

D.U.P. NO. 93-8

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION  
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

PASSAIC COMMUNITY COLLEGE,

Respondent,

-and-

Docket No. CO-92-352

OPEIU, LOCAL 153,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charged filed by OPEIU, Local 153 against Passaic Community College. The charge alleged that the College violated the Act when it unilaterally changed the pay rate of bargaining unit members.

The Director determined that the Board had the contractual right to correct the divisor in its payroll procedure so as to have the salaries paid match the salaries set forth in the agreement.

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Appearances:

For the Respondent,  
Michael Yosifon, Vice President for Business and Finance

For the Charging Party,  
Schneider, Cohen, Solomon, Leder & Montalbano, attorneys  
(Bruce D. Leder, of counsel)

REFUSAL TO ISSUE COMPLAINT

On April 28, 1992, Local 153, OPEIU filed an unfair practice charge with the New Jersey Public Employment Relations Commission against Passaic County Community College. The charge alleges that the College violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1.1 et seq., specifically, subsections 5.4(a)(1) and (5)<sup>1/</sup> when it unilaterally changed the pay rate of bargaining unit members.

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<sup>1/</sup> 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."

The College claims that it did not change the pay rate, but simply corrected a defect in its payroll procedure which had caused a mistaken overpayment to employees in fiscal years with more than 260 work days.

Local 153 denies there was an overpayment and alleges that the use of 260 as the divisor of the annual salary was agreed to by the parties in 1984. It also asserts that the employer repudiated an established term and condition of employment and a clear and consistent past practice by changing the divisor. It further points out that the College acted in bad faith by not raising the divisor issue until after the present agreement was reached. Finally, it points out that the rate change is not a mere breach of contract but rather strikes at the entire contract.

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The contract between the parties provides a specific annual salary for each unit position as listed in Appendix B.

In 1984, the College converted its payroll system from a semi-monthly to a bi-weekly system. At the time, the annual salary was divided by 260 work days to obtain a daily rate. The College continued to use the 260 day divisor, even in fiscal years containing 261 or 262 work days. During these years, employees received an overpayment of one or two days pay, resulting in their receiving more than the annual salary set forth in the collective negotiations agreement.

The College discovered this error in March 1992 and explained it to the affected negotiations units. It did not seek to recover past overpayments. However, it implemented a reduction in the bi-weekly rate beginning with the payroll period of April 9,

1992, so that the rate conformed with the number of work days in the fiscal year.


ANALYSIS

An employer may lawfully change terms and conditions of employment when the change is authorized by a collective negotiations agreement. Bound Brook Bd. of Ed., P.E.R.C. No. 83-11, 8 NJPER 439 (¶13207 1982); Randolph Tp. Bd. of Ed., P.E.R.C. No. 81-73, 7 NJPER 23 (¶12009 1980). Further, clear contract provisions prevail over contrary past practices in establishing terms and conditions of employment. Randolph; Tp. of Maplewood, D.U.P. No. 90-4, 15 NJPER 554 (¶20228 1989).

Here, the parties' agreement sets forth the salaries for the positions in the negotiations unit. Accordingly, the Board had the right to correct the divisor in its payroll procedure so as to have the salaries paid match the salaries set forth in the agreement. Compare Barnegat Tp. Bd. of Ed., P.E.R.C. No. 91-18, 16 NJPER 484 (¶21210 1990), aff'd App. Div. Dkt. No. A-550-90T5 (3/16/92).

Thus, I conclude that the Commission's complaint issuance standard has not been met. Accordingly, I decline to issue a complaint on the allegations of this charge. N.J.A.C. 19:14-2.3. The charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: September 15, 1992  
Trenton, New Jersey