P.E.R.C. NO. 83-47

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BERGEN COMMUNITY COLLEGE,

Respondent,

-and- Docket No. CO-82-66-147

BERGEN COMMUNITY COLLEGE
PROFESSIONAL STAFF
ASSOCIATION,

Charging Party.

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BERGEN COMMUNITY COLLEGE,

Respondent,

-and- Docket No. CO-82-67-148

BERGEN COMMUNITY COLLEGE
ADULT LEARNING CENTER
FACULTY,

Charging Party.

## SYNOPSIS

The Public Employment Relations Commission dismisses a consolidated Complaint based on unfair practice charges the Bergen Community College Professional Staff Association and the Bergen Community College Adult Learning Center Faculty filed against the Bergen Community College. The charge had alleged that the College violated the New Jersey Employer-Employee Relations Act when it refused to grant paid release time to the presidents of the charging parties for their attendance at a preliminary hearing on an unrelated charge filed with the Commission. A Hearing Examiner found, in granting a Motion for Summary Judgment, that the parties' contract does not require the College to grant paid release time for attendance at Commission unfair practice cases. The Commission agrees.

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BERGEN COMMUNITY COLLEGE
ADULT LEARNING CENTER
FACULTY,

Charging Party.

Appearances:
For the Respondent, Rosen, Gelman & Weiss, Esqs.
(Roger B. Jacobs, of Counsel)

For the Charging Parties, Sterns, Herbert & Weinroth, Esqs.
(Mark D. Schorr, of Counsel)

DECISION AND ORDER

On September 25, and December 18, 1981, the Bergen Community College Professional Staff Association ("Association") and the Bergen Community College Adult Learning Center Faculty ("ALCFA") filed, respectively, an unfair practice charge and an amended charge against Bergen Community College ("College") with the Public Employment Relations Commission. The charge, as amended, alleged that the College violated the New Jersey

Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1),(2), and (5),[1/] when it refused to grant paid release time to the presidents of the Association and the ALCFA for their attendance at a preliminary hearing on an unrelated unfair practice charge filed with the Commission. The charge specifically alleged that the presidents had both a statutory and a contractual right to paid release time to attend Commission proceedings.

On June 29, 1982, the Director of Unfair Practices issued a Complaint and Notice of Hearing pursuant to N.J.A.C. 19:14-2.1. On July 12, 1982, the College filed an Answer admitting that it refused to grant the presidents paid release time, but denying that the presidents had either a statutory or contractual right to paid release time. As a separate defense, the College asserted that the following contractual provision on release time in the agreements between the Association, the ALCFA, and the College excluded payment for attendance at Commission proceedings:

> Whenever any representative of the Association is mutually scheduled by the parties to participate during working hours in negotiations, grievance proceedings, conferences or meetings which are related to Association matters, he shall suffer no loss in pay, nor be expected to compensate in any way for time spent in carrying out such responsibilities, nor shall he receive extra compensation therefore. (Emphasis supplied)

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; (2) Dominating or interfering with the formation, existence or administration of any employee organization; 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."

On July 30, 1982, the College filed a Motion for Summary Judgment pursuant to N.J.A.C. 19:14-4.8. On August 4, 1982, it submitted a supporting brief together with certain exhibits. The College asserted that there is no statutory requirement that it pay employee representatives for attending Commission hearings, the Commission had no jurisdiction to consider the question of contractual interpretation since the parties' contracts made the Board of Trustees the final step of the grievance procedure, and the parties' contracts did not authorize paid release time for Commission proceedings. It also asserted that there were no genuine issues of material fact.

On August 5, 1982, the Chairman of the Commission referred the motion to Commission Hearing Examiner Alan R. Howe pursuant to N.J.A.C. 19:14-4.8(a). On August 30, 1982, the Association and ALCFA filed a brief opposing summary judgment. They argued that the Commission does have jurisdiction to decide questions of contractual interpretation, that the contractual provision on release time was not clear and unambiguous, and that they should be allowed to introduce evidence concerning the parties' past practice and intention with respect to that clause. In particular, they argued that the presidents were entitled to paid release time since the Commission unfair practice hearing was "mutual" in the sense that it affected both the College and employee organizations and that they could establish this claim at a hearing.

On September 8, 1982, the Hearing Examiner granted the College's Motion for Summary Judgment and recommended dismissal of the Complaint. H.E. No. 83-9, 8 NJPER ___ (¶_____ 1982) (copy attached).

On September 15, 1982, the Association and ALCFA filed Exceptions pursuant to N.J.A.C. 19:14-7.3. They incorporated and reiterated the arguments set forth in their brief before the Hearing Examiner opposing summary judgment.2/ They specifically argue that summary judgment was improvidently granted, especially in the absence of supporting affidavits, that they should have an opportunity to prove that their construction of the contracts is what the parties intended, and that the Hearing Examiner's report was "largely devoid of reason."

On September 20, 1982, the College filed a statement supporting the Hearing Examiner's decision and incorporating its previous submissions.

We have reviewed the record. We agree with the Hearing Examiner that summary judgment was appropriate in this case.

Pursuant to N.J.A.C. 19:14-4.8(d), summary judgment may be granted "[i]f it appears from the pleadings, together with the briefs, affidavits and other documents filed, that there exists no genuine issue of material fact and the movant or cross-movant is entitled to its requested relief as a matter of law...." As the Hearing Examiner recognized, a motion for summary judgment is to be granted with extreme caution, the

2/ They also stated that they were not claiming any inherent statutory right to be paid while attending Commission conferences, but instead were limiting their claim to their asserted contractual right. We accept this limitation and consequently will not consider the former issue.

moving papers are to be considered in the light most favorable to the party opposing the motion, all doubts are to be resolved against the movant, and the summary judgment procedure is not to be used as a substitute for a plenary trial. Baer v. Sorbello, 177 N.J. Super. 182, 185 (App. Div. 1981).

The Hearing Examiner's findings of fact (Slip Opinion at pp. 2-4) are undisputed. We adopt and incorporate these findings here.

Whether or not a genuine issue of material fact exists in the instant case turns upon whether Article III, Section 2 is clear and unambiguous on its face. If it is, then there is no need to consider evidence of negotiations history or past practice because the plain language of the contract controls. See, e.g., In re New Brunswick Bd. of Ed., P.E.R.C. No. 78-47, 4 NJPER 84 (1979); In re Randolph Twp. Bd. of Ed., P.E.R.C. No. 81-73, 7 NJPER 23 (¶12009 1980).3/

We agree with the Hearing Examiner that Article III, Section 2 is clear and unambiguous on its face and cannot be read

3/ Procedurally, the parties' submissions are adequate for a summary judgment determination, despite the absence of any affidavits. N.J.A.C. 19:14-4.8 does not require affidavits, and the pleadings and the parties' briefs and exhibits establish the undisputed facts and, in particular, the centrality of the wording of Article III, Section 2 to this dispute. The College is under no obligation to submit affidavits or other documents to support its contention that the plain wording of that section does not require payment for attendance at unfair practice charge proceedings. We also note that the Association has not placed into dispute any specific facts concerning the negotiations history or the parties' practice before or after the adoption of Article III, Section 2.

to require payment of Association or ALCFA representatives attending Commission unfair practice proceedings. The parties may "mutually schedule" meetings, grievance proceedings, conferences, or meetings related to Association matters, but they do not "mutually schedule" Commission unfair practice charge proceedings. The Association argues that these proceedings are "mutual" in the sense that they affect both employers and employees, but the phrase "mutually scheduled by the parties" is, on its face, more restrictive. It means the parties have agreed to meet at a particular time and place to work out a problem. For example, the clause requires payment for mutually scheduled meetings to negotiate or to participate in grievance proceedings.[4/] Unfair practice charge proceedings, by contrast, lack the elements of consent, cooperation, and control inherent in that phrase. Thus, the clause omits such proceedings.

The Association and ALCFA have not excepted to the Hearing Examiner's conclusion that Article XXVIII, Section 7 of the parties' agreements is clear and unambiguous and does not require payment for attending Commission unfair practice proceedings. We adopt and incorporate the Hearing Examiner's discussion (Slip opinion at pp. 8-9) here.

For the reasons stated above, we affirm the Hearing Examiner's grant of the College's Motion for Summary Judgment and dismiss the Complaint.

4/ We note that the contracts do not provide for binding arbitration.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Hartnett, Newbaker and Suskin voted in favor of this decision. Commissioner Hipp abstained. Commissioner Graves was not present.

DATED: Trenton, New Jersey
October 7, 1982
ISSUED: October 8, 1982

H. E. No. 83-9

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

In the Matter of

BERGEN COMMUNITY COLLEGE, :

Respondent, :

-and- : Docket No. CO-82-66-147

BERGEN COMMUNITY COLLEGE PROFESSIONAL STAFF ASSOCIATION, :

Charging Party :

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BERGEN COMMUNITY COLLEGE,

Respondent, :

-and- Docket No. CO-82-67-148

BERGEN COMMUNITY COLLEGE ADULT LEARNING CENTER FACULTY, :

Charging Party :

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SYNOPSIS

A Hearing Examiner grants the Respondent's Motion for Summary Judgment on a Charge of Unfair Practices, which alleged that the Respondent violated Subsections(a)(1), (2) and (5) of the New Jersey Employer-Employee Relations Act when it refused to "grant release time with pay" to the Presidents of the Association and the Faculty to attend a "PERC" hearing on September 11, 1981. The Presidents had sought payment under several provisions of the collective negotiations agreements between the Respondent and the Association and the Faculty. However, the Hearing Examiner found that the cited provisions of the agreements were clear and unambiguous and allowed of no interpretation which would require the Respondent to pay the Presidents for lost time while attending a "PERC" hearing. Thus, there was no unilateral change in terms of conditions of employment by the Respondent.

A Hearing Examiner's Decision and Order on a Motion for Summary Judgment not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission, which reviews the Recommended Decision and Order, 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. 83-9

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

In the Matter of

BERGEN COMMUNITY COLLEGE, :

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BERGEN COMMUNITY COLLEGE,

Respondent, :

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BERGEN COMMUNITY COLLEGE ADULT LEARNING CENTER FACULTY, :

Charging Party. :

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Appearances:

For Bergen Community College
Rosen, Gelman & Weiss, Esqs.
(Roger B. Jacobs, Esq.)

For the Association & Faculty
Sterns, Herbert & Weinroth, Esqs.
(Mark D. Schorr, Esq.)

RECOMMENDED DECISION AND ORDER ON RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

Identical Unfair Practice Charges were filed with the Public Employment Relations Commission (hereinafter the "Commission") on September 25, 1981, and amended on December 18, 1981, by the Bergen Community College Professional Staff Association (hereinafter the "Association") and the Bergen Community College Adult Learning Center Faculty (hereinafter the "Faculty") alleging that the

Bergen Community College (hereinafter the "Respondent" or the "College") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (hereinafter the "Act"), in that the Respondent refused to grant release time with pay to the Presidents of the Association and the Faculty to attend a "PERC" preliminary hearing on September 11, 1981, involving an unfair practice charge filed with the Commission, all of which is alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1), (2) and (5) of the Act.[1/]

It appearing that the allegations of the Unfair Practice Charges, as amended, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on June 29, 1982. The Respondent filed an Answer on July 12, 1982, which raised no genuine issue as to any material fact, but merely denied the legal conclusions set forth in the Unfair Practice Charges, as amended.

On July 30, 1982 the Respondent filed a Motion for Summary Judgment and supporting brief together with a request to stay the hearing scheduled for August 9 and 10, 1982, which stay was granted. On August 5, 1982 the Chairman of the Commission referred the Motion for Summary Judgment to the instant Hearing Examiner pursuant to N.J.A.C. 19:14-4.8(a) and gave the Charging Parties until August 16, 1982 to file responding papers in opposition to the Respondent's Motion for Summary Judgment. The Charging Parties retained counsel on August 10, 1982 and an extension was granted to file responding papers, which were received on August 30, 1982.

Upon the record papers filed by the parties in the instant proceeding to date, the Hearing Examiner makes the following:

## UNDISPUTED FINDINGS OF FACT

1. The Bergen Community College is public employer within the meaning of

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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.

"(2) Dominating or interfering with the formation, existence or administration of any employee organization.

"(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 Act, as amended, and is subject to its provisions.

2. The Bergen Community College Professional Staff Association is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

3. The Bergen Community College Adult Learning Center Faculty is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

4. The relevant collective negotiations agreement between the College and the Association was effective during the term July 1, 1979 to June 30, 1982 (Answer, Exhibit "A").

5. The relevant collective negotiations agreement between the College and the Faculty is effective during the term July 1, 1981 to June 30, 1983 (Answer, Exhibit "B").

6. Article III, Negotiations, Section 2, provides identically in each collective negotiations agreement, supra, as follows:

> "Whenever any representative of the Association is mutually scheduled by the parties to participate during working hours in negotiations, grievance proceedings, conferences or meetings which are related to Association matters, he shall suffer no loss in pay, nor be expected to compensate in any way for time spent in carrying out such responsibilities, nor shall he receive extra compensation therefore." (Emphasis supplied).

7. Alan Filippi the President of the Faculty requested in writing of the Respondent on September 8, 1981 that he be permitted to attend a "PERC" hearing on September 11, 1981 at the Commission's offices in Newark, New Jersey. Filippi stated that his attendance at the hearing was "...at the request of Dr. Howard Parish, NJEA Representative..." and "...in accordance with the provisions of Article III, item 2 of the College-Association Agreement."

8. Filippi was told by the College that he could charge the day to vacation time, earned comp time, or take a personal day without pay. Filippi attended the "PERC" hearing on September 11, 1981 and took a personal day without pay under protest.

9. Filippi thereafter filed a grievance with the President of the College on October 23, 1981, which was denied. On November 17, 1981 Filippi appealed to the Board of Trustees of the College. The Board denied the grievance appeal on February 10, 1982.[2/]

10. Lorna Puleo, the President of the Association, requested on September 3, 1981 a personal leave with pay to attend a "PERC" hearing in Newark on September 11, 1981. Her request was denied by the College on September 8, 1981 and on September 9th Puleo filed a grievance alleging a violation of Article XXVIII, Section 7 of the agreement between the Association and the College.[3/] Puleo's grievance was denied on September 28, 1981 on the ground that Article XXVIII, Section 7, supra, provides only for leave without pay to attend conferences of affiliates of the Association.

11. The Unfair Practice Charges filed herein on September 25, 1981 alleged, in part, that the College "...refused to grant release time with pay..." to the Presidents of the Association and the Faculty to attend the "PERC" preliminary hearing on September 11, 1981.

THE APPROPRIATENESS OF SUMMARY JUDGMENT

Based on the foregoing undisputed findings of fact, the Respondent contends that the matter is ripe for disposition on its Motion for Summary Judgment: see analysis and discussion by the New Jersey Supreme Court in Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 73-75 (1954); Rule 4:46-2 of the New Jersey Civil Practice Rules; and N.J.A.C. 19:14-4.8(d), the latter providing, in part, as follows:

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2/ Article XVII, Grievance Procedure, in the agreement between the College and the Faculty provides that "...The disposition of the grievance by the Board of Trustees shall be final."

3/ Article XXVIII, Leaves of Absence, Section 7, Personal Leave, provides, in pertinent part, as follows:

"Special leave for personal needs of not more than two (2) working days a year may be granted with pay by the President or his designee.

"Personal leave may be granted to a maximum of three (3) days without pay to not more than two (2) Associations members to attend conferences of affiliates of the Professional Staff Association..."

> "...If it appears... that there exists no genuine issue of material fact and the movant... is entitled to its requested relief as a matter of law, the motion ...for summary judgment may be granted and the requested relief may be ordered."

Counsel for the Association and the Faculty, in opposing the Respondent's Motion for Summary Judgment, contends that Article III, Section 2 (Undisputed Finding of Fact No. 6, supra) is ambiguous and, thus, a plenary hearing is required in order that evidence of past practice, motive and intent may be adduced. Counsel cites Baer v. Sorbello, 177 N.J. Super. 182, 185 (App. Div. 1981) for the proposition that in a motion for summary judgment proceeding judgment is to be granted with extreme caution, that the moving papers are to be considered in the light most favorable to the party opposing the motion, all doubts are to be resolved against the movant, and finally, the summary judgment procedure is not to be used as a substitute for a plenary trial.

As will be apparent hereinafter, the Hearing Examiner is not persuaded that Article III, Section 2, supra, is ambiguous in the least.[4/] Thus, the Hearing Examiner concludes, for the reasons hereinafter set forth, "...that there exists no genuine issue of material fact..." as to which a plenary hearing is necessary.

The Hearing Examiner being satisfied that the requisites for disposing of Respondent's Motion for Summary Judgment have been met, grants the said motion for the reasons hereinafter set forth.

## DISCUSSION AND ANALYSIS

### Article III, Section 2 of the Parties' Agreements Is Clear And Uambiguous With Respect To The Requirement That It Becomes Operative Only When A Representative Is "Mutually Scheduled By The Parties"

4/ Counsel for the Association and the Faculty does not refer to Article XXVIII, Section 7 of the Association agreement, under which Puleo sought to be excused (Undisputed Finding of Fact No. 10 and footnote 3, supra). This provision, too, is unambiguous, infra.

Notwithstanding the contention of counsel for the Association and the Faculty that Article III, Section 2, supra, is ambiguous on its face and requires a plenary hearing to adduce evidence of past practice and other parol evidence to support an alleged violation Subsection(a)(5) of the Act, the Hearing Examiner finds and concludes that the said Article and Section is completely free of ambiguity and allows of no other interpretation but that negotiations, conferences, etc. must be "mutually scheduled by the parties..." Hence, the conduct of the Respondent herein does not constitute a violation of Subsection(a)(5) of the Act.

It is eminently clear that where contract language is ambiguous parol evidence is admissible: Restatement of Contracts, Secs. 231, 233, 238; Corbin on Contracts, Sec. 579; Mt. Olive Township Board of Education, H.E. No. 78-6, 3 NJPER 284, 285, aff'd. P.E.R.C. No. 78-25, 3 NJPER 382 (1977); New Brunswick Board of Education, P.E.R.C. No. 78-47, 4 NJPER 84, 85 (1978); and Township of Jackson, H.E. No. 81-12, 6 NJPER 533, 535, 536 (Pt. IV), aff'd. P.E.R.C. No. 81-76, 7 NJPER 31 (1980). In fact, counsel for the Association and the Faculty refers to Jackson where the Commission affirmed the Hearing Examiner's conclusion that a provision in the agreement pertaining to tuition and textbooks was ambiguous thus making it appropriate to resort to past practice in interpreting the agreement vis-a-vis alleged violations of Subsection(a)(5) of the Act (6 NJPER at 535, 536 and 7 NJPER at 33).

The Commission decisions in Mt. Olive, New Brunswick, and Jackson, supra, clearly stand for the parallel proposition that where a contract provision is clear and unambiguous parol evidence and evidence of past practice is not admissible. In Jackson, supra, the Hearing Examiner, in Point II, relied upon New Brunswick, supra, in finding that the Township's refusal to negotiate concerning a sick leave provision in the agreement was not a violation of Subsection(a)(5) of the Act, stating that in New Brunswick "...the Commission held that if the language of a contract is clear and unambiguous and the mutual

intent of the parties can be discerned from a simple of reading of the contract, then said language is controlling over past practice" (6 NJPER at 535). Commission, in affirming the Hearing Examiner on Point II of his decision, rejected the exception of the Charging Party in that case, which contended that the past practice of the parties should take precedence over the language in the contract.

The Hearing Examiner also notes herein the contention of counsel for the Respondent that the Commission should not adjudicate matters of contractual interpretation, such matters being for the Courts, citing Board of Education of Edison Township v. Edison Township Education Association, 161 N.J. Super. 155, 158 (App. Div. 1978). However, the Commission has in many cases, involving unfair practices, interpreted contractual provisions: see, for example, Piscataway Township Board of Education, P.E.R.C. No. 77-65, 3 NJPER 169, 172 (1977), aff'd. 164 N.J. Super. 98 (App. Div. 1978) and City of Elizabeth, P.E.R.C. No. 82-74, 8 NJPER 121, 122 (1982). The Hearing Examiner leaves to the Commission whether or not any change is to be made in its policy of interpreting contractual provisions in the context of a unilateral change in terms and conditions of employment in alleged violation of Subsection(a)(5) of the Act.

It is noted that in the instant cases the agreements do not provide for binding arbitration, which is a prerequisite for deferral: East Windsor Board of Education, E.D. No. 76-6, 1 NJPER 59 (1975). The absence of binding arbitration herein would appear to mandate contractual interpretation by the Commission.

Finally, the Hearing Examiner notes the citation by counsel for the Respondent of a decision by the New York Public Employment Relations Board and various decisions of the National Labor Relations Board to the effect that the denial of payment to employees to attend Board-related conferences and hearings is not violative of the New York Act or the National Labor Relations Act: Suffolk County Water

Authority, 12 PERB para. 4590 (1979), aff'd. 13 PERB para. 3016 (1980) and Golden Arrow Dairy, 194 NLRB 474 (1971) and, etc.

For all of the foregoing reasons the Respondent did not violate Subsections(a)(1), (2) and (5) of the Act when Alan Filippi, the President of the Faculty, was required by the Respondent to take a personal day to attend the "PERC" hearing on September 11, 1981, notwithstanding Filippi's claim that he was entitled to be paid under Article III, Section 2, supra.

Article XXVIII, Section 7 Of The Agreement Between The Association And The Respondent Is Clear And Unambiguous With Respect To The Requirement That Personnel Leave May Only Be Taken "To Attend Conferences Of Affiliates of The Professional Staff Association"

Although counsel for the Association and the Faculty has not cited Article XXVIII, Section 7 of the Association agreement, under which Puleo sought to be excused for the "PERC" hearing on September 11, 1981, the Hearing Examiner finds and concludes that the said Article and Section is completely free of ambiguity and allows of no other interpretation but that it may only be invoked "...to attend conferences of affiliates of the Professional Staff Association..." (Undisputed Finding of Fact No. 10 and footnote 3, supra). Hence, the conduct of the Respondent in refusing to pay Puleo to attend the "PERC" hearing on September 11, 1981 does not constitute a violation of Subsection(a)(5) of the Act.

All of the authorities cited and discussed by the Hearing Examiner above, in connection with Article III, Section 2 of the parties' agreement, applies with equal force to the instant Article and Section. Thus, the Hearing Examiner reaches the same conclusion, namely, the Respondent did not violate Subsections(a)(1), (2) and (5) of the Act when Lorna Puleo, the President of the Association, was denied personal leave with pay to attend the "PERC" hearing on September 11, 1981.

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Upon the foregoing, the Hearing Examiner makes the following:

## CONCLUSIONS OF LAW

1. The Respondent's Motion for Summary Judgment is granted.

2. The Respondent's conduct herein did not violate N.J.S.A. 34:13A-5.4 (a)(1), (2) and (5).

## RECOMMENDED ORDER

The Hearing Examiner HEREBY recommends that the Commission ORDER that the Complaint be dismissed in its entirety.

Alan R. Howe
Hearing Examiner

Dated: September 8, 1982
Trenton, New Jersey