

P.E.R.C. NO. 87-17

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ESSEX COUNTY COLLEGE,

Respondent,

-and-

Docket No. CO-85-101-133

ESSEX COUNTY COLLEGE PROFESSIONAL  
ASSOCIATION, LOCAL 4137,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that Essex County College violated the New Jersey Employer-Employee Relations Act when it unilaterally granted wage increases to certain employees it promoted.

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of  
ESSEX COUNTY COLLEGE,

Respondent,

-and-

Docket No. CO-85-101-133

ESSEX COUNTY COLLEGE PROFESSIONAL  
ASSOCIATION, LOCAL 4137,

Charging Party.

Appearances:

For the Respondent, Schwartz, Pisano & Simon, Esqs.  
(Nathanya G. Simon, of Counsel)

For the Charging Party, Dwyer, Canellis & Bell, Esqs.  
(John J. Janasie, of Counsel)

DECISION AND ORDER

On October 18, 1984, Essex County College Professional Association, Local 4137 ("Association") filed an unfair practice charge against Essex County College ("College"). The charge alleges that the College violated subsections 5.4(a)(1) and (5)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et

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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."

seq., when it unilaterally reclassified the positions of four unit employees and increased their salaries.

On May 13, 1985, the Director of Unfair Practices issued a Complaint and Notice of Hearing.<sup>2/</sup> The College then filed an Answer asserting that it had a managerial prerogative to reclassify and upgrade positions and that with respect to one employee (Alma Sulzman) it had placed her on the salary guide in accordance with the collective negotiations agreement.

On August 9, 1985, Hearing Examiner Judith E. Mollinger conducted a hearing. The parties entered stipulations, examined witnesses and introduced exhibits. They filed post-hearing briefs by February 12, 1986.

After Hearing Examiner Mollinger resigned from the Commission's employ, the case was transferred to Hearing Examiner Richard C. Gwin to issue a report and recommended decision.

N.J.A.C. 19:14-6.4.

On August 18, the Hearing Examiner issued his report and recommended decision. H.E. No. 87-14, \_\_ NJPER \_\_ (¶\_\_\_\_\_ 1986). He concluded that the College had a managerial prerogative to reclassify the titles held by the four employees and to adopt the

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<sup>2/</sup> On the same day, he consolidated this case with another charge alleging that the College discriminatorily discharged two employees who were Association supporters. That charge, however, involves issues related to a petition of appeal pending before the Chancellor of Higher Education and has been held in abeyance pending the outcome of predominant interest proceedings.

criteria for its reclassification plan. He further determined that the collective negotiations agreement authorized the raise paid Sulzman after her title was reclassified from Level II to Level III. He also determined, however, that the College violated subsections 5.4(a)(1) and (5) when it unilaterally determined the amount of raises paid employees reclassified from Levels II and III to Level IV. He recommended an order requiring the College to post a notice and to negotiate a Level IV salary range if the parties have not already done so.<sup>3/</sup>

On September 8, the College filed exceptions. It asserts that it did not violate the Act by increasing the salaries of Joan Henry, Rose Berry and Leonard DellaValle following their promotions because the increases were minimal and were to be adjusted once protracted negotiations had been completed. The College also contends that it acted in good faith and should therefore not have to post a notice of any violation.

On September 12, the Association filed a response. It supports the Hearing Examiner's decision and further contends that requiring the College to post a notice is an appropriate remedy for a serious violation.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 2-8) are accurate. We adopt and incorporate them here.

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<sup>3/</sup> As of the date of hearing, the parties had tentatively agreed on a Level IV salary range.

Under all the circumstances of this case, we agree with the Hearing Examiner that the College did not violate subsections 5.4(a)(1) and (5) when it paid Alma Sulzman a contractually specified raise following her reclassification from Level II to Level III, but that it did violate these subsections when it unilaterally determined the amounts of raises paid Henry, Berry and Dellavalle following their promotions from Levels II and III to Level IV.<sup>4/</sup> These raises were substantial and the College did not attempt to negotiate with the Association over the specific amounts before they were given. Since this violation tends to undermine the Association's exclusive status as a majority representative, a notice should be posted stating that such violations will not recur.

ORDER

The Public Employment Relations Commission orders Essex County College to:

I. Cease and desist from:

A. Interfering with, restraining or coercing employees in the exercise of their rights guaranteed by the Act by unilaterally establishing new salary levels; and

B. Refusing to negotiate in good faith with the Association over establishing new salary levels.

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<sup>4/</sup> The College asserts that these three employees were promoted rather than reclassified. The testimony of the Vice-President for Administration bears out this contention. The difference in terminology, however, is not important to determining whether the College met its duty to negotiate compensation once the employees were placed in Level IV positions.

II. Take the following affirmative action:


A. Negotiate in good faith with the Association over Level IV's salary ranges if the parties have not already reached agreement on these ranges.

B. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice on forms to be provided by the Commission shall be posted immediately upon receipt thereof and, after being signed by the Respondent's authorized representative, shall be maintained by it for at least twenty (20) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

C. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply herewith.

The Complaint's remaining allegations are dismissed.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Hipp, Johnson, Smith and Wenzler voted in favor of this decision. Commissioner Reid was not present.

DATED: Trenton, New Jersey  
September 25, 1986  
ISSUED: September 26, 1986

# 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 employees in the exercise of their rights guaranteed by the Act by unilaterally establishing new salary levels.

WE WILL cease and desist from refusing to negotiate in good faith with the Association over establishing new salary levels.

WE WILL negotiate in good faith with the Association over Level IV's salary ranges if the parties have not already reached agreement on these ranges.

ESSEX COUNTY 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 Street, Trenton, NJ 08608, (609) 292-9830.

H.E. NO. 87-14

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

In the Matter of

ESSEX COUNTY COLLEGE,

Respondent,

-and-

DOCKET NO. CO-85-101-133

ESSEX COUNTY COLLEGE PROFESSIONAL  
ASSOCIATION, LOCAL, 4137,

Charging Party.

SYNOPSIS

The hearing examiner finds that the College violated subsections 5.4(a)(5) and, derivatively, (a)(1) when it unilaterally established new salary levels after reclassifying the titles of three Association members. The hearing examiner finds that the College did not commit an unfair practice by reclassifying the titles, unilaterally adopting criteria for a reclassification plan or giving a raise to a fourth (reclassified) Association employee because the raise was provided by the parties' agreement.

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. 87-14

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

In the Matter of

ESSEX COUNTY COLLEGE,

Respondent,

-and-

DOCKET NO. CO-85-101-133

ESSEX COUNTY COLLEGE PROFESSIONAL  
ASSOCIATION, LOCAL, 4137,

Charging Party.

Appearances

For the Respondent,  
Schwartz, Pisano & Simon  
(Nathanya G. Simon of counsel)

For the Charging Party  
Dwyer, Canellis & Bell  
(John J. Janasie of counsel)

HEARING EXAMINER'S RECOMMENDED  
REPORT AND DECISION

On October 18, 1984, Essex County College Professional Association, Local 4137 ("Association") filed two unfair practice charges against Essex County College ("College"). The first (CO-85-100) involves the discharge of two Association members and is being held in abeyance pending the outcome of predominant interest proceedings. The second charge (CO-85-101) alleges that the College

violated subsections 5.4(a)(1) and (5)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34A:13-1 et seq. when it unilaterally reclassified the positions of four unit employees and increased their salaries.

On May 13, 1985, the Director of Unfair Practices issued a Complaint and Notice of Hearing.

On June 10, 1985, the College filed an answer denying any violation of the Act.

Hearing Examiner Judith E. Mollinger held a hearing on August 9, 1985. The parties entered stipulations, examined witnesses and introduced documents. They waived oral argument but filed briefs and reply briefs, the last of which was received on February 12, 1986. Hearing Examiner Mollinger is no longer employed by the Commission. Pursuant to N.J.A.C. 19:14-6.4, the case has been transferred to me for issuance of a proposed decision and order on the record.

Based upon the entire record, I make the following:

FINDINGS OF FACT

Following are the stipulations entered on the record:

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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; (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."

"1. Essex County College Professional Association, AFT, Local 4137...is the collective negotiations representative for a negotiating unit...consisting of certain professional staff employed by Essex County College.

"2. The College is a public employer within the meaning of the New Jersey Employer-Employee Relations Act.

"3. A collective bargaining agreement between the College and the [Association] for the period of July 1, 1981, through June 30, 1984, was executed on June 23, 1982 [J-1].

"4. On or about May 17, 1984, negotiations commenced for a successor agreement to [J-1]. While these negotiations have been tentatively concluded, no new agreement has formally been reached.

"5. On or about July 31, 1985, a Petition of Appeal was filed with the Chancellor of Higher Education by Marion Coleman and Jerry Nichols, alleging, among other things, that the action of the College in terminating Marion Coleman and Jerry Nichols was arbitrary, capricious and violative of statutory, regulatory, constitutional, and other rights. In light of this filing, the pending matter before the Public Employment Relations Commission (Docket Number CO-85-100) is held in abeyance pending consolidation with the Petition of Appeal pending before the Chancellor of Higher Education.

"6. Throughout late 1982 and 1983, a reclassification study was accomplished by the College with [Association participation]. As a result of the study, several members of the unit were recommended

and approved for reclassification in terms of level placement and salary adjustment.

"7. Prior to reclassification, the position of Nurse Practitioner Supervisor was placed in level III. [As a result of the] reclassification, the position was placed in level IV.

"8. Alma Sulzman holds the position of Registered Nurse at the College. Prior to June, 1984, this position was classified in level II. Her salary at that time was \$19,582. [As a result] of the reclassification of this position into level III, her salary was \$20,332, a difference of \$750.

"9. Prior to October 22, 1984, Rose Berry held the position of Manager of Word Processing at the College. [The] position was placed at level III, [with] a salary of \$20,251.99. Effective October 22, 1984, Rose Berry was placed in the newly created position of Manager of Word Processing 2...at level IV, [with] a salary of \$22,920.

"10. Prior to September 1, 1984, Joan Henry held the [level II] position of Facilities Office Manager...at a salary of \$17,908.70. Effective September 1, 1984, through October 22, 1984, she was placed into the newly created position of Acting Assistant Director/Facilities Management...[at] level IV, [with] a salary of \$22,000....Effective October 22, 1984, she was placed in the newly created permanent position of Assistant Director/Facilities Management...[at] level IV, [with] a salary of \$22,000. [A] memorandum concerning this promotion from Francis B. Cobb, Director

of Facilities Management and Services to Dr. A. Zachary Yamba, President, and Dr. Herbert Scourzo, Vice President for Administration, recommending the promotion for Ms. Joan Henry, is [in evidence].

"11. Prior to October 22, 1984, Leonard Della Valle held the position of Manager of Print Shop...[at] level III, [with] a salary of \$20,217.69. Effective October 22, 1984, Mr. Della Valle was placed in the newly created position of Acting Manager-Print Shop II...[at] level IV, [with] a salary of \$22,933.

"12. The job descriptions for the respective positions identified in the paragraphs above are [in evidence].

"13. A grievance was filed by the [Association] in November, 1983, alleg[ing] that...certain unit members [were] awarded salary increases different from the negotiated amounts. The [College] rescinded the salary increases.

"14. Della Valle, Sulzman, Berry and Henry have been and continue to be members of the unit."

I add the following findings:

15. Article VII(a) of the parties' 1981-84 collective agreement provides that, "there shall be no increase or decrease in a professional employee's salary as fixed pursuant to this agreement without the express written approval of the Board of Trustees and the Professional Association." [J-1 at p. 6].

16. As part of the reclassification study referred to in stipulation number 6, a committee was established, which included

representatives of the College and the Association. The Committee discussed the criteria to be used for the reclassification of titles in the unit. The College ultimately adopted a reclassification plan. Many of the criteria adopted by the College were not opposed by the Association. The Association did oppose market value as a criterion. The College adopted it anyway.

17. The parties' 1981-84 collective agreement [J-1] provides at Article XXXVI that:

ARTICLE XXXVI

RECLASSIFICATION

The parties agree that there shall be a reclassification study. The implementation of reclassification shall be effective 7/1/82 and the reclassification shall include the creation of a 4th classification.

There shall be Union participation in committees conducting reclassification studies and subsequent recommendations to the President.

The reclassification shall be based upon a point system application of standards to be developed by the College prior to the study.

There shall be no downward reclassifications.

Reclassifications from I to II shall be compensated by a salary increase of \$500.00 over and above the negotiated percentage increase; from II to III by \$750.00 above the negotiated percentage increase; from III to IV by \$1,000.00 above the negotiated percentage increase.

18. The \$750.00 increase in salary received by Sulzman as a result of the College's reclassification of her level II position to level III reflects the increase provided by Article XXXVI. Sulzman's upgrade is based on the College's reclassification plan, which

applies a point value for each criterion. Sulzman's title would not have been elevated to level III without the points the College attributed to the market value of her job.

19. The parties' 1981-84 agreement [J-1] did not include salary ranges for the level IV classification. The only reference in the Agreement to level IV is found in Article XXXVI, which provides for a \$1000.00 increase in the event of a reclassification from level III to level IV. The increases received by Henry, Berry and Della Valle were \$4,091.30, \$2,668.01 and \$2,715.31 respectively.<sup>2/</sup>

A provision for level IV salary ranges is part of a tentative agreement reached as a result of negotiations for a successor to J-1. That agreement was not ratified by the College as of the date of hearing (August 9, 1985). The parties did not negotiate or agree on a level IV salary range prior to October, 1984, when the upgrades of Henry, Berry and Della Valle became effective.

20. Unlike the personnel action form [J-16] documenting Sulzman's reclassification (which refers to the \$750.00 provided for in Article XXXVI for an upgrade from level II to III), the personnel action forms documenting the upgrades of Henry and Berry [J-17, 18 and 19] make no reference to the basis for their salary increases. The personnel action form for Della Valle is not in evidence.

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<sup>2/</sup> Henry was reclassified from level II to a level IV. Berry and Della Valle were reclassified from level III to level IV.

21. The parties' practice concerning the designation of salary levels for unit employees is: 1) the parties negotiate salary ranges for each level classification; and, 2) employees are then placed in the appropriate level classification salary range.

#### ANALYSIS

I conclude that the College did not violate the Act when it reclassified Sulzman from level II to level III and paid her the increase provided by Article XXXVI of the parties' collective agreement. I find, however, that the College did violate the Act by unilaterally establishing level IV salaries for Henry, Berry and Della Valle.

The College was under no obligation to negotiate its decision to reclassify the four titles, the criteria used in the reclassifications, or any resulting new job descriptions. State v. Local 195, IFPTE, 88 N.J. 393, 416-417 (1982); Ridgefield Park Ed. Assn. v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978); State v. State Supervisory Employees Assn., 78 N.J. 54, 90 (1978); Dept. of Law & Public Safety, Div. of State Police v. State Troopers NCO Assn. of N.J., 179 N.J. Super 80, 91-92 (App. Div. 1981); Teaneck Bd. of Ed. v. Teaneck Teachers Assn., 161 N.J. Super 75, 84 (App. Div. 1978); Byram Tp. Bd. of Ed. and Byram Tp. Ed. Assn., 152 N.J. Super 12, 27 (App. Div. 1977); Bd. of Ed. Tp. of N. Bergen v. N. Bergen Fed. Teachers, 141, N.J. Super 97, 104 (App. Div. 1976); In re Somerset County College, P.E.R.C. No. 86-48, 11 NJPER 690 (¶ 16238 1985); Tp. of Egg Harbor, P.E.R.C. No. 86-70, 11 NJPER 518 (¶ 16181



1985); Willingboro Bd. of Ed., P.E.R.C. No. 85-74, 11 NJPER 57 (¶ 16030 1984); Trenton Bd. of Ed., P.E.R.C. No. 85-62, 11 NJPER 25 (¶ 16013 1984); Rutgers University, P.E.R.C. No. 84-45, 9 NJPER 663 (¶ 14287 1983); City of Camden, P.E.R.C. No. 83-116, 9 NJPER 163 (¶ 14071 1983); West Deptford Bd. of Ed., P.E.R.C. No. 80-96, 6 NJPER 56 (¶ 11030 1980). Further, the College fulfilled any contractual obligation it had by permitting the Association's participation on committees conducting reclassification studies (see findings 6, 16 and 17).

The College did, however, have an obligation to negotiate new salary increases resulting from the reclassification. Galloway Tp. Bd. of Ed. v. Galloway Tp. Assn. of Ed. Secs., 78 N.J. 1 (1978); Englewood Bd. of Ed. v. Englewood Ed. Assn., 64 N.J. 1 (1973); In re North Brunswick Tp. Bd. of Ed., P.E.R.C. No. 86-29, 11 NJPER 583 (¶ 16203 1985) ("North Brunswick"). In the case of Sulzman, the College met its obligation. It exercised a prerogative when it reclassified her position based on the criterion of the market value of her job. It applied the negotiated increase set forth in Article XXXVI (\$750.00) when it set her new salary. Thus, the College did not violate any negotiations obligation by reclassifying Sulzman's position and paying her the negotiated increase provided by Article XXXVI.

The College did violate the Act when it unilaterally set new level IV salaries for Henry, Berry and Della Valle. Again, neither the reclassification nor the criteria form the basis of the

violation. Unlike the case of Sulzman, however, the College did not rely on a contractual provision in setting the new salaries of Henry, Berry and Della Valle. While the parties were in the process of negotiating a level IV salary range, there was no agreement when the College implemented the reclassifications and raises. The record contains no evidence concerning the manner in which the College arrived at the salaries it decided to pay Henry, Berry and Della Valle. The record is clear, however, that those new salaries were not the product of negotiations with the Association. Therefore, I find a violation (see North Brunswick, supra).

I turn now to the question of remedy. As of the date of hearing, the parties had tentatively agreed on a level IV salary range. If the parties have ratified an agreement including a level IV salary range, I recommend that Henry, Berry and Della Valle be placed within that range, consistent with the parties' practice. If the parties have no agreement on a level IV salary range, I recommend that the Commission issue an order to negotiate and restore the status quo. I also recommend the posting of the attached notice .

#### CONCLUSIONS OF LAW

1) The College did not commit an unfair practice when it reclassified the titles held by Sulzman, Henry, Berry and Della Valle or by unilaterally adopting criteria for the reclassification plan.

2. The College did not commit an unfair practice when it raised Sulzman's salary \$750.00 after reclassifying her title from level II to level III because the increase was provided by the parties' collective agreement.

3) The College did violate section 5.4(a)(5) and derivatively section 5.4(a)(1) of the Act when it unilaterally set level IV salaries for Henry, Berry and Della Valle.

RECOMMENDED ORDER

I recommend that the Commission ORDER:

A. That the College cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of rights guaranteed by the Act by unilaterally establishing new salary levels.

2. Refusing to negotiate in good faith with the Association by unilaterally establishing new salary levels, a term and condition of employment.

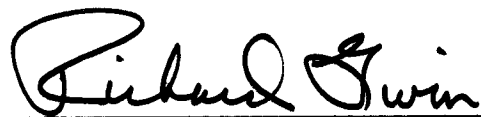
B. That the College take the following affirmative action:

1. If the parties have ratified an agreement that includes a level IV salary range, ensuring that Henry, Berry and Della Valle are placed within that range, consistent with the parties' practice.

2. If the parties have no provision for a level IV salary range, negotiate same in good faith with the Association.

3. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of the notice shall be provided by the Commission and shall be signed by the College's authorized representative and posted immediately upon receipt for a period of at least sixty (60) days. The College must take reasonable steps to ensure that the notices are not altered, defaced or covered by other materials.

4. Notify the Chairman of the Commission within twenty (20) days to report what steps have been taken to comply with this order.

  
Richard C. Gwin  
Hearing Examiner

Dated: August 18, 1986  
Trenton, New Jersey

# 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 employees in the exercise of the rights guaranteed to them by the Act by unilaterally establishing new salary levels.

WE WILL cease and desist from refusing to negotiate in good faith with the Association by unilaterally establishing new salary levels, a term and condition of employment.

WE WILL ensure, consistent with our practice with the Association, that employees Henry, Berry and Della Valle will receive a salary from a level IV salary range that has been (or will be) negotiated with the Association.

\_\_\_\_\_  
ESSEX COUNTY 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 James Mastriani, Chairman, Public Employment Relations CN-429, 495 W. State Street, Trenton, New Jersey 08625 Telephone (609) 292-6780