P.E.R.C. NO. 87-81

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ESSEX COUNTY COLLEGE,

Respondent,

-and-

ESSEX COUNTY COLLEGE PROFESSIONAL ASSOCIATION, LOCAL 4173, NJSFT, AFT/AFL-CIO,

DOCKET NO. CO-86-141-168

Charging Party,

-and-

ESSEX COUNTY COLLEGE PROFESSIONAL ASSOCIATION,

Intervenor.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge filed by the Essex County College Professional Association, Local 4173, NJSFT, AFT/AFL-CIO against Essex County College. The charge alleged that the College violated the New Jersey Employer-Employee Relations Act when it failed to implement a collective negotiations agreement. The Commission finds that the charging party was not the majority representative of the employees in the collective negotiations unit and therefore did not have standing to file the charge.

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ESSEX COUNTY COLLEGE PROFESSIONAL ASSOCIATION, LOCAL 4173, NJSFT, AFT/AFL-CIO,

Docket No. CO-86-141-168

Charging Party,

-and-

ESSEX COUNTY COLLEGE PROFESSIONAL ASSOCIATION,

Intervenor.

Appearances:

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

For the Charging Party, Dwyer & Canellis, Esqs. (Michael E. Buckley, of counsel)

For the Intervenor, Joseph Lauria, President

DECISION AND ORDER

On December 6, 1985, the Essex County College Professional Association Local 4173, NJSFT, AFT/AFL-CIO ("NJSFT") filed an unfair practice charge against Essex County College ("College"). The charge alleges that the College violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"),

specifically subsections 5.4(a)(1) and (5),[1/] when it failed to implement a collective negotiations agreement.

On April 30, 1986, a Complaint and Notice of Hearing issued. The College's Answer admitted considering the proposed agreement, but denied ratifying it.

On June 12, 1986, Hearing Examiner Alan Howe conducted a hearing. The parties stipulated almost all the facts, briefly examined witnesses and introduced exhibits. They waived oral argument but filed post-hearing briefs.

At the hearing, the College moved to dismiss the Complaint because the Essex County College Professional Association ("Association") is the majority representative with which it negotiated and NJSFT is only an affiliate. The Association moved to intervene because it wants to continue to negotiate. The Hearing Examiner reserved on the motion to dismiss, but granted the motion to intervene.[2/]

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."

2/ The Association specifically sought to divorce itself from the instant charge because, unlike NJSFT, it was willing to return to the bargaining table.

On June 23, 1986, the Hearing Examiner issued his report and recommended decision, H.E. No. 86-66, 12 NJPER 561 (¶17212 1986) (copy attached). He denied the College's motion to dismiss, finding that the Association was affiliated with the AFT, that it had received a charter in 1981 and that AFT representatives had participated in negotiations since that time. The Hearing Examiner also noted that the memorandum of agreement, executed on June 12, 1986, was signed by the AFT State Representative. He then found that the College violated subsections 5.4(a)(1) and (5) when it repudiated the memorandum of agreement.

On July 10, 1986, the College filed exceptions. It asserts that NJSFT lacks standing to litigate the case and that it did not repudiate the contract.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 4-7) are accurate. We adopt and incorporate them here.

The Complaint's gravaman is that the College violated subsections 5.4(a)(5) and, derivatively, (a)(1) when it refused to implement a collective negotiations agreement. The key question is whether NJSFT had standing to litigate the charge. Our law is settled that only the majority representative can litigate such a charge. See e.g., New Jersey Turnpike Authority, P.E.R.C. No. 81-64, 6 NJPER 560 (¶11284 1980), aff'd App. Div. Docket No. A-1263-80T2. This principle is not a mere matter of procedure. To the contrary, it is predicated on the exclusive representation

principle, the cornerstone of our Act. See Red Bank Reg. Ed. Ass'n v. Red Bank Reg. H.S. Bd. of Ed., 78 N.J. 122, 138-139 (1978); Lullo v. International Association of Firefighters, 55 N.J. 409 (1970). In New Jersey Dept. of Higher Education, P.E.R.C. No. 85-77, 11 NJPER 74 (¶16036 1985), aff'd App. Div. Dkt. Nos. A-2920-84T7 and A-3124-84T7 (4/7/86), we stated:

> A public employer only violates 5.4(a)(5) when it refuses to negotiate in good faith with a majority representative. Thus, individual employees and minority organizations do not have standing to litigate such a charge because the exclusive right to negotiate is vested in the majority representative. See, e.g., New Jersey Turnpike Authority, P.E.R.C. No. 81-64, 6 NJPER 560 (¶11284 1980); Newark Board of Education, D.U.P. No. 84-7, 9 NJPER 555 (¶14230 1983). See also, Red Bank Regional Education Ass'n v. Red Bank Reg. High School Board of Education, 78 N.J. 122, 138-139 (1978); Lullo v. Intern Assoc. of Fire Fighters, 55 N.J. 409 (1970). As we said in New Jersey Turnpike Authority (citing State of New York and Frank S. Robinson, et al., PERB Case No. U-4537, 13 PERB 3105 (¶3063 1980)):
>
> > ...a charge must allege a violation of a right of the Charging Party protected by the statute. Since the right to negotiate is that of the majority representative, not an individual employee or even a group of individual employees, only the majority representative may charge the employer with a violation of the duty to negotiate. [Id. at 561, n. 7]
>
> [11 NJPER at 78; footnote omitted]

Thus, in this case, NJSFT must initially establish that it was the majority representative. It failed to meet this burden.

First, NJSFT is not merely the alter ego of the majority representative: the Association. It was specifically stated on the

record that only the "New Jersey State Federation of Teachers" was the "Charging Party." Moreover, the president of the Association, which intervened as an independent third party, explicitly divorced the Association from the charge by stating "the Professional Association is not charging."

The College voluntarily recognized the Association as the majority representative in 1973 or 1974. Between 1973 and 1981, the Association was the sole negotiator for collective negotiations agreements with the College. In 1981, the Association affiliated with the NJSFT, received a charter and was given a local number.[3/] However, neither the present contract (J-2, covering July 1, 1984 - June 30, 1987) nor the previous contract (J-1, covering July 1, 1981 - June 30, 1984), acknowledges the affiliation. Both documents are entitled "Agreement Between Essex County College Board of Trustees and Essex County College Professional Association." Indeed, the recognition clauses in both agreements state: "The Board of Trustees of Essex County College hereby recognizes the Essex County College Professional Association as the exclusive bargaining representative...." The contracts do not mention the state-wide organization or bear the signatures of

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3/ It is not clear whether the affiliation was completed before or after J-1 went into effect.

NJSFT representatives.[4/] Further, negotiations for these agreements were conducted primarily by a team from the Association, with input from just one NJSFT representative.

In Dept. of Higher Ed, we stated that a charge could be litigated by an entity acting on behalf of the majority representative with its authorization. We stressed the unique facts:

> ...Council #4 [the local] acted on behalf of the joint majority representative [NJCSA/NJSEA] and with its authorization. Council #4 was the largest local of its affiliate CSA, one of the joint representatives. CSA had delegated to Council #4 authority to administer the contract. The charge pertained to the administration of the contract since it involved coverage of part-time employees under the recognition clause. The CSA Executive Director approved the filing of the charge and submitted it to the attorney for CSA/SEA who did not object. Indeed, SEA had consistently endorsed the charge's allegation that part-time employees were within the negotiations unit represented by CSA/SEA.

None of these factors is present here. The Association disavowed all connection with the charge and indeed repeatedly requested that NJSFT drop it. Further, an overwhelming majority of the Association's membership voted to return to the table on the one issue which the College sought to renegotiate. Under all of the circumstances, we conclude that NJSFT did not have standing to file this charge.

4/ While the memorandum of agreement bears the signature of an NJSFT representative, his designation as such is not noted. The Agreement is signed only under the general heading of "For the Union."

Based on our determination that NJSFT lacked standing to litigate this case, we do not address the other issues raised in the exceptions.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey
December 22, 1986
ISSUED: December 23, 1986

H.E. NO. 86-66

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

In the Matter of

ESSEX COUNTY COLLEGE

Respondent,

-and-

ESSEX COUNTY COLLEGE PROFESSIONAL ASSOCIATION, LOCAL 4137, NJSFT, AFT/AFL-CIO,

Docket No. CO-86-141-168

Charging Party.

-and-

ESSEX COUNTY COLLEGE PROFESSIONAL ASSOCIATION,

Intervenor.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent Board violated §§5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act when its Board of Trustees, after giving unqualified approval and ratification to a Memorandum of Agreement on September 12, 1985, attached a condition to its ratification, namely, that the ratification was "subject to clarification." Thereafter the Board insisted that there be certain additional substantive negotiations on salary levels, which negotiations have never taken place. The Hearing Examiner concluded that the College acted in bad faith by demanding further negotiations on substantive issues after ratification.

Citing NLRB precedent, the Hearing Examiner recommended that the College be ordered to execute the final collective negotiations 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. 86-66

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

In the Matter of

ESSEX COUNTY COLLEGE

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ESSEX COUNTY COLLEGE PROFESSIONAL ASSOCIATION, LOCAL 4137, NJSFT, AFT/AFL-CIO,

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Appearances:

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

For the Charging Party
Dwyer & Canellis, Esqs.
(Michael E. Buckley, Esq.)

For the Intervenor
Joseph Lauria, President

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on

December 6, 1985 by the Essex County College Professional Association, Local 4137, NJSFT, AFT/AFL-CIO (hereinafter the "Charging Party" or the "AFT") alleging that Essex County College (hereinafter the "Respondent" or the "College") has 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 after the parties' negotiators reached agreement on June 12, 1985, as to the terms and conditions of a three-year successor agreement, to be effective during the term July 1, 1984 through June 30, 1987, and the parties having executed a Memorandum of Agreement on June 12, 1985; and the members of the Charging Party having shortly thereafter ratified the Memorandum of Agreement; and the College having ratified the Memorandum of Agreement on September 12, 1985, with the condition that such ratification was "subject to clarification"; and the Charging Party having learned the nature of the "clarification" sought by the College on September 30, 1985, which called for a reduction in the minimum salary level for certain employees; it is alleged that all of the foregoing is a violation of N.J.S.A. 34:13A-5.4(a)(1) and (5) of the Act.[1/]

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; 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."

It appearing that the allegations of the Unfair Practice Charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on April 30, 1986.. Pursuant to the Complaint and Notice of Hearing, a hearing was held on June 12, 1986 in Newark, New Jersey, at which time a motion to dismiss was heard with decision reserved,[2/] and a motion to intervene was made and granted.[3/] The record was essentially stipulated by the parties with two witnesses providing limited testimony, and oral argument being waived. The parties filed post-hearing briefs by June 18, 1986.

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.

2/ The College moved to dismiss the Unfair Practice Charge on the ground that the AFT lacked standing and has acted in bad faith, the recognized representative of the unit employees being the Essex County College Professional Association, which has divergent interests from AFT regarding the 1984-87 collective negotiations agreement.

3/ Joseph Lauria, the President of the Essex County College Professional Association (hereinafter the "Association") moved to intervene in order to protect the interests of the Association, which seeks to divorce itself from the instant Unfair Practice Charge, it being prepared to continue to negotiate with the College while the AFT contends in the Unfair Practice Charge that a complete agreement has been reached and that the College is acting in bad faith in violation of the Act.

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

FINDINGS OF FACT

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

2. The Essex County College Professional Association, Local 4137, NJSFT, AFT/AFL-CIO is a public employee representative within the meaning of the Act, as amended,[4/] and is subject to its provisions.

3. The Essex County College Professional Association is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

4. The Association came into existence sometime in 1973 or 1974. Thereafter the College voluntarily recognized the Association as the exclusive representative for its professional personnel. Three or four collective negotiations agreements were consummated prior to the Association affiliating with the AFT in 1981. At that time it was chartered by the AFT as Local 4137.

4/ The College was unwilling to stipulate that the AFT was a public employee representative within the meaning of the Act. The Hearing Examiner takes administrative notice of the fact that the AFT maintains an organization in the State of New Jersey and there was uncontradicted testimony that in 1981 the AFT granted a charter to the Essex County College Professional Association, denoting it as Local 4137.

Thereafter, in negotiations, the Association had its own team while an AFT representative conducted negotiations.[5/]

5. On or about May 17, 1984, negotiations commenced for a successor agreement to J-1, which was effective during the term July 1, 1981 through June 30, 1984. These negotiations continued until June 1985, when a Memorandum of Agreement as to the terms and conditions of a successor agreement was executed by the parties on June 12, 1985 (J-3). This Memorandum of Agreement provided at the outset that it was "...subject to formal approval and ratification and concluded, "The undersigned agree to recommend ratification and approval."

6. On July 8, 1985, the then President of the Association, Thure Tengwall, sent a memorandum to the Board of Trustees of the College, advising them that the membership of the Association had ratified the proposed contract on June 19, 1985 (J-4).

7. At a public meeting of the College Board of Trustees on September 12, 1985, the trustees unanimously voted to ratify the negotiated agreement but, however, the resolution and the minutes

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5/ The Hearing Examiner notes that the two collective negotiations agreements since AFT affiliation in 1981 have been signed only by members of the Association's negotiating team and not by any representative of the AFT (see J-1 and J-2). However, Thomas H. Wirth, a State representative of AFT, did join in the signing of the Memorandum of Agreement for the 1984-87 contract (see J-3).

reflect that the action of the Trustees was "subject to clarification" (J-5 & J-6).[6/]

8. The Hearing Examiner finds as a fact that the above colloquy established conclusively that the College ratified the Memorandum of Agreement on September 12, 1985, as evidenced by the following statements of Dasher:

> 1. There are still somethings...to be clarified. It does not in any way negate the ratification of the contract. It is ratified...Some areas must be clarified for the benefit of both the...Association and the Board...as to the intent...(Tr 46, 47) and
>
> 2. ...The contract has been ratified Mr. Cascella under the conditions mutually agreed upon by the Association and the Board. Period. (Tr 48).
>
> (Emphasis supplied)

Whether or not Cascella assented to the College's use of the term "clarification" or agreed to meet with the College thereafter is irrelevant to the fact that ratification occurred on September 12th (see Tr 49).

6/ At the hearing in this matter, the College offered in evidence a portion of a tape of the September 12th Board of Trustees meeting, supra. There being no objection by the parties, and the parties having subsequently stipulated as to the accuracy of the contents of the tape, it was played at the hearing and the reporter transcribed it (Tr 45-50). The transcribed portion involved a colloquy between Clara Dasher, the Chairman of the Board of Trustees, and Victor Cascella, a Staff Representative of the State AFT, where the subject matter was the meaning of the phrase "subject to clarification" in the resolution (J-6).

9. Cascella testified without contradiction that sometime after the September 12, 1985, Board of Trustees meeting and before the attorney for the College, Lawrence S. Schwartz, sent a letter to the Association on September 30th, Cascella met with Schwartz and Herbert E. Scuorzo, a Vice President of the College, where he, Cascella, was informed that the phrase "subject to clarification" meant that the College wanted to reopen negotiations (Tr 58).

10. Under date of September 30, 1985, Schwartz sent a letter to Robert Bryant of the Association, which outlined certain proposals by the College as to the rolling back of Level III Minimums and to spread certain increases over the life of the three-year agreement (J-7).

11. On December 9, 1985, Joseph Lauria, then the President of the Association, sent a memorandum to Scuorzo, advising him that the members of the Association had on December 3, 1985 voted "...to renegotiate Level III Minimum..." (J-8). Lauria testified that at this meeting of the Association approximately 85% to 90% of the members voted in favor of renegotiating out of approximately 100 members present.

DISCUSSION AND ANALYSIS

The Respondent's Motion To Dismiss The Unfair Practice Charge For Lack Of Standing, Etc. Is Denied.

The Hearing Examiner has thoroughly considered the cogent arguments of counsel as to why the College's motion to dismiss the Unfair Practice Charge should be granted or should be denied. The motion to dismiss must, however, be denied.

Section 102.9 of the Rules and Regulations of the National Labor Relations Board provides that a charge alleging that any person has engaged or is engaging in an unfair labor practice "...may be made by any person..." The Commission's Rules and Regulations, although somewhat narrower, are still of considerable breadth. Thus, N.J.A.C. 19:14-1.1 provides:

> A charge that any public employer or public employee organization has engaged or is engaging in any unfair practice listed in §(a) and §(b) of N.J.S.A. 34:13A-5.4 may be filed by any public employer, public employee, public employee organization or their representative. (emphasis supplied).

Although the College would not stipulate that the AFT was a public employee representative under the Act, the Hearing Examiner has so found based upon administrative notice. While, admittedly, only the Association is a party to J-1 and J-2, and only its representatives signed the agreements, there does exist a history wherein the Association affiliated with the AFT and was issued a charter in 1981. Also, AFT representatives have participated in the negotiations since 1981 and the memorandum of Agreement (J-3), which was executed on June 12, 1985, contains the signature of Thomas H. Wirth, an AFT State Representative.

In view of the above, the Hearing Examiner necessarily concludes that the Charging Party herein had standing to file the instant Unfair Practice Charge on December 6, 1985. Note is taken of the fact that the College has alleged bad faith on the part of the AFT in filing the instant Charge but the Hearing Examiner finds nothing more than the presence of a policy disagreement between the

College, the Association and the AFT over how the matter of the implementation of the Memorandum of Agreement is to be best effectuated.

Accordingly, the Hearing Examiner will recommend that the motion to dismiss be denied.

The Respondent College Violated §§5.4(a)(1) And (5) Of The Act When It First Unqualifiedly Ratified The Memorandum Of Agreement And Then Sought To Condition Its Ratification By Adding That It Was "Subject To Clarification."

There is no evidence in the record that the parties' negotiators were clothed with apparent or actual authority to conclude a binding successor agreement to Exhibit J-1. Thus, Commission decisions standing for that proposition such as Bergenfield Bd. of Ed., P.E.R.C. No. 90, 1 NJPER 44 (1975) and East Brunswick Bd. of Ed., P.E.R.C. No. 77-6, 2 NJPER 279 (1976) are not involved herein. This, of course, is evident from the first two lines of the Memorandum of Agreement (J-3), which was executed by the parties on June 12, 1985, and which provides that it is "...subject to formal approval and ratification...," followed at the end thereof by the "...undersigned agree to recommend ratification and approval...."

The Association promptly ratified the Memorandum of Agreement on June 19, 1985, thereby giving its assent, i.e. "approval and ratification," to the substantive terms and conditions set forth in paragraphs one through five of the Memorandum of

Agreement. The Board of Trustees of the College at its public meeting on September 12, 1985, first gave its unqualified "approval and ratification" to the Memorandum of Agreement,[7/] but then sought to add as a condition that it was "subject to clarification" (J-5 & J-6).

Following the Board of Trustees' imposition of "clarification" as a condition to its ratification, the attorney for the College met with representatives of the Association and the AFT. After this meeting he sent a letter to the Association on September 30, 1985 (J-7), setting forth the College's proposals regarding a "rollback" in Level III minimums and that any subsequent increases be spread over the life of the contract. This precipitated the filing of the instant Unfair Practice Charge on December 6, 1985, by the AFT, after which Lauria wrote to Scuorzo on December 9, 1985, stating that the Association was willing to renegotiate the Level III Minimum (J-8).

A violation by the College of §5.4(a)(5) of the Act requires a finding that it has manifested bad faith in negotiations with the AFT. Plainly, the negotiations process continues until a contract is finally executed and implemented. When the College unqualifiedly ratified the June 12th Memorandum of Agreement on September 12th,[8/] and then repudiated that ratification by

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7/ See statements of Dasher in Finding of Fact No. 8, supra.

8/ The addition of the term "subject to clarification" fails to arise to a condition precedent or subsequent since "to clarify" is "to free of confusion" or "to make understandable": Webster's New Collegiate Dictionary (1976 ed p. 206).

insisting on substantive changes in the terms and conditions of employment set forth in ¶2 of the Memorandum of Agreement by proposing a "rollback" of Level III minimums, etc. (see J-7), it became clear that the College plainly manifested bad faith. Although the Hearing Examiner has found no Commission decisions squarely on the issue of repudiation by an employer of a ratification previously voted upon unconditionally, he notes that in one case the Commission found a violation of §5.4(b)(4) of the Act[9/] by a union whose members ratified an agreement, following which the union refused to execute it unless the employer agreed to include two clauses, which the union "would have preferred": Bergen Co. Prosecutor's Office, P.E.R.C. No. 83-90, 9 NJPER 75 (¶14040 1982).[10/] The Hearing Examiner also cites Dept. of Human Services, P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984) where it was stated that the repudiation of a contractual clause may be litigated under §5.4(a)(5) of the Act as inferring bad faith. Plainly, if the repudiation of a contract term maybe an arguable

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9/ This subsection prohibits employee organizations, their representatives or agents from: "(4) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

10/ See also, Matawan-Aberdeen Reg. Bd. of Ed., H.E. No. 86-46, 12 NJPER 255 (¶17108 1986), now pending before the Commission, where it is recommended that an employer which ratified a memorandum of agreement and a subsequent contract be ordered to execute the contract; and Timber Products Co., 277 NLRB No. 78, 121 LRRM 1039 (1985) where the NLRB found that an "enforceable contract was formed," following the unequivocal acceptance by the union of the employer's final offer, which warranted an order to execute and abide by the contract.

manifestation of bad faith, then certainly the repudiation of the ratification of an entire agreement must arise to an even higher level of bad faith on the part of the employer.

Given the above authorities, the Hearing Examiner is overwhelmingly persuaded that the College has violated §§5.4(a)(1) and (5) of the Act, based upon the facts previously found and the above analysis. One concluding point, and that is that no legal significance is found in the Association having voted on December 3, 1985, to renegotiate the Level III minimum in view of the College having previously voted unanimously to ratify the Memorandum of Agreement without any legally significant condition precedent or subsequent having been imposed on its ratification.

Accordingly, the Hearing Examiner will recommend an appropriate remedy to rectify the violations of the Act by the College, supra.

* * * *

Upon the foregoing, and upon the entire record in this case, the Hearing Examiner makes the following:

CONCLUSION OF LAW

The Respondent College violated N.J.S.A. 34:13A-5.4 (a)(1) and (5) when its Board of Trustees on September 12, 1985, gave unqualified approval and ratification to a Memorandum of Agreement executed by its negotiators on June 12, 1985, notwithstanding its attempt to attach a condition that the ratification was "subject to clarification."

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER:

A. That the Respondent College cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly, by demanding the reopening of negotiations and by refusing to execute the 1984-87 collective negotiations agreement.

2. Refusing to negotiate in good faith with the AFT by failing to execute the 1984-87 collective negotiations agreement.

B. That the Respondent College take the following affirmative action:

1. Forthwith execute the 1984-87 collective negotiations agreement, which was ratified by the College on September 12, 1985.[11/]

2. 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 sixty (60) consecutive days.

11/ Although the AFT failed to allege a violation of §5.4(a)(6) as to the College's refusal to execute the 1984-87 contract, the Hearing Examiner concludes that Timber Products Co., supra (see Footnote 10, supra) affords sufficient precedent to order the College to execute the contract on the basis of a §5.4(a)(5) violation. To refrain from recommending such an order to execute would reward the College for its illegal course of conduct since September 12, 1985.

Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

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

C. That the Respondent's motion to dismiss the Unfair Practice Charge for lack of standing be denied.

Alan R. Howe
Hearing Examiner

DATED: June 23, 1986
Trenton, New Jersey

Appendix "A"

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 NOT interfere with, restrain or coerce our employees in the exercise of the rights guaranteed to them by the Act, particularly, by demanding the reopening of negotiations and by refusing to execute the 1984-87 collective negotiations agreement.

WE WILL NOT refuse to negotiate in good faith with the AFT by failing to execute the 1984-87 collective negotiations agreement.

WE WILL forthwith execute the 1984-87 collective negotiations agreement, which was ratified by the College on September 12, 1985.

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 Commission, CN 429 495 W. State Street, Trenton, New Jersey 08625, Telephone (609) 292-9830