

P.E.R.C. NO. 80-62

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CUMBERLAND COUNTY COLLEGE,

Respondent,

-and-

Docket No. CO-78-76-12

CUMBERLAND COUNTY COLLEGE  
FACULTY ASSOCIATION,

Charging Party.

SYNOPSIS

The Commission sustains a Hearing Examiner order, H.E. No. 80-8, 5 NJPER 434 (¶10225 1979), granting a motion to dismiss the Complaint. Under Bd of Ed, Twp. of Bernards v. Bernards Twp. Ed Ass'n, 79 N.J. 311 (1979), PERC has no jurisdiction to consider the withholding of an increment as an alleged violation of N.J.S.A. 34:13A-5.4(a)(5) (refusal to negotiate in good faith).

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Appearances:

For the Respondent, Kavesh & Basile, Esqs.  
(Mr. Frank G. Basile, of Counsel)

For the Charging Party, Greenberg & Mellk, Esqs.  
(Mr. Arnold M. Mellk, of Counsel)

DECISION ON REQUEST FOR REVIEW

On September 14, 1979 Commission Hearing Examiner Robert T. Snyder issued a Decision and Order granting in its entirety a Motion to Dismiss Complaint filed by Cumberland County College (the "College"), H.E. No. 80-8, 5 NJPER \_\_\_\_ (¶ \_\_\_\_ 1979). The Cumberland County College Faculty Association (the "Association") had filed an unfair practice charge against the College alleging in pertinent part that the College had violated the New Jersey Employer-Employee Relations Act (the "Act") when it unlawfully withheld a salary increase from Robert J. Costello, an Assistant Professor II at the College, for the year 1977-78, to which Costello was entitled pursuant to the negotiated agreement entered into by the Association and the College.

The Hearing Examiner granted the College's Motion to Dismiss Complaint concluding that two judicial decisions, East Brunswick Education Association v. East Brunswick Board of Education, P.E.R.C. No. 78-75, 4 NJPER 216 (14108 1978), affmd App. Div. Docket No. A-4497-77 (3/9/79), Pet. for Certif. denied \_\_\_ N.J. \_\_\_ (5/30/79) and Bd of Ed, Township of Bernards v. Bernards Twp. Education Assn, 79 N.J. 311 (1979), mandated the conclusion that decisions made by public employers in the educational context to withhold either length of service salary increments or negotiated salary increases for "inefficiency or other good cause", pursuant to N.J.S.A. 18A:29-14, were not terms and conditions of employment, but rather matters pertaining to the quality of the educational system that were subject to review either by the Commissioner of Education or the Chancellor of Higher Education as in the instant matter. The Hearing Examiner thus concluded that the Commission lacked jurisdiction over the subject matter of the instant complaint where the matter at issue related to whether an employer such as the College had withheld an increment or salary increase for "inefficiency or other good cause." The Hearing Examiner further found that other allegations in the charge, relating to subsections (a)(1), (2), (3) and (4), failed to refer to sufficient facts which could constitute unfair practices on the part of the College, and, accordingly, the Hearing Examiner dismissed the Complaint in its entirety.

Pursuant to N.J.A.C. 19:14-4.7, the Association filed a timely Request for Review of the Hearing Examiner's decision to

grant the College's Motion to Dismiss Complaint. The Association framed the issue presented in the case as whether or not the unilateral imposition of additional educational requirements upon Costello, i.e., that he fulfill an obligation to pursue an M.B.A. degree to permit qualification in the discipline in which he instructed at the College, amounted to a change in terms and conditions of employment affecting negotiations unit members represented by the Association, an unfair practice proscribed by the Act. The Association, in support of its Request for Review, relied upon its Memorandum of Law in Opposition to the Respondent's Motion to Dismiss which had earlier been submitted to the Hearing Examiner. In response to the Association's Request for Review, the College in a letter dated September 26, 1979 relied upon a series of memoranda that had been submitted to the Hearing Examiner in support of its Motion to Dismiss.

The Association argues that the Public Employment Relations Commission has primary jurisdiction over the subject matter at issue, i.e., whether an unfair practice was committed when the College withheld Costello's salary increase for the 1977-78 academic year for reasons which the Association maintains did not constitute "inefficiency or other good cause." The Association asserts that the College violated the Act when it unilaterally and discriminatorily imposed additional job requirements on Costello, i.e. the obtaining of an M.B.A. degree within a delineated period of time, applicable only to him directly, as a condition

precedent for the receipt of a salary increase. The Association asserts that the Bernards Township decision, supra, is inapplicable to the instant matter since the present controversy does not involve questions of negotiability in the context of an arbitration proceeding which was the procedural setting in the Bernards matter. The Association refers to an unpublished Appellate Division decision, cited in the Bernards case, Education Assn of Passaic v. Passaic Board of Education, (App. Div. March 23, 1977) as carving out an exception to the general principles enunciated in Bernards that the Association argues is fully applicable in this present matter before the Commission. The Appellate Division in the Passaic decision held essentially that a board of education could not adopt as a management prerogative a resolution unilaterally, without prior negotiations, conditioning the receipt of sixth year teacher salary increments upon the obtaining of five hours of professional growth credits prior to that time. The Court stated that the five credit/five year policy imposed a standard of "good cause" not set forth in N.J.S.A. 18A:29-14 or elsewhere and thus was subject to mandatory negotiations. The Association concludes that the unilateral imposition of additional educational requirements for the obtaining of salary increases in the instant matter likewise relates to a mandatory subject for collective negotiations and amounts to an unfair practice remediable by PERC.

After careful consideration of the entire record in this matter including the judicial decisions cited by the parties, we conclude that the College's Motion to Dismiss Complaint must

be granted in its entirety substantially for the reasons cited by the Hearing Examiner in this decision. We do wish to add some additional comments at this time.

The Commission has always interpreted N.J.S.A. 34:13A-5.4(a)(5), in pertinent part, as giving the Commission jurisdiction to remedy unilateral changes in terms and conditions of employment only, i.e., mandatory subjects for collective negotiations. The New Jersey Supreme Court in the Bernards Township decision specifically held that the decision to withhold an increment (and inferentially a negotiated increase)<sup>1/</sup> is "a matter of essential managerial prerogative which has been delegated by the Legislature to the Board [and]...cannot be bargained away." 79 N.J. 311, 321. The Commission has recently applied this holding in several cases<sup>2/</sup> and has found unequivocally that the reasons for the withholding of an increment (or, again inferentially, a salary increase) e.g. whether based on subjective assessments of teaching performance or on objective factors concerning professional growth, could not be the subject of collective negotiations.<sup>3/</sup>

<sup>1/</sup> See East Brunswick, supra.

<sup>2/</sup> See In re Fairview Board of Education, P.E.R.C. No. 80-18, 5 NJPER 378 (¶10193 1979); In re Nutley Board of Education, P.E.R.C. No. 80-41, 5 NJPER \_\_\_\_\_ (¶ \_\_\_\_\_ 1979); In re Woodbridge Twp. Board of Education, P.E.R.C. No. 80-45, 5 NJPER \_\_\_\_\_ (¶ \_\_\_\_\_ 1979) and In re Fair Lawn Board of Education, P.E.R.C. No. 80-5 NJPER \_\_\_\_\_ (¶ \_\_\_\_\_ 1979).

<sup>3/</sup> It would be an exercise in sophistry to say that although the decision to withhold an increment is a managerial prerogative and thus an illegal subject for negotiations, the reasons advanced for the withholding of an increment, e.g., the failure to obtain a particular degree, are subject to mandatory negotiations.

In the Woodbridge decision, supra, at note 2 the Public Employment Relations Commission stated that "it is only the Commissioner of Education who can make a binding determination as to whether good cause existed for the withholding of an increment." (slip opinion at p. 5). Therefore, the Public Employment Relations Commission has no authority within the context of an "(a)(5)" refusal to negotiate case to rule upon allegations relating to the withholding of a salary increase which the courts of this state have found concerns an illegal subject of collective negotiations.<sup>4/</sup> The Passaic Board of Education case relied upon by the Association has been overruled by the Bernards decision sub silentio.

For the reasons set forth above, the Complaint in the instant matter is hereby dismissed in its entirety.

BY ORDER OF THE COMMISSION

  
 Jeffrey B. Tener  
 Chairman

Chairman Tener, Commissioners Hartnett, Newbaker and Parcells voted for this Decision. Commissioner Hipp abstained. Commissioner Graves was not present.

DATED: October 31, 1979  
 Trenton, New Jersey  
 ISSUED: November 1, 1979

<sup>4/</sup> The Commission has found that although procedures relating to the issue of withholding of salary increments, e.g. procedural notice requirements, the right to respond to decisions to withhold an increment, etc., are negotiable terms and conditions of employment, Bernards precludes reliance upon such provisions as a means of limiting, through binding grievance arbitration, the Board's right to withhold an employment increment for cause. See cases cited at note 2, supra.

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SYNOPSIS

A Hearing Examiner Orders dismissal of an unfair practice charge filed against Cumberland County College by the Cumberland County College Faculty Association, which alleges that the College refused to negotiate in good faith by unilaterally withholding a negotiated salary increase from Assistant Professor Julian Costello.

The agreement for 1977-78 between the parties provided a salary increase for teachers with Professor Costello's rank. The College refused to pay Costello the increase, concluding that he had failed to make progress toward attainment of an MBA degree. Professor Costello possesses a master in education degree.

Viewing the facts, most favorably to the Association's position as is required in evaluating a motion to dismiss the Complaint filed by the College, the Examiner concludes that the basic issue, as to the negotiability of the subject matter, is governed by the recent Supreme Court decision in Bd. of Ed. Twp. of Bernards v. Bernards Twp. Ed. Ass'n., 79 N.J. 311 (1979). Bernards held that inasmuch as N.J.S.A. 18A:29-14 authorizes a local board of education to withhold a salary increment for "inefficiency or other good cause" the employer's decision to withhold an increment is a matter of managerial prerogative delegated by the Legislature to the board and which may not be bargained away. As a negotiated salary increase has now been determined under the authority of East Brunswick Ed. Ass'n. v. East Brunswick Bd. of Ed., P.E.R.C. No. 78-75, 4 NJPER 216 (1978), aff'd. App. Div. Docket No. A-1497-77 (3/9/79), certif. den. N.J. (Sup. Ct. Docket No. C-707, 5/30/79), to be encompassed within "the employment increment" and "the adjustment increment" which a board is authorized to withhold and, further, as the College's authority to withhold is by statute the same as a local board's, the Examiner determines that the matter of the withholding of the salary increase is an illegal subject for negotiations and the College had no obligation to bargain with the Association about its decision.



Other allegations in the Charge failed to allege sufficient facts which could constitute unfair practices on the part of the College, and, accordingly, the Examiner dismissed the Complaint in its entirety.

The Hearing Examiner's Decision and Order Granting a Motion to Dismiss the Complaint in its entirety may become a final administrative determination of the Public Employment Relations Commission. Absent a request for review by the Charging Party filed within 10 days from the date of the order of dismissal, the case shall be closed.

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For the Respondent, Kavesh & Basile, Esqs.  
(Frank G. Basile, Esq., Of Counsel)

For the Charging Party, Greenberg & Mellk, Esqs.  
(Arnold M. Mellk, Esq., Of Counsel)

DECISION AND ORDER GRANTING  
MOTION TO DISMISS COMPLAINT

Respondent moves to dismiss the Complaint herein before answer. 1/

1/ Complaint issued August 3, 1978. Motion was made November 1, 1978 on the eve of hearing. Hearing was adjourned without date pending the parties' consideration of settlement proposals. During consideration by the parties, a Supreme Court decision issued in Bd. of Ed. Twp. of Bernards v. Bernards Twp. Ed. Ass'n., 79 N.J. 311 (1979) and an Appellate Division decision issued in East Brunswick Education Assn. v. East Brunswick Bd. of Ed., P.E.R.C. No. 78-75, 4 NJPER 216 (para. 4108, 1978), affm'd. App. Div. Docket No. A-4497-77 (3/9/79), certif. den. N.J. (Sup. Ct. Docket No. C-707, 5/30/79), the impact of both of which on the pending motion the parties were asked to brief by formal notice dated April 9, 1979 which also set up a briefing schedule. Respondent filed a supplemental memorandum of law on May 14, 1979, Charging Party filed a memorandum of law in opposition to the motion with various exhibits attached on June 27, 1979 and Respondent then filed a supplemental reply memorandum of law in support of the original motion on July 26, 1979.

The outstanding Complaint <sup>2/</sup> alleges that the Respondent, Cumberland County College, failed to provide Professor Costello with the salary increase for 1977-78 which was collectively bargained for and obtained pursuant to Article VI of the collective agreement between the parties. The Complaint further claims that Costello, as Assistant Professor II in the Business Department of the College, has been a member of the faculty there for eleven years and presently possesses a master in education degree, which degree is the sole requirement for eligibility for the position of Assistant Professor II under Article VIB of the agreement. The Complaint continues that on or about March 28, 1977, Costello filed a grievance under the agreement claiming breach in the omission of his salary increase. It concludes that the College withheld Costello's increase because of his "failure" to obtain an MBA degree notwithstanding provisions of the agreement and furthermore, that the Board of Trustees of the College has refused to process Costello's grievance notwithstanding the grievance procedures collectively bargained for at Article IX of the agreement. The foregoing conduct is alleged to have violated subsections (a)(1), (2), (3), (4) and (5). <sup>3/</sup>

In its motion, the Respondent College argues that the Commission has no jurisdiction to review the College's determination to withhold a salary "increment"

<sup>2/</sup> The Complaint alleges violations of N.J.S.A. 34:13A-5.4(a)(1), (2), (3), (4) and (5) flowing from conduct engaged in by the Respondent against three named individuals. By virtue of the Commission's approval of withdrawal by the Charging Party on September 18, 1978, of those portions of the charge upon which Complaint had issued dealing with alleged violative conduct against two of them, only claims on behalf of the third, Assistant Professor Julian Costello, remain outstanding and are the subject of the instant motion. A copy of approval of the withdrawal by the Commission's designee, Carl Kurtzman, Director of Unfair Practices, is hereby ordered to be made part of the record herein and has been physically attached to the original Complaint pursuant to the authority vested in me by N.J.A.C. 19:14-6.3.

<sup>3/</sup> These subsections prohibit 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; (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this Act; (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this Act and (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit or refusing to process grievances presented by the majority representative."

of an individual teacher in reliance upon Bernards, *supra*. In Bernards, the Supreme Court held that even though the withholding of a salary increment "directly affect[s] the work and welfare" of public school teachers and is thus an intimate part of the compensation due a teacher for services rendered, since N.J.S.A. 18A:29-14 explicitly authorizes a local board to withhold an increment only for "inefficiency or other good cause", its decision to withhold an increment is a matter of essential managerial prerogative which has been delegated by the Legislature to the board and under the Court's decisions in Ridgefield Park Education Ass'n. v. Ridgefield Park Board of Education, 78 N.J. 144 (1978); State v. State Supervisory Employees Ass'n., 78 N.J. 54 (1978) and Dunellen Board of Education v. Dunellen Ed. Ass'n., 64 N.J. 17 (1973) may not be bargained away. Thus, the Court concluded in Bernards that the parties could not agree to binding arbitration of the dispute involving the withholding of a salary increment (although they could, and, according to the Court, did agree to advisory arbitration of the same dispute) since under the statute only the Commissioner of Education has the responsibility to review the board's decision.

The Charging Party, Cumberland County College Faculty Association, argues that the Commission has primary jurisdiction over the subject matter of the Complaint, even though the Commissioner of Education has concurrent jurisdiction, under the authority of City of Hackensack v. Winner, 162 N.J. Super. 1 (App. Div. 1978), certif. granted 78 N.J. 404 (1979), appeal pending Supt. Ct. Docket No. 15,201.

Respondent counters in its supplemental reply memorandum that the principle enunciated by the Supreme Court in Dunellen rather than that relied upon by the Appellate Division in Hackensack should govern. In Dunellen the Court reversed the trial court's denial of restraint of arbitration of the issue of the school board's consolidation of two departments. The Supreme Court concluded that the Commissioner of Education had exclusive authority grounded upon the express language of N.J.S.A. 18:6-10 to hear dismissal proceedings which superceded the authority flowing from the general terms of N.J.S.A. 34:13A-5.3 authorizing the parties to agree on grievance procedures providing for "binding arbitration as a means of resolving disputes."

The subject matter of the dispute in Hackensack arose under N.J.S.A. 34:13A-5.4(a)(1) and (3), raising issues of interference with, and discrimination to discourage exercise of, the rights guaranteed to employees by the Act. The

Court was careful to note that it was not dealing with the subject matter of promotion as a term and condition of employment, as to which subject the City of Hackensack had urged, under N.J.S.A. 11:21-1 and 3, the Civil Service Commission had exclusive jurisdiction, Id. at f.n. 12, page 12 of the Court's slip. op. The Civil Service Commission's concurrent jurisdiction was grounded by the Court in Hackensack on the New Jersey Constitution (N.J. Const., 1947, Art. VII sec. 1, para. 2), the merit and fitness provision, and on various statutory provisions including N.J.S.A. 11:4-1 and 2 and 21-1 providing Civil Service full authority to inquire into the bases for appointments and promotions in the State and local Civil Service, including the "good faith" of the appointing authority, N.J.S.A. 11:1-7d (power to enforce the acts and rules and regulations), 11:6-2(e) (authority over all personnel procedures in classified service), 11:5-1(c), (d) (power to investigate and hear appeals of persons claiming discrimination) and 11:5-1(f) (authorizing, inter alia, procedures for consideration of disputes, grievances, complaints and proposals relating to the employer-employee relationship). No one provision of the Constitution or Statute granted specific authority over the subject matter of the Hackensack dispute, viz.. a discrimination in promotion flowing from anti-union animus, as it did in Dunellen. The Hackensack Court was also dealing with two final administrative orders resulting from two completed administrative proceedings and noted it would have applied the single controversy doctrine even if the record had not established the litigation of the discrimination issue in the Civil Service proceeding, Id. at pages 29 and 30 of the Court's slip. op. Finally, the Supreme Court has granted certiorari in Hackensack and the final disposition of that issue must await the Court's review. At the same time, the Commission, with Court approval, took the position in East Brunswick, supra, even before the Supreme Court determinations in Bernards and State Supervisory Employees that the unilateral withholding of a negotiated salary increase by a board of education constitutes an illegal subject of negotiations because subject to the exclusive authority of local boards as to the initial determination and the exclusive reviewing authority of the Commissioner of Education under N.J.S.A. 18A:29-14.

Both parties agree that the Chancellor of Higher Education has jurisdiction under N.J.S.A. 18A:29-14 to review the College's withholding of Professor Costello's salary increase "for inefficiency or other good cause". (See 18A:64A-13 granting teaching staff employees and administrative officers other than the president of the county college all the rights and privileges of teachers employed

by local boards of education). Further, while the Respondent characterizes the dispute as involving denial of a salary "increment" and the Charging Party views the item as a salary "increase", it makes no difference <sup>4/</sup> since East Brunswick has defined "the employment increment" and "the adjustment increment" under N.J.S.A. 18A:29-6 to encompass a negotiated salary increase.

I conclude that the Commission lacks jurisdiction over the subject matter of the outstanding Complaint, at least as to the subd. (a)(5) allegation, and, as the Complaint is inadequate as a matter of law with respect to all other allegations, the Respondent's Motion to Dismiss shall be granted.

With respect to the subd. (a)(5) allegation, drawing every inference in favor of the Charging Party, as required under the test enunciated in Township of North Bergen, P.E.R.C. No. 78-28, its best possible posture <sup>5/</sup> still leaves it with the insurmountable handicap of a dispute over subject matter which a reading of Bernards and East Brunswick, taken together, teaches us is an exclusive matter for the College to determine, and for the Chancellor Higher Education to review.

It is the judgment of the undersigned that City of Hackensack may be appropriately distinguished for the reasons discussed, and, in any event, does not constitute a determination of the highest appeal Court in the State as does Bernards. While the subject matter here directly affects a term and condition of employment, Bernards and State Supervisory Employees state principles of law which cannot be avoided.

The Charging Party's claim at page 10 of its memorandum that East Brunswick did not involve a question of jurisdiction ignores the fact that both the

<sup>4/</sup> Nonetheless, it is clear that the matter in dispute is a negotiated salary increase and not an increment as those terms are commonly understood.

<sup>5/</sup> Under the North Bergen standard, the assertions made by Professor Costello in his affidavit attached to Charging Party's brief have been credited and all inferences favorable to the Charging Party have been drawn therefrom as well as from Article VIB of the contract concerning Professor Costello's entitlement to the minimum salary accorded his rank. Nevertheless, note may be taken of the fact that Article VIA does incorporate N.J.S.A. 18:29-14 by reference in providing that "All increases in salary are awarded by the Board of Trustees upon the recommendation of the President, "and, further, that while Charging Party asserts the withholding was grounded on Costello's failure to "obtain" an MBA degree, the Respondent claims the withholding was for a failure to "pursue" the degree "which will permit qualification in the discipline in which he instructs at Cumberland County College". As indicated, these conflicts need not be resolved, and all favorable inferences have been drawn for the Charging Party's position.

Commission and Appellate Division determinations preceded Bernards. In light of Bernards, at least with respect to the subd. (a)(5) unfair practice portion of the consolidated proceeding, the Commission would be constrained to dismiss on jurisdictional grounds were East Brunswick to be decided today.<sup>6/</sup> The Charging Party is also incorrect when it asserts at page 9 of its memorandum that this proceeding does not involve a question of negotiability. Central to the subd. (a)(5) allegation is the question as to whether the denial of a salary increase is a mandatory subject of negotiations. The Charging Party also cites Education Association of Passaic v. Passaic Board of Education, Docket No. A-3082-75 (App. Div. 3/25/77) (Unpublished Opinion) for the proposition that the unilateral withholding of a salary increment for failure to comply with a board policy requiring graduate credits imposes a standard of good cause beyond the requirements of N.J.S.A. 18A:29-14 ("inefficiency or other good cause") and is therefore within the scope of negotiations under the Act. While Charging Party concedes in its memorandum at f.n., page 11 that certain procedural aspects of the case are of questionable validity in light of State Supervisory Employees and Bernards, supra, I am compelled to conclude that its holding on the merits has been overruled as well. First, the Supreme Court in Bernards notes at page 8 of the slip. op. that "The precise question herein posed has already arisen in three suits aside from the present one" and cites Passaic among the three. Second, the Supreme Court at page 16 of the slip. op. concludes that even assuming the absence of an arbitration clause of any type, the parties could not have validly agreed to alter the "inefficiency or other good cause" standard by which the board and Commissioner are to gauge the propriety of withholding increments <sup>7/</sup> not only because such an agreement would contravene the specific standard of evaluation established by N.J.S.A. 18A:29-14 and hence be unenforceable under State Supervisory Employees, but also because "such an agreement [would] impermissibly intrude upon matters of managerial prerogative." Thus, while recognizing the subject's direct affect upon wages, the Bernards Court is also saying that the matter of granting or

<sup>6/</sup> The Commission did just that in Matter of Fairview Board of Education, P.E.R.C. No. 80-18, 5 NJPER para. \_\_\_\_ (8/29/79), by commenting that "The Supreme Court in Bd. of Ed. Twp. of Bernards v. Bernards Twp. Ed. Ass'n., 79 N.J. 311 (1979) held that withholding of an increment for inefficiency or other good cause is removed from negotiability by N.J.S.A. 18A:29-14, which specifically places review of such action in the jurisdiction of the Commissioner of Education," at page 3 of the Commission's Decision and Order. [emphasis added].

<sup>7/</sup> The Bernards Court thereby nullified any claim asserted by Charging Party here based on its interpretation of Article VIB of the agreement.

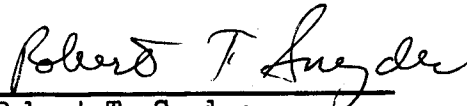
withholding an increment is not a term or condition of employment as it involves factors of educational criteria and evaluation which only the employer may determine. Accordingly, the Passaic conclusion that a standard which exceeds the statutory test is thereby a term and condition of employment no longer has any validity.

The foregoing analysis concerns the subd. (a)(5) and derivative (a)(1) allegation. With respect to the subd. (a)(1), (2), (3) and (4) allegations, inasmuch as no specific allegations on interference with employee rights or discrimination related to anti-union animus appears in the Complaint, and, further, inasmuch as no claim relates to domination or interference with the Association's formation, existence or administration, and, finally, as Professor Costello's grievance <sup>8/</sup> does not constitute the use of Commission procedures, these independent allegations shall likewise be dismissed. See Camden County Sheriff's Department and John Edward Koyak, D.U.P. No. 79-8, 4 NJPER 112 (para. 4052, 1978); See B & M Excavating, Inc., 155 NLRB 1152, 1160, 60 LRRM 1466 (1965) and Morris, The Developing Labor Law, BNA, 1971 at page 134.

ORDER

Accordingly, IT IS HEREBY ORDERED that the Complaint be, and it hereby is, dismissed in its entirety.

DATED: September 14, 1979  
Newark, New Jersey

  
Robert T. Snyder  
Hearing Examiner

<sup>8/</sup> The failure to process a grievance concerning a non term or condition of employment cannot be violative of subd. (a)(5).