P.E.R.C. NO. 82-15

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDDLESEX COUNTY COLLEGE,

Respondent,

-and- Docket No. CO-81-84-62

LOCAL 2269, AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, AFL-CIO,

Charging Party.

SYNOPSIS

In an unfair practice proceeding, the Commission adopts, with one modification, the recommended report and decision of its Hearing Examiner finding that Middlesex County College did not violate N.J.S.A. 34:13A-5.4(a)(1) and (5) with respect to its decision to change the work year for certain school secretaries from 10 months to 12 months. The Commission finds that a clause in the parties' contract gave the College the right to abolish the 10-month positions and to recreate them as 12-month positions provided that it agreed to negotiate the compensation rates associated with such positions. Additionally, the Commission finds that the union's decision not to pursue its grievance alleging a violation of that clause to binding arbitration weakens its argument that the clause should be interpreted contrary to its apparent meaning.

The Commission also takes note of the fact that the College did meet with the union and the employees and did, as a result of those meetings, postpone the date for the change in the work year of the secretaries for one year, which postponed date corresponded to the expiration of the parties' contract. The Commission does, however, adopt the exception of the union that the Hearing Examiner erred when she did not find that the change in the work year under the circumstances of this case did not pertain to a term and condition of employment.

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Charging Party.

Appearances:

For the Respondent
Jack Muraskin, Director of Labor Relations

For the Charging Party
Carlton Steger, Council Representative

DECISION AND ORDER

On September 24, 1980 an unfair practice charge was filed with the Public Employment Relations Commission ("PERC" or the "Commission") by Local 2269, American Federation of State, County and Municipal Employees, AFL-CIO ("Charging Party" or "AFSCME"), alleging that Middlesex County College ("Respondent" or "College") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"). Specifically, AFSCME alleges that the College violated N.J.S.A. 34:13A-5.4(a)(1) and (5) of the Act[1/] by its refusal

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."

to negotiate its decision to change the length of the work year of certain secretarial positions at the College from 10 months to 12 months.

It appearing that the allegations of the unfair practice charge, if true, might constitute an unfair practice within the meaning of the Act, a Complaint and Notice of Hearing was issued on December 4, 1980. A hearing was held on January 27, 1981 before Hearing Examiner Joan Kane Josephson, at which time all parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. The parties filed post-hearing briefs and were allowed one week for responsive briefs; however, none were filed.

The Hearing Examiner issued her Recommended Report and Decision, including findings of fact, conclusions of law and a recommended order on April 23, 1981, (H.E. No. 81-40, 7 NJPER 253 ¶12114 1980), a copy of which is attached hereto and made a part hereof.)

The Hearing Examiner's findings of fact included the following:

1. The College had notified the union of its decision to convert all 10 month secretary positions to 12 month secretary positions for increased efficiency and financial savings.

2. The College hoped to stop payment of unemployment compensation to the 10 month employees during summer months, eliminate part-time summer secretarial help which were non-unit positions, and reassign those duties to the employees in the new 12 month positions, thus effecting a significant annual savings.

3. The College met with the union and the affected employees on three separate occasions to discuss the change and any alternate means of accomplishing the financial savings.
As a result of these discussions, the College advised AFSCME that the conversion originally planned for June 30, 1980 would be delayed one year and implemented June 30, 1981 to allow the affected employees adequate time to prepare for the change.

4. On April 2, 1980 AFSCME filed a grievance pursuant to clause XI A of the parties' July 1, 1979 to June 30, 1981 collective negotiations agreement. That clause provides:

> When and if the College at its descretion establishes new jobs, adds or removes duties from existing jobs, or combines all or part of the duties of two or more jobs, the Union may challenge commencing at Step Three of the grievance procedure the accuracy of the job rate and classification assigned to the job.
> (emphasis added)

At the third step grievance hearing held on September 9, 1980, the College offered to negotiate wages, salaries and other terms and conditions of employment of the new 12 month positions, but not the decision to combine the part-time summer secretary position with the ten month position into the new 12 month position. AFSCME refused to negotiate on these terms. The College denied the grievance, stating that its actions were consistent with the rights negotiated in Article XI A and noted AFSCME's refusal to negotiate on the matters set forth in that clause. AFSCME did not pursue the grievance to binding arbitration, but instead advised the

College that it was filing the instant unfair practice charge.

5. On April 1, 1980 AFSCME and the College entered contract negotiations pursuant to a contract reopener for wages and fringe benefits. The parties' agreement was for the term of July 1, 1979 to June 30, 1981. Conversion of the secretarial jobs was not raised by either party during those negotiations.

6. Over the four years prior to 1980, the College had been phasing out the ten month secretarial positions through attrtion; that is as a secretary who held a ten month position would retire or resign the position, the person the employer hired to fill the vacancy would be hired as a twelve month secretary. AFSCME had notice of the process, at least through the posting of notices of vacancies pursuant to the contract, and had never objected. At the time the charge was filed, nine of the ten month positions existed, by the time of the hearing only five ten month positions remained. 2/

2/ There is no evidence in the record to indicate that AFSCME ever objected to the conversion of the four additional positions from 10 months to 12 months through attrition even after it filed the charge. As indicated by the Hearing Examiner, the legal principle urged by AFSCME would be applicable to the change in the length of the work year of the unit position, Cf. In re Deptford Board of Education, P.E.R.C. No. 81-78, 7 NJPER 35 (¶12015, 1980), appeal pending App. Div. Docket No. A-1818-80-T8; and the Charging Party's failure to object to these on-going changes is supportive of the College's argument of a waiver of its right to object to the same changes when applied to employees still holding the positions. See State of N.J. and Local 195, P.E.R.C. No. 77-40, 3 NJPER 78 (1977), aff'd App. Div. Docket No. A-2681-76 (App. Div. 1978).

Based on these findings of fact, and the others contained in her Recommended Report, the Hearing Examiner found no violation of N.J.S.A. 34:13A-5.4(a)(1) and/or (a)(5) and recommended the dismissal of the unfair practice complaint against the College. The Hearing Examiner concluded that based on the contract language of Article XI A, quoted above, the College's actions and AFSCME's failure to protest the changes effectuated through attrition, that the College did not violate the Act in its decision to change the remaining 10 month positions to 12 month positions, effective June 30, 1981. She found that AFSCME's own actions, particularly the negotiation of Article XI A, foreclosed it from protesting the College's action through the instant unfair practice charge.

Additionally, the Hearing Examiner also found the Appellate Division decision in Ramapo-Indian Hills Education Association v. Ramapo-Indian Hills Board of Education, 176 N.J. Super. 35 (App. Div. 1980), affirming P.E.R.C. No. 80-9, 5 NJPER 302 (¶10163 1979) applicable to the instant case. In Ramapo-Indian Hills the same teacher held the full-time position of instrumental music teacher and the extra-curricular position of band director. The school board decided that the position of band director should not be extra-curricular, but part of the assigned responsibilities of the full-time instrumental music teacher. It therefore abolished both the extra-curricular band director position and the full-time instrumental music teacher position and created a new position of music teacher/band director which incorporated the duties of both. The same teacher was given the new position.

The Commission found that the grievance filed over the board's restructuring of the position was outside the scope of negotiations except as to the salary of the new position. The Commission found that the board's action involved matters of major educational policy. Since the assignment of extra-curricular activies is itself a non-negotiable subject for teachers, the Commission held that the board's determination to assign the band director duties to the teacher position was not arbitrable. The Appellate Division affirmed this analysis. The Hearing Examiner herein concluded that Ramapo-Indian Hills was sufficiently analogous to the instant case to be controlling and recommended dismissal on this ground as well.

AFSCME filed exceptions to the Hearing Examiner's Recommended Report and Decision; the College did not. AFSCME's exceptions can be grouped into three major contentions:

1. That Ramapo-Indian Hills does not control this case.

2. That AFSCME's conduct with respect to this entire matter did not constitute a waiver of its right to negotiate concerning the College's actions.

3. That Article XI A of the agreement is not applicable to this case. 3/

3/ AFSCME also takes exception to the Hearing Examiner's purported finding that it had made no effort to invoke the Commission's impasse procedures. It is not clear, either from the exceptions themselves or the supporting argument, to what portion of the Hearing Examiner's decision this exception applies. However, given our resolution of this case, the failure to utilize the Commission's impasse procedures is not relevant to the determination of the issues in this case.

After a careful consideration of the Hearing Examiner's Recommended Report and Decision, the entire record and AFSCME's exceptions, the Commission adopts the Hearing Examiner's findings of fact and conclusion that the College did not violate N.J.S.A. 34:13A-5.4(a)(1) and (5). However, we do not adopt her recommended conclusion of law that Ramapo-Indian Hills controls this case. As discussed below, we agree with AFSCME that that case is distinguishable from the instant one. But we do find that given the wording of Article XI A of the contract, particularly when combined with the course of conduct pursued by both parties, that the College met its negotiation obligation in this case.

AFSCME argues that Piscataway Twp. Board of Education v. Piscataway Twp. Principals Association, 164 N.J. Super. 98 (App. Div. 1978), affirming and enforcing P.E.R.C. No. 77-65, 3 NJPER 165 (1977) is the applicable precedent in this case, and not Ramapo-Indian Hills. We agree that as to the scope of negotiations question involved, the former case is more directly on point. In that case, the board reduced the work year of certain principals from 12 to 10 months in an effort to save money.[4/] Here the College

4/ See also Hackettstown Board of Education, P.E.R.C. No. 80-139, 6 NJPER 263 (¶11124 1980) and New Brunswick Bd. of Education v. New Brunswick Education Ass'n, P.E.R.C. No. 78-47, 4 NJPER 84 (¶4040 1978) mot. fpr recon. denied, P.E.R.C. No. 78-56, 4 NJPER 156 (¶4073 1978), aff'd App. Div. Docket No. A-2450-77 (App. Div. 1979). In these two cases the boards also abolished the old positions and created new ones with a different work year. The fact that these cases shortened 12 month work years to 10 month ones to save money, whereas here the Board lengthened the work year from 10 to 12 months to save unemployment contributions and part-time salaries, does not alter the negotiability of the subject matter.

itself stated that its major consideration was economic and not an educational policy concern, as it had been in Ramapo-Indian Hills. As indicated earlier, the assignment of the extra-curricular duties of band director was not negotiable in the first instance, whereas the length of an employee's work year, particularly when unrelated to the student work year, is a term and condition of employment. Therefore, we do not adopt the Hearing Examiner's conclusion that this case is controlled by Ramapo-Indian Hills.[5/]

We do, however, agree with and adopt the remaining aspects of the Hearing Examiner's decision, and therefore reject AFSCME's exceptions to those findings of fact and conclusions of law. We find that Article XI A is applicable to this situation. It would appear to be a negotiated clause directly on point to the situation herein. If AFSCME believed that Article XI A was not applicable or that the College was not applying it correctly, it could have, pursued its grievance to binding arbitration. But it chose not to do this.

5/ The Court in Ramapo distinguished cases similar to the instant dispute:

> The absence of power in a board to compel a teacher to report to work earlier or later and leave earlier or later, or to increase a teacher's hours to equalize the workload with that of other teachers, or to require teachers to work during their free time or to increase the number of pupil contact hours, does not interfere with its delegated constitutional duty of ensuring that all children receive a thorough and efficient education. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., supra, 78 N.J. at 165. In those controversies, the concern is predominantly with the work and welfare of the teachers rather than educational policy. 176 N.J. Super. at pg. 45.

Instead, AFSCME filed the instant charge. Assuming, arguendo, that abandoning the grievance did not in itself constitute a waiver of its argument, AFSCME in electing to utilize the unfair practice procedure, assumed the burden of proof. N.J.A.C. 19:14-6.8. AFSCME has submitted nothing to overcome the language of the clause, which appears applicable.

Moreover, the facts indicate that the College did negotiate. It advised AFSCME of its proposed action and actually met with the employees and AFSCME to discuss the change. As a result of these sessions, it changed the effective date of the termination of the 10-month positions from June 30, 1980 to June 30, 1981. Thus, the change will not even occur until after the existing contract has expired. Additionally, AFSCME did not accept the College's offer to negotiate wages and fringe benefits as part of the step three grievance resolution, nor did it pursue the grievance to binding arbitration.[6/]

Based upon this entire record, the Commission must find that the College did not refuse to negotiate the change in the work year of the secretaries represented by AFSCME.

6/ Nor, as noted by the Hearing Examiner, had AFSCME objected to the conversion of the 10 month positions to 12 month ones through the process of attrition. No negotiations had been demanded over these changes.

ORDER

The Complaint is hereby dismissed in its entirety.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hartnett, Newbaker, Parcells and Suskin voted for this decision. Commissioners Graves and Hipp voted against the decision.

DATED: Trenton, New Jersey
July 21, 1981
ISSUED: July 22, 1981

H. E. No. 81-40

8 2-15

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

In the Matter of

MIDDLESEX COUNTY COLLEGE,

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-and-

Docket No. CO-81-84-62

LOCAL 2269, AMERICAN FEDERATION
OF STATE, COUNTY AND MUNICIPAL
EMPLOYEES, AFL-CIO,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the College did not violate 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act. The College decided to eliminate non-unit summer employees and consolidate their duties with certain secretaries represented by the union thereby increasing their work year from ten to 12 months. The Hearing Examiner found Ramapo-Indian Hills Ed/Assn v. Ramapo-Indian Hills Bd/Ed, 176 N.J. Super. 35 (App. Div. 1980) to be controlling and therefore found the decision was non-negotiable and non-arbitrable except as to compensation which the union refused to negotiate.

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. 81-40

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Charging Party.

Appearances:

For the Respondent
Jack Muraskin, Director of Labor Relations

For the Charging Party
Carlton Steger, Council Representative

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on September 24, 1980, by Local 2269, American Federation of State, County and Municipal Employees, AFL-CIO ("Charging Party" or "AFSCME") alleging that Middlesex County College ("Respondent" or the "College") had engaged in unfair practices within the meaning of the New Jersey Public Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act") when it refused to negotiate the length of the school work year for certain employees, which was alleged to be a

violation of N.J.S.A. 34:13A-5.4(a)(1) and (5) of the Act. 1/

It appearing that the allegations of the Unfair Practice Charge, if true, may constitute an unfair practice within the meaning of the Act, a Complaint and Notice of Hearing was issued on December 4, 1980. A hearing was held on January 27, 1981, at which time all parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. The parties filed post-hearing briefs by February 23 and were allowed one week for responsive briefs; however, none were filed.

An Unfair Practice Charge having been filed with the Commission, a question concerning alleged violations of the Act, as amended, exists and, after hearing, and after consideration of the post-hearing briefs of the parties, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

Upon the entire record, the Hearing Examiner makes the following:

Findings of Fact

1. Middlesex County College is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. Local 2269, American Federation of State, County and Municipal Employees, AFL-CIO is a public employee representative

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."

within the meaning of the Act, as amended, and is subject to its provisions.

3. On March 12, 1980, Jack Muraskin, the College's Director of Personnel Services, met with Elizabeth Pajauis, president of Local 2269, and Gary Cardinale, Chief Shop Steward for Local 2269. Muraskin advised the union representatives that the college intended to increase the work year of all secretaries working ten months to 12 months. 2/ At that time there were nine secretaries employed on a ten-month basis. The College proposed the change for economy reasons. 3/ Over the past four years the College had been phasing out ten-month secretaries by attrition. The union had not raised any objections to the replacement of ten-month positions with 12-month positions in any prior instance (Tr. 59). 4/ The decision was made to eliminate all remaining ten-month secretarial positions because clerical needs were ongoing during the summer, as evidenced by the College hiring summer clerical help, rather than certain technical positions with academic year needs only, e.g. lab assistants when laboratories were closed during summer months.

2/ Local 2269, the majority representative, represents ten-month and 12-month employees in various clerical and technical positions.

3/ Under the contract between the parties ten-month employees receive between 15 and 20 vacation days depending on longevity of service (which are taken during the ten-month work year), all contractual health benefits for the entire 12 months, and unemployment compensation during the summer months for which the College is fully billed under a direct reimbursement system (Tr. 64).

4/ The union president recalled that ten-month secretaries who retired were replaced by 12-month secretaries but was uncertain as to the extent of such replacements. She had no knowledge of such replacements prior to her term as president. The College personnel director testified credibly that the College consistently replaced vacant ten-month positions with 12-month positions. The majority representative had notice of the abolition of the ten-month positions and establishment of 12-month positions because of posting requirements for vacancies, which requires a designation of the collective negotiations unit placement of the vacant position (Tr. 59).

The plan was to eliminate the summer positions and integrate their work into the duties of the ten-month employees by using a stenographic pool during the summer months and making assignments when and where needed. (The summer help is not included in this collective negotiations unit.) While there were nine affected employees when the College's proposal was first made, there were five remaining ten-month employees when this matter was heard.

4. The union president and shop steward were requested by the College to meet with the affected employees and advised that since the final decision had not yet been made, the College was willing to hear recommendations from the union for other possibilities for the College to save money.

5. The union met with the employees who "demanded" a meeting with College representatives (Tr. 14). On March 7 the employees, Pajauis and Cardinale, met with Muraskin, Kavanagh and a Mr. Schindelman, Assistant to the President of the College.

The employees suggested "possible solutions" (Tr. 15) among which was offering not to collect unemployment compensation during the summer months in order to save the College money. Muraskin responded he could not answer these arguments at that time but would get back to them at a later meeting. Pajauis and Muraskin met further with Muraskin, Kavanagh and Schindelman in Schindelman's office wherein Muraskin further discussed the union's position. Muraskin set another meeting for March 11 with College representatives and the union officials and the employees.

6. The parties met on March 11 and Muraskin advised the union the College decided all ten-month positions would be converted to 12-month positions in 1981 rather than 1980 as originally pro-

posed. Union president Pajauis testified Muraskin advised them the effectuation was delayed one year because he felt the employees did not have adequate notice for the summer of 1980. 5/ On March 19 the union president was advised by Muraskin that the ten-month positions would become 12-month positions effective September 19, 1980 (J-1 in Evid.).

7. A grievance was filed on April 2, 1980, under the collective negotiations agreement under a clause of the contract that permits the union to grieve the job rate and classification of newly created jobs by the College or additional duties to existing jobs or the combination of duties of two or more jobs (Art. XIA of the contract, C-3 in evid.). At a third step grievance hearing on September 9, 1980, 6/ the College offered to negotiate wages or salary or other conditions of employment of the new 12-month positions but not the decision to change the work year from ten to 12 months; however, the union refused to negotiate these issues (J-6 in evid. and Tr. 27 and 54). The grievance was denied and the decision stated that the change in classification from ten-month secretaries to 12-month secretaries was consistent with the contract and noted the union's refusal to discuss wages, salary or conditions of employment. The Union did not pursue the matter to binding arbitration under the

5/ Karen Kavanagh, personnel director, also testified the change was postponed until 1981 in order that employees would have adequate time to "arrange child care of whatever." (Tr. 71)

6/ At a second step grievance hearing on April 14 before Kavanagh, both parties agreed to withhold further processing of the grievance pending the receipt of the results of a study a college-appointed task force was conducting concerning the College's fiscal problems.

contract and advised the College that an unfair practice charge had been filed with the Commission concerning conversion of ten-month employees to 12-month employees (J-8 in evid.). The charge was filed on September 24, 1980. On September 24, 1980, the College advised the union they considered the grievance withdrawn and would not proceed to arbitration on the merits [7/] (J-9 in evid.).

8. On April 15, 1980, the union entered into contract negotiations with the College on a wage and fringe re-opener. The parties negotiated from April to June. The union made no demand to negotiate either the change itself or wages, salary or conditions of employment for this position. The president testified she felt the union could not make a proposal concerning the length of the school year because the negotiations were limited to wage and fringe re-openers. [8/]

The Issue

Did the Respondent College violate § (a)(5) and derivatively (a)(1) of the Act when it refused to negotiate the length of the school work year for certain employees?

7/ This matter might have been deferred to arbitration by the Commission if the employer had agreed to allow the matter to be heard by an arbitrator on the merits. The deferral process was not initiated by the Commission and a complaint was issued and assigned to the undersigned.

8/ The grievance filed by the union stated that since negotiations were limited to wages and fringes there could be no negotiations on making the ten-month employees 12-month employees and that the College must retain all ten-month employees as ten-month employees until the expiration of the contract, June 21, 1981.

Analysis

The Commission and the court have held that the length of the work year is a mandatorily negotiable term and condition of employment. Piscataway Twp. Bd/Ed v. Piscataway Twp. Principals Assn., P.E.R.C. No. 77-65, 3 NJPER 165 (1977), aff'd and enf'd 165 N.J. Super. 98 (App. Div. 1978). There it was held that the Piscataway Board committed an unfair practice when it unilaterally and without negotiations reduced the work year of certain principals from 12 to ten months. The Commission has also held that abolition of 12 and 11-month positions and the creation of ten-month positions rather than reduction in months of service is a distinction without a difference and mandatorily negotiable. 9/ The Board had argued unsuccessfully that their managerial right to reduce staff was the same as cutting months of services. See Hackettstown Bd/Ed and Hackettstown Ed/Assn, P.E.R.C. No. 80-139, 6 NJPER 263 (¶11124, 1980).

However, in a recent case the Appellate Division affirmed a Commission determination that the decision to establish a new position encompassing the duties of an abolished position was non-negotiable and non-arbitrable except as to the compensation to be paid to the holder of the new position. Ramapo-Indian Hills Ed/Assn v. Ramapo-Indian Hills Bd/Ed, 176 N.J. Super. 35 (App. Div. 1980). In Hackettstown they were the same people doing substantially the same work for less salary. The board was changing a salary practice without negotiations. In Ramapo-Indian Hills there was a reorganization and reassignment of duties.

9/ Most prior cases have dealt with reduction of the work year and this case involves increase in the work year. The negotiability issue is the length of the work year, whether increased or decreased, cf., length of work day for employees had been consistently held to be negotiable.

The instant matter has elements of both situations.

While the charge does not allege the the original replacements of ten-month positions with 12-month secretarial positions to be violations of the Act, this would appear to have been a change in the length of the work year of unit positions and that decision would have been negotiable had a timely demand by the union been made when these changes occurred. The union was aware of the change and their lack of demand to negotiate indicates to the undersigned an acquiescence and waiver of the union's right to bargain over the subject generally. See State of New Jersey and Local 195 IFPTE and Local 518 SEIU, P.E.R.C. No. 77-40, 3 NJPER 78 (1977) and In re Deptford Bd/Ed, P.E.R.C. No. 81-78, 6 NJPER ___ (¶ , 1980).

The Ramapo-Indian Hills case is controlling, however, in the more recent replacement of the ten-month secretarial positions with 12-month secretarial positions, when coupled with the elimination of non-unit summer employees and reassignment of their duties to the new 12-month employees during the summer months. This decision is non-negotiable and the union refused to negotiate any compensation aspects of this change. 10/ Furthermore, the union has contractually agreed to grieve only "classification of job rate and classification assigned to the job"

> "when and if the College at its discretion establishes new jobs, adds or removes duties

10/ While the College declined to negotiate this decision at the grievance hearing in September 1980, there were some discussions concerning the decision in the spring of 1980 that led to the College's decision to postpone the implementation of the decision for one year. While the union did not agree to the delayed implementation of the decision, they made no effort to invoke the Commission's impasse resolution procedures. The College attempted to reconcile its fiscal objectives with the concerns advanced by the union. Assuming arguendo the decision itself was negotiable as the union argues, this behavior could constitute waiver under the State of N.J. and Local 195 IFPTE, supra.

> from existing jobs, or combines all or part of the duties of two or more jobs, the Union may challenge commencing at Step Three of the grievance procedure the accuracy of the job rate and classification assigned to the job." (Emphasis added)

The union has contractually agreed that the College may at its discretion combine duties of two or more jobs which the College did here with the summer and ten-month secretarial jobs.[11/] Based on both Ramapo-Indian Hills and the contract between the parties, the Charging Party is foreclosed from complaining by the instant charge of unfair practices that the Respondent College has refused to negotiate the subject of length of school year in the context presented herein. Accordingly, I recommend dismissal of the Complaint alleging that the Respondent College violated (a)(5) and (a)(1) of the Act.

Conclusions of Law

The Respondent College did not violate N.J.S.A. 34:13A-5.4(a)(1) or (5) when it refused to negotiate concerning the school year of certain employees in the Charging Party's bargaining unit.

Recommended Order

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

Joan Kane Josephson
Hearing Examiner

DATED: April 23, 1981
Trenton, New Jersey

11/ At the contractual wage and fringe reopener negotiations, the union made no demand to negotiate any wage or fringe aspects of the change and felt the issue itself could not be negotiated at that point.