989, was a reason negotiations ended. Hoerner had reported to Lacatena before C-1B was sent, but did not have a believable explanation why Lacatena would have waited three weeks to send C-1B assuming the accuracy of Hoerner's contention that negotiations ended on September 26 (1T88-1T90). Thus, I find -- crediting Drake and Mills -- that the last session occurred on October 18, Hoerner was there, and she reported the results to Lacatena who sent C-1B that day.

19/ J-2 referred to a letter of October 23, 1989 presumably sent by Lacatena to the State raising questions of negotiability presumably related to the issues here. But since no copy of that letter was introduced for evidence, I cannot determine the true nature of its content.

4. During this general time period statewide negotiations were proceeding between the State and Council for a new collective negotiations agreement. A new agreement (J-1) was signed on March 21, 1990, effective July 1, 1989-June 30, 1992. Near the end of those negotiations a member of the State's team raised a question about the College housing situation. As a result, the parties signed Side Letter of Agreement IV (C-1A) which provides:

> The parties acknowledge that the issue of College housing programs for employees has not been a subject of negotiations leading to the 1989-1992 Agreement. This Agreement will not preclude the State from negotiating the matter during the term of this Agreement.

C-1A was not printed into J-1, but is part of that agreement. The State has not requested negotiations pursuant to C-1A (1T61-1T62).

On May 31, 1990 Lacatena sent the State the following letter (C-1C):

> The Council hereby requests that you provide it with the following information concerning the above-captioned matter:
>
> Houses/apartments currently owned by the College:
>
> A. Total number of houses/apartments
>
> B. Location of houses/apartments (Street Addresses)
>
> 1. For each house/apartment:
>
> a. Occupancy--indicate
>
> 1) Vacant 2) Occupied or 3) College use
>
> If occupied, indicate whether rental or being purchased
> Give name of occupant and college title
>
> Your cooperation in securing this information is appreciated. Thank you.

The State did not provide a written response.[20/]

Prior to October 1989, Drake made the arrangements for unit employees to rent College housing, but Rydell assumed that responsibility after that date (2T19-2T20). In June 1990, Rydell renewed the leases for all employees in College housing at that time to run from July 1, 1990-June 30, 1991. She renewed employees Zamborski and Brooks, as well as faculty member Subarna Samanta, theater technician Kevin Patucek, and employee Karen Greenberg (2T20-2T21).[21/] She also arranged three new leases for 1990-91, for employees Ursula Wolz, Don Lovett, and Steve Ripons (2T22, 2T26-2T27, 2T29-2T32). Both Lovett and Ripons were in the Council's unit (2T25-2T26).

The College has not sold any homes to unit employees, but a total of six unit employees rent College housing. Three faculty employees rent houses, three professional staff employees rent apartments (2T27). The three rented homes are located at 80 Colleen Circle, 15 Linwood Drive, and 1868 Pennington Road, Ewing, New Jersey. The three rented apartments are located at 1914 and 2064

20/ On June 6, 1990 (J-10) the Chancellor of Higher Education requested the Board of Higher Education approve a resolution authorizing the Corporation to implement a property acquisition program. The Board approved the resolution on June 15, 1991 (J-11).

21/ As of the date of hearing Kevin Potucek was no longer renting College housing (2T36-2T37).

Pennington Road, and 46-C Green Lane in Ewing (2T25-2T26).[22/] All renters have the option to pay their rent through payroll deductions (2T32), all pay one and one-half months security deposit, and all have one year leases (2T36). On July 18, 1990, Lacatena sent another letter to the State (C-1D) again seeking the housing information requested in C-1C, and advising that the Council might file with the Commission if the information is not provided.

After C-1D was sent Hoerner and/or Lacatena began receiving, via telephone, the information the Council requested from the State/College. They learned which employees were in College housing, their unit status, the rental amount, and the housing characteristics. Hoerner was provided with information regarding rentals of apartments and houses to unit employees (1T75-1T76).

On August 21, 1990, Hoerner prepared a document for Lacatena (CP-4), listing the housing information they had received. CP-4 listed the addresses of the houses and apartments, the occupants, the 1990-91 rents, the date of purchase and purchase price, the market analysis value of the housing, and the housing size.

Based upon Rydell's testimony and CP-4, the record shows that for 1990-91 six unit employees rented the following:

Lovett - 80 Colleen Circle (house) - $885 per month
Wolz - 15 Linwood (house) - $1025 per month

22/ Other available College homes that are either vacant or not rented to unit employees are located at 54 Carlton Drive, 14 Clement Avenue, and 1904 Pennington Road (2T24-2T26).

Samanta - 1868 Pennington (house) - $700 per month
Zamborski - 1914 Pennington (Apt.) - $490 per month
Brooks - 2064 Pennington (Apt.) - $410 per month
Ripons - 46-C Green Ln. (Apt. cottage) - $400 per month.[23/]

5. The record shows that there are some homes and apartments near College-owned housing that rent for more than similar College housing. The home at 8 David Drive, for example, is nearly identical to 80 Colleen Circle but rents for $1100 per month (1T41, CP-2). The three bedroom home at 1868 Pennington Road is a single family house renting for $700 per month, while a three bedroom duplex at 1584 Pennington rents for $825 per month (1T42, CP-2). There are also several apartments in the vicinity of College-owned apartments which were advertised for higher monthly rents than College apartments (CP-3). While there may be some homes and apartments renting for more than College housing, there is no conclusive evidence that the rents fixed by the College/Corporation are below the norm for rents of similar housing.[24/]

23/ On October 23, 1990 the Corporation held a Board of Directors meeting. The minutes of that meeting (J-12) reflect that the Faculty Purchase Option Program had not "moved forward" because the College and Council had not reached agreement on that program.

24/ The Council offered the testimony of Joan George, a licensed real estate agent for a private realtor, who sells and rents homes in the neighborhood near the College. She compared College-owned homes with similar homes in the area and compared their rents. The Council offered her as an expert, but I reserved on deciding that question while permitting her testimony (1T38). I am satisfied that George has the

Footnote Continued on Next Page

6. J-1, Article 8, Section C provides that the State/College agrees to furnish the Council with information upon written request within a reasonable time, 15 work days where practicable.

ANALYSIS

Since the charge was filed on August 2, 1990 and amended on February 6, 1991, the statute of limitations extended back to only February 2, 1990 on the original charge and to August 6, 1990 on the amended charge. Incidents that occurred prior to those respective limitation dates cannot be the basis of a violation. N.J.S.A. 34:13A-5.4(c). Nevertheless, in litigating their respective cases both parties presented information about events that occurred from May through December 1989. That litigation produced the background facts which were needed to analyze whether events within the statute of limitations period violated the Act.

24/ Footnote Continued From Previous Page

experience, training and education to qualify as an expert under Rule 19 of the New Jersey Rules of Evidence, and may give opinion testimony pursuant to Rule 56. Although I credit her testimony, its probative value is minimal. She could only establish that some similar homes rented for more than College houses. George did not, however, establish what the norm or median rental price was in the area for homes similar to College homes, nor did she produce a scientific, or statistically reliable survey establishing that point. Thus, I cannot conclude that the College rents are below the norm, and I will not infer that the level of rent itself confers a benefit on the employee-renter. I believe that offering housing to employees is, itself, a benefit, but if the parties are unable to agree on whether it is appropriate to negotiate over the amount of rent, that matter can be raised to the Commission by the filing of a scope of negotiations petition. See N.J.A.C. 19:13-1.1 et seq.

The Allegations

Despite the length of the original charge (C-1), in summary it only alleged 1) that the College unlawfully "offered housing" to prospective unit employees in July 1990 (items 10 & 13); and 2) that it failed to respond to requests for information in May and July 1990 (items 8, 9 11 12 & 14).

The Council also alleged certain other facts but without also alleging that those facts formed the basis of a violation. In item 4 of C-1, for example, it alleged that a College housing program involved mandatorily negotiable terms and conditions of employment. But the Council did not allege that the College unlawfully: implemented a housing program; "rented" housing to unit employees in either 1989 or 1990; set the amount of rent or that the rent constituted a negotiable term and condition of employment; refused to negotiate over the method to determine rental amount or over employee eligibility for College housing.

In item 5 of C-1, the Council explained the intent of C-1A, but did not allege that the State or College had refused to negotiate during the term of J-1. In item 6 of C-1, the Council alleged that in C-1B it had requested negotiations over the College housing program but that no negotiations have been held on that issue because the State's Director of the Office of Employee Relations (OER) assured the Council the program would not be implemented at that time. Even if that allegation was based upon accurate facts, the Council did not then allege in this charge that

the College unilaterally implemented the program or refused to negotiate. But the facts of item 6 are not accurate. The Council did not request negotiations in C-1B, the parties did hold negotiations over rentals, nor was proof offered at the hearing that anyone from OER gave the Council specific assurances. In C-1B, Lacatena only insisted that negotiations over the housing program take place on the statewide level between himself (or his designee) and OER. It made no request to negotiate at that time.

Thus, in C-1 the Council did not allege that any of the 1989 facts violated the Act.

In the amended charge (C-1E) the Council alleged additional facts but concluded its charge with the same two summary allegations: 1) unlawfully offering rental units to unit employees in July 1990, and 2) not complying with the May and July 1990 requests for information.

In item 4 of C-1E the Council alleged that sale or rental of College-owned properties to unit employees involved mandatorily negotiable terms and conditions of employment. It then said "this allegation encompasses" all College housing programs. But there was no allegation that the College failed or refused to negotiate over those programs or their affect on unit employees.

Item 6 of C-1E was essentially the same as item 6 of C-1, but in C-1E the Council expanded on the facts. The Council alleged that in C-1B it requested negotiations regarding a housing purchase program which involved the sale of housing to unit employees at a

discount from market price. Although in C-1B Lacatena referred to discussions covering the housing purchase program which involved the sale of housing to unit employees at a discount from market price, he made no request in C-1B to negotiate over that matter. He only insisted that all further negotiations take place on a statewide basis.

Thus, despite peripheral facts, the allegations from C-1 and C-1E are limited to the two items listed above and the time frame of from May to July 1990.

The Offer For Housing

The State did not violate the Act by offering rental units to unit employees in July 1990. In 1990, it merely continued the conduct that had begun in 1989. As a result, there was no unilateral change in 1990. The change -- offering rentals, and renting, to unit employees -- occurred in 1989. Since the Council acquiesced to those changes in 1989, offering rentals, and renting, to unit employees was the status quo in July 1990.

The facts show that as early as June 1989, the College offered rentals to unit employees. Mills and Drake notified Steinman and Wirth about those offers and that the employees would take occupancy by September or October of 1989. The Council representatives did not object to the offers or rentals; did not demand negotiations over those offers or rentals apart from the ongoing negotiations over the housing program; and did not file a charge over those offers or rentals. The Council, thus, allowed the College conduct to become the status quo.

In Caldwell-West Caldwell Bd. of Ed., P.E.R.C. No. 80-64, 5 NJPER 536, 537 (¶10276 1979), aff'd in pt. rev'd in pt., 180 N.J. Super. 440 (App. Div. 1981), the Commission explained that once the union had acquiesced to the employer's conduct, that conduct rose to an implied, mutual understanding between the parties.[25/]

The result here is the same. The Council was aware of offers and rentals to unit employees in 1989, it acquiesced to that conduct, thus, making such offers and rentals in 1990 was merely the continuation of an existing term and condition of employment.

Once the Council acquiesced to the College making such offers and rentals to unit employees, the Council assumed the burden to demand negotiations if it sought to change the status quo. See Town of Kearny, P.E.R.C. No. 91-42, 16 NJPER 591 (¶21259 1990), request for recon. den. 17 NJPER 243 (¶22109 1991); Willingboro Bd. of Ed., P.E.R.C. No. 90-43, 15 NJPER 692 (¶20280 1989); Trenton Bd. of Ed., P.E.R.C. No. 88-16, 13 NJPER 714 (¶18266 1987); Town of Secaucus, P.E.R.C. No. 87-104, 13 NJPER 258 (¶18105 1987); Monroe Tp. Bd. of Ed., P.E.R.C. No. 85-35, 10 NJPER 569 (¶15265 1984).

In view of the language in C-1A, J-1 did not operate as a waiver of the Council's right to negotiate over renting College housing to unit employees. Nevertheless, the Council had to demand negotiations over those issues in 1990. Since no demand to

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25/ The Court did not disturb the Commission's legal concepts, but did reverse the Commission's decision on the merits of that issue based upon its own analysis of the facts.

negotiate over those issues was made that year, the Council waived the right to negotiate over those issues during that time period. Phillipsburg Bd. of Ed., P.E.R.C. No. 90-35, 16 NJPER 623 (¶20260 1989); South River Bd. of Ed., P.E.R.C. No. 86-132, 12 NJPER 447 (¶17167 1986), aff'd App. Div. Dkt. No. A-5176-85T6 (3/10/87); Rutgers University, P.E.R.C. No. 82-98, 8 NJPER 300 (¶13132 1982).[26/]

Having found there was no unilateral change in 1990, I conclude the College did not fail or refuse to negotiate over offers and rentals that year; thus, the 5.4(a)(5) charge regarding the "offers" allegation should be dismissed.

The Request For Information

It is well settled law that a majority representative is entitled to information needed to carry out its statutory duty of contract administration and employee representation. Failure to provide such information is a refusal to negotiate in good faith. New Jersey Transit Bus Operations, Inc., P.E.R.C. No. 89-127, 15 NJPER 340 (¶20150 1989); N.J.S.A. 34:13A-5.4(a)(5); City of Atlantic City, P.E.R.C. No. 89-56, 15 NJPER 11, 12 (¶20003 1988); Burlington Cty., P.E.R.C. No. 88-101, 14 NJPER 327 (¶19121 1988), aff'd App. Div. Dkt. No. A-4698-87T1 (4/28/89); State of New Jersey,

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26/ Since there is no contractual waiver over offers and rentals to unit employees the Council may demand negotiations over those subjects at any time.

P.E.R.C. No. 88-27, 13 NJPER 752 (¶18284 1987), recon. den. P.E.R.C. No. 88-45, 13 NJPER 841 (¶18323 1987), aff'd App. Div. Dkt. No. A-2047-87T7 (12/27/88); New Jersey Transit Bus Operations, Inc., P.E.R.C. No. 88-12, 13 NJPER 661 (¶18249 1987), adopting H.E. No. 87-65, 13 NJPER 423 (¶18164 1987); Downe Tp. Bd. of Ed., P.E.R.C. No. 86-66, 12 NJPER 3 (¶17002 1985); Shrewsbury Bd. of Ed., P.E.R.C. No. 81-119, 7 NJPER 235 (¶12105 1981); see also NLRB v. Acme Industrial Co., 385 U.S. 432 (1967); NLRB v. Truitt Mfg. Co., 351 U.S. 149 (1956).

By sending C-1C on May 31, 1990, the Council formally requested information that could affect members of its negotiations unit. The State did not respond to that request, thus violated subsection 5.4(a)(5) of the Act. While the Council may have had some of the requested information, it could not have known whether it had the most up-to-date information without a College response.[27/] The State/College could have responded that it had provided the information or some of the information, it could have provided what it thought it hadn't previously provided, or it could have provided the information in full. But by not responding to

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27/ The facts show that there were some changes from the list of employees who rented in 1989, and those scheduled to rent in 1990.

C-1C the State/College violated the Act and also repudiated Article 8, Section C of J-1.[28/]

The State did not violate the Act with respect to C-1D because shortly after that letter issued State officials communicated the requested information to Lacatena and/or Hoerner. That resulted in Hoerner's compilation of the information on CP-4. CP-4 appears to contain the essential elements of the information originally requested in C-1C.

Remedy

The Council sought the rescission of housing programs and rentals to unit employees in addition to the receipt of the requested information. But the State's failure to respond to C-1C does not entitle the Council to an order rescinding the housing programs or employee rentals. C-1C was not a demand to negotiate (neither was C-1D). The Council could have included a demand to negotiate with its request for information, but it did not. Absent a demand, the College was under no obligation to negotiate the offers and rentals in 1990, they had become the status quo. Thus, the Council is not entitled to an order rescinding those actions.

28/ The violation here was the State's failure to respond. It is critical to distinguish between its failure to respond, and what the content of any response might have been. If the Council was unhappy with the State's response, it could have filed a grievance over the sufficiency of the response and an arbitrator could have decided whether the response complied with contractual intent. But by not responding, the State/College was unlawfully avoiding its legal obligation to provide information, and ignoring -- thus repudiating -- Article 8, Section C of the collective agreement.

The Council is entitled to the requested information, but that information was provided after C-1D was sent. Thus, the appropriate remedy here is the posting of a notice indicating that the State/College violated the Act, and repudiated Article 8 Section C of J-1, and requiring the State/College to honor J-1 and respond to future requests for information in a timely fashion.

Conclusion

The State/College violated subsection 5.4(a)(5) and derivatively (a)(1) of the Act by failing to respond to a request for information in a timely fashion.

Based upon the above findings and analysis, I make the following.

Recommended Order

I recommend the Commission ORDER:

A. That the State/College cease and desist from:

Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly by failing to timely respond to a Council request for information, and thereby also repudiating Article 8, Section C of the parties' collective agreement.

B. That the State/College take the following action:

1. Honor Article 8, Section C of the parties' collective agreement, and respond to requests for information within a reasonable time.

2. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice shall, after being signed by the Respondent's authorized representative, be posted immediately and maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

3. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply with this order.

C. That the remaining allegations be dismissed.

Arnold H. Zudick
Hearing Examiner

Dated: December 10, 1991
Trenton, New Jersey

Appendix of
Pertinent Exhibits

C-1 Original Charge.

C-1A Side bar agreement between the parties that College housing programs was not included in negotiations leading to their collective agreement, J-1.

C-1B Council President Lacatena's letter of October 18, 1989, to the State demanding all further negotiations regarding College housing take place on the State-wide level.

C-1C Lacatena's May 31, 1990 "first" request for information.

C-1D Lacatena's July 18, 1990 "second" request for information.

C-1E Amended Charge.

J-1 Parties 1989-1992 collective agreement.

J-13 College April 1988 Long Range Financial Plan.

J-15 College August 14, 1989 housing program proposals to the Council.

J-16 Council August 15, 1989 housing program proposals to the College.

J-17 September 26, 1989 list of tentative agreements between the parties regarding housing program.

J-18 College October 12, 1989 proposed housing program agreement.

CP-4 August 21, 1990 Council preapred information of employees occupying College housing.

Recommended Posting
Appendix "A"

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining or coercing our employees in the exercise of the rights guaranteed to them by the Act, particularly by failing to timely respond to a Council request for information, and thereby also repudiating Article 8, Section C of our collective agreement.

WE WILL henceforth honor Article 8, Section C of our collective agreement with the Council, and will respond to their requests for information within a reasonable time.

Docket No. CO-H-91-28 STATE OF NEW JERSEY (TRENTON STATE COLLEGE)
(Public Employer)

Dated_____ **By**_____
(Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State St., CN 429, Trenton, NJ 08625 (609) 984-7372.