

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BURLINGTON COUNTY COLLEGE,

Respondent,

-and-

Docket No. CO-78-219-82

BURLINGTON COUNTY COLLEGE
FACULTY ASSOCIATION,

Charging Party.

SYNOPSIS

In an unfair practice proceeding initiated by the Faculty Association and which reached the Commission on the basis of stipulated facts and briefs submitted by the parties without hearing and without a Hearing Examiner's Recommended Report and Decision, the Commission concluded, in agreement with the Association, that the Board of Trustees' actions in unilaterally inserting an early termination provision in the 1978-79 individual faculty employment contracts without prior negotiations was violative of N.J.S.A. 34:13A-5.4(a)(5) and derivatively N.J.S.A. 34:13A-5.4(a)(1). The Commission rejected the Board's contentions that early termination notices were so intimately bound up with its reduction in force decisions that it was but an incident of the managerial right to RIF. The Commission concluded that notice provisions concerning early terminations do not predominantly relate to educational policy decisions but directly affect the financial and personal welfare of teachers, i.e. their terms and conditions of employment. The Commission notes that notice of termination provisions simply relate to an employee's right to have sufficient time to seek employment elsewhere and to put one's life in order if one is released for any reason.

The Commission further concludes, that to the extent that the College would rely on the 60 day notice provision of the early termination clause to give a notice of non-reappointment different from that provided by the clause negotiated by the parties that would constitute a unilateral modification of that term and condition of employment without any prior negotiations and would violate N.J.S.A. 34:13A-5.4(a)(5), even if the motivation for that non-reappointment was a reduction in force.

Accordingly, the Commission ordered the College to cease and desist from interfering with, restraining or coercing unit members represented by the Faculty Association by unilaterally establishing or modifying their terms and conditions of employment by

substituting or threatening to substitute a different notice provision for the non-reappointment of unit members than that set forth in the parties' current agreement. Additionally, the Board was ordered to delete the early termination provision inserted in the 1978-79 individual faculty employment contracts and no longer give any effect to those provisions; post notices; and notify the Chairman of the Commission within 20 days of the receipt of this order what steps the Board of Trustees is taking to comply with the order.

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FACULTY ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Kessler, Tutek & Gottlieb, Esqs.
(Myron Gottlieb and David Gladfelter, on the Brief)

For the Charging Party, Sterns, Herbert & Weinroth, Esqs.
(Michael J. Herbert, of Counsel, on the Brief)

DECISION AND ORDER

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") by the Burlington County College Faculty Association (the "Association") on March 17, 1978 and said Charge was amended by the Association on May 22, 1978. The Association alleged that the Board of Trustees of the Burlington County College (the "College") had unilaterally inserted a 60 day early termination provision in the 1978-79 individual faculty employment contracts without prior negotiations in violation of N.J.S.A. 34:13A-5.4(a)(1), (a)(5) and (a)(7).^{1/}

^{1/} These subsections prohibit employers, their representatives or agents from "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act; (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; (7) Violating any of the rules and regulations established by the commission." On July 10, 1978 the Association formerly withdrew its allegation that the College's conduct violated N.J.S.A. 34:13A-5.4(a)(7).

Furthermore, the Association asserted that the College intended to terminate faculty members pursuant to the alleged illegally instituted early termination provision and not in accordance with the notice of non-reappointment provisions agreed upon by the Association and College and set forth in the existing agreement between the parties, in violation of the above-cited provisions of the New Jersey Employer-Employee Relations Act (the "Act").

The Association's amended Charge was accompanied by a request for interim relief along with supportive documentation. The interim relief requested consisted, in part, of an order restraining the College from terminating any faculty members in the unit who had received a contract of reappointment for the 1978-79 school year, in reliance upon the 60 day early termination clause, prior to the end of the 1978-79 academic year contracted for. The Special Assistant to the Chairman, Stephen B. Hunter, having been delegated the authority to act upon requests for interim relief on behalf of the Commission, executed an Order to Show Cause on May 22, 1978, made returnable on June 8, 1978.

Pursuant to the Order to Show Cause both parties filed briefs or memoranda of law prior to the hearing. Both parties appeared at the Show Cause Hearing on June 8, 1978 represented by Counsel.

At the Order to Show Cause hearing, after substantial discussion concerning the respective positions of the College and the Association, the parties agreed that inasmuch as there appeared to be no substantial and material disputed factual issues and in the interest of an expeditious resolution of this instant matter, they would mutually agree to execute a complete Stipulation of

Facts along with a Stipulation of Procedure and a Stipulation of Issues. After the issuance of a Complaint in this matter the parties would waive their rights to an evidentiary hearing and would further agree to waive an intermediate Hearing Examiner's Recommended Report and Decision. Furthermore, the Association withdrew its request for interim relief. The parties agreed that this matter would be submitted to the Commission for its determination to be based upon the pleadings, all briefs submitted by the parties, and the following stipulations:^{2/}

1. The Charging Party has served as the employee organization for faculty and professional staff at Burlington County College since the 1970-71 academic year.

2. During this period of time, successive contracts were entered into between the parties, including a collective negotiations agreement for the period July 1, 1975 to June 30, 1978, the non-economic terms of which were extended by the parties until June 30, 1979. A copy of the collective negotiations agreement is attached hereto as Appendix "A" and made a part hereof.

3. Until March 14, 1978, all instructional staff received an identical individual contract form, including the annual term, which did not include an early termination provision. The 1977-78 individual contract form is attached hereto as Appendix "B".

4. On March 14, 1978, the Burlington County College Board of Trustees passed a resolution whereby faculty would receive new individual contracts providing that faculty may be given notice of early termination (at least sixty days in advance of the intended early termination date). The 1978-79 individual contract form is attached hereto as Appendix "C". There was a cover memo issued with the 1978-79 individual contracts, which memo is attached hereto as Appendix "D".

^{2/} Appendices B, C, and D referred to in the Stipulation of Facts are attached to this decision and made a part hereof. Appendix A is a copy of the present negotiations agreement between the parties, and has not been attached to this decision because of its length.

5. The inclusion of the early termination provision in the 1978-79 individual contract was not negotiated between the parties.

6. An unfair labor practice charge, which related to the Board's action of March 14, 1978, was filed by the Faculty Association on March 17, 1978.

7. In accordance with the early termination provision included in the 1978-79 individual contracts, the Board has maintained that it may terminate the employment of faculty members without complying with the notice of non-reappointment provision set forth in Article V, Paragraph B, 2, of the collective negotiation agreement between the parties. The Board of Trustees has not acted on any early termination with regard to any individual faculty members as of June 8, 1978.

8. There will also be supplied by counsel for Respondent in letter form a factual statement of what action relevant to these issues took place at the Board of Trustees' meeting of June 20, 1978. This letter will be incorporated into the record before the Commission.^{3/}

The College and the Association further agreed that the following issues were to be presented to the Commission for final determination:

1. Is the Board's action in unilaterally inserting an early termination provision in the 1978-79 individual faculty employment contracts without prior negotiation violative of N.J.S.A. 34:13A-5.4, a(1) and (5), i.e., did this action relate to a required, permissive or illegal subject of negotiation?

2. Would the early termination of faculty members, not in accordance with the notice provisions set forth in Article V, Paragraph B, 2, a of the collective negotiation agreement between the parties, constitute a violation of N.J.S.A. 34:13A-5.4, a (1) and (5)?

^{3/} Appendices E, F and G attached to this decision relate to the documents that the Commission received concerning Stipulation Number 8.

On June 16, 1978 the Commission's Director of Unfair Practice Proceedings issued a Complaint in the instant matter after he determined that the allegations of the Charge, if true, might constitute unfair practices within the meaning of the Act. Final supplemental briefs were submitted to the Commission by the parties by June 16, 1978 and this matter is now properly before the Commission for decision.

The Association maintains that the actions of the College not only resulted in unilaterally abrogating negotiated notice procedures concerning reappointments that have been deemed by the Commission to be mandatorily negotiable, but effectively changed the work year of all faculty members from an annual term of employment (10 months or 12 months) to a minimum period of 60 days. The Association, contrary to the College's contentions, does not view the insertion of an early termination provision as being merely an incident of the right to make reduction in force (RIF) decisions, but as a way of abrogating a negotiated agreement concerning procedures for receiving timely notices of termination for any reason. The Association categorizes all notice provisions, including early termination clauses, as being subsumed within the more general classification of fair dismissal procedures which provide basic safeguards that protect teachers and other public employees against arbitrary or unjust action without undue interference with an employer's policy judgments and as such are mandatory subjects of collective negotiations.

The College submits that the insertion of a clause in individual employee contracts encompassing the issue of early termination is tantamount to granting the College the bare right to RIF and is the incident of a policy or managerial decision that cannot legally be the subject of collective negotiations. The College asserts that there is a vital distinction between non-renewal and early termination pursuant to a reduction in force. The College argues that in a non-renewal situation the duration and kind of notice to which a faculty member is entitled prior to non-renewal is a term and condition of employment which must be negotiated and which in the instant matter has been negotiated as set forth in Article 5, Paragraph B, 2 of the parties agreement.^{4/}

The College maintains that an early termination provision that is utilized in RIF situations is not mandatorily negotiable, or even permissively negotiable, since it is so inextricably related to RIF decisions that are exclusively managerial prerogatives.^{5/} The College contends that to require that such

^{4/} Article 5, paragraph B,2 reads in relevant part as follows:

"In the event the Board does not intend to reappoint a faculty member, notice of non-reappointment, and reasons for such, shall be given, in writing, in accordance with the following schedules:

5 - Year Tenure

2nd Year Contract	-	March 15 of 1st year
3rd Year Contract	-	January 15 of 2nd year
4th Year Contract	-	December 15 of 3rd year
5th Year Contract	-	December 15 of 4th year
6th Year Contract	-	November 30 of 5th year

^{5/} The College cites Englewood Board of Education and Englewood Teachers' Assn, P.E.R.C. No. 76-23, 2 NJPER 72 (1976), rev. 150 N.J. Super. 265 (App. Div. 1977), certif. den. 75 N.J. 525 (1977) and In re Union Cty Regl H.S. Bd of Ed, P.E.R.C. No. 76-43, 2 NJPER 221 (1976), reversed, sub. nom. Union Cty Regl. H.S. Teachers Assn Inc. v. Union County Regl H.S. Bd. of Ed, 145 N.J. Super. 435 (App. Div. 1976), pet. for certif. denied 74 N.J. 248 (1977).

a provision be mandatorily negotiable would, absent an agreement, enable a faculty association to frustrate the legal ability of a College to ever implement its RIF decisions, the statutory authority for which is vested solely in a College.

After careful consideration of the entire record in this matter the Commission concludes that the Board's actions in unilaterally inserting an early termination provision in the 1978-79 individual faculty employment contracts without prior negotiations with the Association was violative of N.J.S.A. 34:13A-5.4(a) (5), and derivatively N.J.S.A. 34:13A-5.4(a)(1).^{6/} The dispute in this case would appear to be governed by a series of Commission decisions that have dealt with fair dismissal procedures in general and more specifically notice of termination or non-reappointment provisions.^{7/} These decisions, two of which were rendered by the Commission after the Union County, supra. and Englewood, supra. decisions were decided,^{8/} have uniformly deemed that fair dismissal

^{6/} See Galloway Board of Education and Galloway Township Ed. Assn, P.E.R.C. No. 77-3, 2 NJPER 254, motion for reconsideration granted, P.E.R.C. No. 77-8, 2 NJPER 284, decision on reconsideration, P.E.R.C. No. 77-18, 2 NJPER 295 (1976), affmd 157 N.J. Super. 74 (App. Div. 1978), for a discussion of derivative violations.

^{7/} See for example, Englewood Board of Education and Englewood Teachers' Assn, P.E.R.C. No. 76-23, 2 NJPER 72 (1976), rev. on other grounds, 150 N.J. Super. 265 (App. Div. 1977) certif. den. 75 N.J. 525 (1977), Plainfield Board of Education v. Plainfield Education Assn, P.E.R.C. No. 76-45, 2 NJPER 216 (1976), In re Point Pleasant Beach Teachers Assn, P.E.R.C. No. 78-43, 4 NJPER (1978) and Cinnaminson Twp. Board of Education v. Cinnaminson Teachers' Assn., P.E.R.C. No. 78-46, 4 NJPER 79 (¶4039 1978), appeal pending App. Div. Docket No. A-2682-77.

^{8/} See In re Point Pleasant Beach Teachers Assn, supra., and Cinnaminson Township Board of Education, supra.

procedures and timely notice provisions contained therein were mandatory subjects of collective negotiations. In the Commission's Cinnaminson, supra., decision two notice provisions contained within a reduction in force article -- one concerning advance notification to the majority representative of any anticipated reduction in force and the other relating to notification to the affected teachers of their employment status ^{9/} -- were specifically held to be mandatory subjects of collective negotiations.

The College's assertion that the insertion of an early termination notice in individual employment contracts is so intricately bound up with its reduction in force decisions that it is "but an incident of the managerial right (to RIF)", cannot be sustained by the Commission. The Courts of this state have agreed with the Commission that procedural matters relating to personnel decisions of public employers, e.g. notice provisions concerning vacancies and the like, are required subjects for collective negotiations.^{10/} We conclude that notice provisions concerning early termination do not predominantly relate to educational policy decisions but directly affect the financial and personal welfare of teachers, i.e. their terms and conditions of employment. Negotiations on notice procedures for termination for any reason, including a reduction in force, would not directly affect a public employer's ability to make or effectuate managerial decisions concerning

^{9/} This latter notice provision in Cinnaminson reads as follows: "All teachers shall be notified of their employment status no later than April 30 of each school year." It thus contains language similar to the notice of non-reappointment provision set forth in Article B, 2(a) of the parties' agreement.

^{10/} See, Byram Board of Education and Byram Township Education Assn, P.E.R.C. No. 76-27, 2 NJPER 143 (1976) affmd 152 N.J. Super. 12 (App. Div. 1977) and Board of Ed. of the Twp. of No. Bergen v. No. Bergen Federation of Teachers, 141 N.J. Super 97 (App. Div. 1976).

its work force, but would enable teachers and other public employees to negotiate basic procedural safeguards against arbitrary action on the part of a public employer that do not bear a reasonable relationship to educational goals. Notice of termination provisions very simply relate to an employee's right to have sufficient time to seek employment elsewhere and to put one's life in order if one is released for any reason.

The College itself admits that notice provisions relating to the non-reappointment of faculty members because of unfavorable evaluations or for other non-RIF related reasons is a required subject of collective negotiations. More importantly the College states in its brief that the impact of effectuating its RIF decisions on the terms and conditions of employment of faculty members -- after the affected teachers were given 60 day notices -- was mandatorily negotiable, and encompassed procedural considerations such as whether there "should be prior notice of a proposed RIF given to a designated Association representative, and should the person proposed to be RIFed have the opportunity to appear before the Board to show (a) why there is not a financial exigency or (b) why someone else should be RIFed instead." ^{11/} The College's admissions that notices to Association representatives of anticipated RIFs is mandatorily negotiable as is the right to a hearing before the Board of Trustees concerning the RIF decision is completely inconsistent with

11/ See College's June 16, 1978 brief at page 18.

its assertion that the question of appropriate notice to an individual concerning one's termination is not a required subject. How can notice to a potentially interested third party, the Association, be a required subject of collective negotiations and not notice to the affected individual?

The College's position appears to be reflective of a fundamental misunderstanding of certain principles of public sector labor law. Contrary to the College's assertions the requirement of negotiating in good faith notice provisions concerning early termination does not, absent an agreement, enable a faculty association to frustrate the ability of a college to ever implement its RIF decisions. The Commission in In re City of Jersey City, P.E.R.C. No. 77-58, 3 NJPER 122 (1977), essentially determined that an employer could act unilaterally concerning a required subject of collective negotiations when a genuine impasse had been reached by the parties. Moreover the Commission recognizes in accord with normal principles of contract interpretation that overriding public policy or emergent situations may make agreements reached on particular terms and conditions of employment such as full compliance with a notice of reappointment or termination provisions, unenforceable.^{12/} Thus in true emergency situations where a College, for example, must RIF faculty members immediately, and not in accordance with negotiated notice procedures, there is judicial support to relieve a board of trustees or

^{12/} See Porcelli v. Titus, 108 N.J. Super. 301 (App. Div. 1969) cert. den. 55 N.J. 310 (1970).

other public employer of the contract obligation imposed.^{13/}

In summary, the College, by negotiating the issue of notice provisions for early termination is not putting itself in a position where it cannot properly and timely effectuate its RIF decisions.

The College also misconstrued the effect of the insertion of the early termination clause at issue in individual faculty contracts. This clause states as follows:

"This contract may, consistent with tenure rights, if applicable, be terminated earlier than indicated hereinbefore by either party hereto by giving written notice to the other party of intention to terminate. Such notice shall be given at least sixty (60) days in advance of the intended early termination date."

The College submits that the above clause is merely an incident of a decision to effectuate a reduction in force and as such must be considered to be a matter of educational policy and managerial prerogative and not subject to the duty to negotiate. The College at one point in its post Stipulation of Facts brief refers to the early termination clause as granting the bare right to RIF to the College. However, the language of this early termination clause is not limited to a RIF situation. The College's act of attaching a cover memorandum (Appendix B) to the 1978-79 employment contracts

^{13/} The Commission takes administrative notice of the fact that RIFs in the educational context in the public sector are not normally emergency matters that must be effectuated immediately. Normally notices of termination pursuant to reductions in force, in accordance with relevant statutory or contractual provisions, will be given to teachers in March or April preceding the start of the next school year, or in higher education, preceding the start of the autumn semester.

that generally discusses the possibility of staff reductions, but which does not refer to the addition of early termination clause in the employment contract, does not convert an open-ended 60 day notice provision that has been construed by the courts and the Commissioner of Education to refer to terminations for any reason ^{14/} into a reduction in force clause. It appears to the Commission that the early termination clause at issue could be utilized by the College to terminate faculty members for non-RIF related reasons in contravention of Article 5B, 2(a), although the College, as set forth before, stipulated that non-RIF related notice provisions were required subjects of collective negotiations and in fact agreed that Article 5B, 2(a) at least covers those situations. We therefore conclude that the unilateral inclusion of the early termination provision at issue in individual employment contracts is violative of the Act in that it unilaterally alters the terms and conditions of employment established by Article 5B, 2(a).

A few additional comments are in order concerning other lines of argument pursued by the parties that are germane to this matter.

^{14/} None of the cases cited by the College relating to the 60 day notice provision as used in primary and secondary school situations appear to relate to any RIF situations.

This is not to suggest that the College intends to use the clause in this fashion, and may have drafted it for use only if RIF decisions had to be made. However, the fact is, the language of the clause is not so limited!

Both parties in their lengthy briefs refer to statutes within Title 18A in support of their respective contentions. The College first cites N.J.S.A. 18A:27-7 which authorizes the Commissioner of Education in the primary and secondary school context to prepare and distribute contract forms to be disseminated to teachers in the various school district. The College states that 60 day early termination provisions are now included in the standard individual employment contracts prescribed by the Commissioner pursuant to N.J.S.A. 18A:27-7. As the College readily acknowledges all this establishes is that in a non college setting, 60 day early termination provisions are legal and is not dispositive of its negotiability status. Even if N.J.S.A. 18A:27-7 were applicable to community colleges, the Commission in prior decisions has determined that parties are required to negotiate regarding terms and conditions of employment, e.g. notice provisions relating to the termination of faculty members, but agreements thereon may not be inconsistent with provisions of specific statutes regarding terms and conditions of employment.^{15/} Therefore, the Commission would conclude that negotiations on early termination notice provisions were required but could not be inconsistent with the relevant statute, e.g. parties could negotiate a 90 or 120 day notice provision, but not a 45 day notice provision.

^{15/} See State of New Jersey v. Local 195, IFPTE and Local 518, SEIU, P.E.R.C. No. 77-57, 3 NJPER 118 (1977), direct certif. granted N.J. (1978), appeal pending Supreme Court Docket No. 14,326, State of New Jersey v. State Supervisory Employees Assn, P.E.R.C. No. 77-67, 3 NJPER 138 (1977), direct certif. granted N.J. (1978) appeal pending Supreme Court Docket No. 14,326 and In re Ridgfield Park Bd. of Ed., P.E.R.C. No. 77-71, 3 NJPER 303 (1977).

The College also refers to a Title 18A RIF provision, N.J.S.A. 18A:60-3, (which is similar to N.J.S.A. 18A:28-9) in support of its arguments but as stated before in this decision the Commission does not view the early termination notice provision at issue as a reduction in force provision, though it could be used for that purpose as well. Additionally, even if a clause were limited to that use, N.J.S.A. 18A:60-3 authorizes a county college to effectuate reductions in force. It does not prohibit the College from negotiating a reasonable notice provision in the event it determines such a reduction is necessary. Again, subject to the caveat of a legitimate emergency, such a reasonable notice period is a term and condition of employment and it is a violation of the Act for the College to unilaterally determine what period is fair to the employees, as it did herein.

Lastly, both parties in their submissions allude to N.J.S.A. 18A:27-10 which requires that on or before April 30 in each year all boards of education must give to each non-tenured teacher continuously employed by it since the preceding September 30, either a written offer of a contract for employment for the next succeeding year or written notice that such contract of employment will not be offered.^{16/} Both of the parties, however,

^{16/} The Commission, consistent with its position that negotiations can take place concerning required subjects that are covered by specific statutes as long as the end product of negotiations is not inconsistent with said statute (see cases cited at note 15), has determined that parties in the primary and secondary school context can negotiate notice provisions that would "push-up" the notification date prior to April 30. See In re Point Pleasant Beach Teachers decision, supra.

acknowledge that N.J.S.A. 18A:27-13 specifically provides that this termination notice statute does not apply to teaching staff employees of a county college. We therefore conclude that there are no applicable statutes under Title 18A that would restrict, in any way, negotiations concerning termination notice provisions.^{17/}

For all the reasons expressed we therefore conclude that the answer to the first question posed by the parties is yes; the Board's actions in unilaterally inserting an early termination provision in the 1978-79 individual faculty employment contracts without prior negotiations is violative of N.J.S.A. 34:13A-5.4(a) (5) and derivatively N.J.S.A. 34:13A-5.4(a) (1).

With respect to the second question we must first note our reluctance to respond to an issue which is declaratory in nature in an unfair practice context. Stipulated fact 7 indicates that the College has taken no action directed at individual faculty members based upon the early termination clause.^{18/} However, as

^{17/} The Commission notes that the Commissioner of Education has repeatedly affirmed that the primary intent of N.J.S.A. 18A:27-10 is to provide teaching staff members timely notice that they will not be re-employed in order that they may seek employment elsewhere. See Joanne Sieja v. Board of Education of the East Windsor Regl Sch. District, 1975, S.L.D. 823 (decided December 24, 1975). This is the key argument raised by the Association in support of its contention that similar notice provisions, encompass discharges for any reason, are required subjects for collective negotiations because of their significant impact on the financial and personal welfare of faculty members.

^{18/} As evinced by Appendices E, F & G the College has not discharged the three unit members referred to in the Association's amended Charge and briefs and the two personnel actions taken by the College on June 20, 1978 relating to the 60 day early termination clause are not germane to the instant case. Moreover, the College has stated that it does not contemplate exercising the "60 day clause" at least until shortly before the Winter Semester beginning in January, 1979.

the parties attempted to frame these issues in a way which will help them avoid further disputes over this issue, and in light of the College's expressed intent to utilize this clause in the future to terminate faculty members, instead of the notice provisions of the contract set forth in Article 5, paragraph B, 2 we will attempt to respond to the question.

Article 5, paragraph B, 2 as set forth in footnote 4, supra, provides the notice to be given non-tenured teachers if they are not to be reappointed. Absent an emergency this clause establishes the term and condition of how much notice must be given if a faculty member is not to be reappointed. To the extent that the College would rely on the 60 day notice provision of the early termination clause to give a notice of non-reappointment different from that provided by the negotiated clause it would constitute a unilateral modification of that term and condition of employment without any prior negotiation and would violate N.J.S.A. 34:13A-5.4 (a) (5), even if the motivation for that non-reappointment was a reduction in force.

ORDER

Accordingly for all the reasons set forth above, IT IS HEREBY ORDERED, that the Burlington County College:

1. Cease and desist from interfering with, restraining or coercing negotiations unit members represented by the Burlington County College Faculty Association by unilaterally establishing or modifying their terms and conditions of employment, by substituting or threatening to substitute a different notice provision for the non-reappointment of unit members than that set forth in Article 5, Paragraph B, 2(a) of the parties' current agreement.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Delete the early termination provisions inserted in the 1978-1979 individual faculty employment contracts and no longer give any effect to these provisions.

(b) Post at its central office building in Pemberton, New Jersey and on all pertinent faculty bulletin boards copies of the attached notice. Copies of said notice on forms to be provided by the Chairman of the Public Employment Relations Commission, shall, after being duly signed by Respondent's representative be posted by Respondent immediately upon receipt thereof, and maintained by it for a period of at least sixty (60) consecutive days thereafter including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by Respondent

to insure that such notices will not be altered, defaced or covered over by any other material.

(c) Notify the Chairman, in writing, within twenty (20) days of receipt of this ORDER what steps the Respondent has taken to comply herewith.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Graves, Hartnett and Parcels
voted for this decision. Commissioner Schwartz voted
against this decision. Commissioner Hipp abstained.

DATED: Trenton, New Jersey
August 1, 1978
ISSUED: August 2, 1978

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 negotiations unit members represented by the Burlington County College Faculty Association by unilaterally establishing or modifying their terms and conditions of employment, by substituting or threatening to substitute a different notice provision for the non-reappointment of unit members than that set forth in Article 5, Paragraph B, 2(a) of the parties' current agreement.

WE WILL delete the early termination provisions inserted in the 1978-1979 individual faculty employment contracts and no longer give any effect to these provisions.

BURLINGTON COUNTY COMMUNITY 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 Jeffrey B. Tener, Chairman, Public Employment Relations Commission, P.O. Box 2209, Trenton, New Jersey 08625 Telephone (609) 292-6780

EMPLOYMENT CONTRACT

THIS CONTRACT entered into the _____ day of _____, 19____, by and between BURLINGTON COUNTY COLLEGE, a Body Corporate, Pemberton-Browns Mills Road, Pemberton, New Jersey (hereinafter called the "College") and _____, (hereinafter called the "Employee").

WITNESSETH:

It is hereby mutually agreed to between the College and the Employee as follows:

1. The Employee shall serve in the capacity of _____, with the academic rank of _____, in the College and under the control of the College Board of Trustees for a term of _____, commencing on _____ and ending on _____.

2. In consideration of said services for the aforesaid term, the Employee shall receive the base salary of \$ _____, to be paid according to prevailing College payroll procedures.

3. The Employee agrees that the following shall be conditions precedent to the employment provided herein and that documentation indicating compliance with such conditions shall be on file with the proper agency of the Board of Trustees before any payments for services under this contract shall be made:

- a.
- b.
- c.

APPENDIX B (p.1)

Employee's employment as hereinbefore set forth and covenants that the Employee is duly qualified to serve in the capacity or capacities designated, that the Employee will perform such related duties as the Board of Trustees, College President, and their authorized representatives shall direct, and that the Employee shall observe and enforce all of the rules prescribed for the College by the Board of Trustees.

5. This contract is subject to all applicable laws of New Jersey, the lawful rules and regulations of the Board of Higher Education, the rules and policies of the Board of Trustees, the Administrative regulations and procedures of the College, and the provisions of the Collective Agreement by and between the Board of Trustees of the Burlington County College and the Burlington County College Faculty Association, all of which are hereby made a part of the terms and conditions of this Contract as if fully stated herein.

IN WITNESS WHEREOF, the parties have hereunto set their signatures the day and date first above written.

BURLINGTON COUNTY COLLEGE

By: _____

EMPLOYEE

Please Note:

Selection of 10 or 12 Month Payment Schedule

1. Ten (10) month employees have the option of receiving payment of base annual salary on a 10 or 12 month basis.
2. Consider your choice carefully as the College cannot change your method of payment once you have selected an option.
3. Please indicate your choice below by checking the appropriate box.

_____ 10 Month _____ 12 Month

APPENDIX B (p. 2)

EMPLOYMENT CONTRACT: FULL-TIME FACULTY

THIS CONTRACT entered into the _____ day of _____, 19____ by and between BURLINGTON COUNTY COLLEGE, a Body Corporate, Pemberton-Browns Mills Road, Pemberton, New Jersey 08068 (hereinafter called the "College") and _____ (hereinafter called the "Employee").

WITNESSETH:

It is hereby mutually agreed to between the College and the Employee as follows:

1. Position Description and Term of Employment

The Employee shall serve in the capacity of _____, with the academic rank of _____, in the College in the _____ and under the control of the College Board of Trustees for a term of _____, commencing on _____ and ending on _____, unless an earlier termination date shall apply pursuant to Paragraph 6 herein.

2. Salary

In consideration of said services for the aforesaid term, the Employee shall receive the base salary of _____, to be paid according to prevailing College payroll procedures.

3. Conditions Precedent

The Employee agrees that the following shall be conditions precedent to the employment provided herein and that documentation indicating compliance with such conditions shall be on file with the proper agency of the Board of Trustees before any payments for services under this contract shall be made.

- a.
- b.
- c.

4. Term and Status of Employment, Qualifications, Duties; Observation of Rules

The Employee hereby agrees to the term and status of the Employee's employment as here-inbefore set forth. The Employee having represented and the College having relied thereon that she/he is duly qualified to serve in the capacity or capacities designated shall perform such related duties as the Board of Trustees, President of the College, and their authorized representatives shall direct, and shall observe and enforce all of the rules prescribed for the College by the Board of Trustees.

5. Laws, Rules, Regulations

This contract shall be governed in accordance with all applicable laws of New Jersey, the lawful rules and regulations of the Board of Higher Education, the rules and policies of the Board of Trustees, the Administrative regulations and procedures of the College, and the provisions of the Collective Agreement by and between the Board of Trustees of the Burlington County College and the Burlington County College Faculty Association, all of which are hereby made a part of the terms and conditions of this Contract as if fully stated herein.

(Over)

APPENDIX C (p. 1)

6. Early Termination

This contract may, consistent with tenure rights, if applicable, be terminated earlier than indicated hereinbefore by either party hereto by giving written notice to the other party of intention to terminate. Such notice shall be given at least sixty (60) days in advance of the intended early termination date.

7. Signature and Return of Contract

If the Employee does not sign and return the original and one (1) copy of this employment contract to the College's Personnel Department within sixteen (16) calendar days of the date of issuance hereinafter specified, the College may interpret that:

- a. In the case of a reappointment contract, that reappointment is not desired and that the employee has resigned from her/his position at the College.
- b. In the case of initial employment, that the individual is declining said employment.
- c. In the case of supplemental employment, that the employee is declining said supplemental employment.

Exceptions may be made upon written request for extension. Any such request should be addressed to the President of the College and submitted to the Personnel Department. The request must include a specific date by which the individual will submit the contract; said date shall not be more than ten (10) calendar days beyond the original due date hereinafter specified unless otherwise agreed to by the President of the College. Any extensions which may be granted by the President of the College will be in writing.

IN WITNESS WHEREOF, the parties hereto have hereunto set their signatures the date first above written.

BURLINGTON COUNTY COLLEGE

Date contract issued to employee
by Personnel Department
Date _____ Initials _____

By: _____
EMPLOYEE

Date
Signed _____

Date signed contract due in
College's Personnel Department
_____. (Unless
modified in accord with para-
graph 6).

President of the College

Date
Signed _____

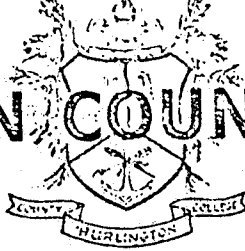
NOTE to 10 Month Employees Only: Selection of 10 or 12 Month Payment Schedule

- 1. Ten (10) month employees have the option of receiving payment of base annual salary on a 10 or 12 month basis.
- 2. Consider your choice carefully as the College cannot change your method of payment once you have selected an option.
- 3. Please indicate your choice below by checking the appropriate box:

_____ 10 Month _____ 12 Month

APPENDIX C (p.2)

BURLINGTON COUNTY COLLEGE



PEMBERTON-BROWNS MILLS ROAD • PEMBERTON, N.J. 08068 • 609-894-9311

DATE: March 14, 1978

TO: Faculty Members Receiving Employment
Contracts for Fiscal Year 1979

FROM: Board of Trustees

SUBJECT: Employment for Fiscal Year 1979

The Board of Trustees feels that in view of escalating costs and stabilizing enrollments at the College, it should indicate that the issuance of Fiscal Year 1979 employment contracts at this time does not preclude the possibility of staff reductions during the next several months should student enrollment and/or revenue fall short of projected levels.

Factors contributing to this serious monetary problem include the following: (1) Funding for FY 79 from the county will not be increased beyond that received for this current fiscal year (FY 78); (2) the number of full-time equated students (FTE - the basis for state funding) is declining; (3) tuition is already at the state allowed maximum; and (4) the state legislature has not yet voted on the state budget for FY 79 (and after the legislature votes on a budget the Governor must still sign it before it is effective). Of course, Dr. Pierce has assured us that a reduction in force would be made only if the College faces severe financial exigency and/or continued problems with student enrollment in all or in specific subject areas. The Board will be willing to negotiate through its appointed representatives the impact of any reduction in force which might be necessary.

To conclude on a more positive note, we would like to urge you to work closely with the administration in attempting to increase the College's student enrollment.

cc: Baker, J. D.	McCarty, K.
Beatty, J.	Peterson, C. D.
DeVoll, D.	Pierce, H. B.
Holt, J.	Schneider, S.
Hughes, J.	Thomas, F.
Hughes, W.	Vail, J. B.
Laufer, J.	Zeranski, T.

APPENDIX D

Kessler, Tutek and Cottlieb

Attorneys at Law

BORDENTOWN, NEW JERSEY 08505

325 FARNSWORTH AVENUE

TELEPHONE 298-2000
AREA CODE 609

JAY B. TOMLINSON
1893-1967

HENRY B. KESSLER
HENRY G. TUTEK
MYRON H. GOTTLIEB
JOHN R. FUTEY
DAVID D. GLADFELTER

June 21, 1978

Stephen B. Hunter, Special Assistant
to the Chairman
Public Employment Relations Commission
429 East State street
P.O. Box 2209
Trenton, NJ 08625

Re: Burlington County College Faculty Association
and Burlington County College
Docket No. CO-78-219

Dear Mr. Hunter:

I am enclosing ten copies of a Resolution which was adopted by the Board of Trustees of Burlington County College at its meeting of June 20, 1978.

The Resolution indicates action taken against two individuals. The first, Walter Hughes, is an administrator and is not a member of the Faculty Association. The second, Rosemary Miller, is a member of the Faculty Association.

I can indicate that the Board of Trustees presently does not contemplate further exercise of the "60-day clause", at least until shortly before the Winter Semester (beginning in January, 1979), dependent on enrollment and financial considerations.

Finally, I would have no objection to the submission of additional memoranda on the issue of appropriate relief, should the Commission determine that the Board of Trustees did commit an unfair practice, and would appreciate your

APPENDIX E (p.1)

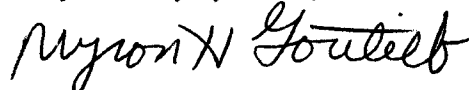
Kessler, Tutek and Gottlieb

Mr. Stephen B. Hunter, Special Assistant
June 21, 1978
Page 2.

instructions on this. Of course, if this should occur, then the submission to the Commission would be delayed for one month.

I am, by carbon of this letter, advising Mike Herbert of this action and am also submitting him a copy of the Resolution.

Very truly yours,



Myron H. Gottlieb

MHG:wf

CC: Michael J. Herbert, Esquire
Sanford Schneider, Chief Negotiator

JUN 23 11 02 AM '78

APPENDIX E (pa)

BURLINGTON COUNTY COLLEGE

BOARD OF TRUSTEES

RESOLUTION: ABOLISHMENT OF
POSITIONS AND TERMINATION OF
EMPLOYMENT

WHEREAS, Burlington County College anticipates that financial support in fiscal year 1979 (July 1, 1978-June 30, 1979) will be substantially less than budgeted amounts, both as a result of the Board of Chosen Freeholders of the County of Burlington failing to increase appropriations above the fiscal year 1978 (July 1, 1977- June 30, 1978) level and as a result of a decrease in anticipated revenues from the State of New Jersey due to declining full-time equated enrollments; and

WHEREAS, such reduction of financial support, taken together with increased cost of operating the College, has created a situation of financial exigency necessitating, in the Board's judgement, a reduction in the number of personnel in the College; and

WHEREAS, the administration of the College is reviewing the College's staffing patterns in relation to its total academic program in order to determine a means of accomplishing such reduction in the number of personnel that will be least detrimental to the College; and

WHEREAS, the administration's review has progressed to the point where certain recommendations have been presented to the Board of Trustees by the President of the College/Secretary of the Board; and

WHEREAS, the Board has considered said recommendations and has determined to exercise its descretion with respect to a reduction in the number of personnel in the number set forth herein;

APPENDIX F (p.1)

NOW THEREFORE, BE IT RESOLVED by the Board of Trustees of Burlington County College assembled in public session this 20th day of June 1978, that the employment of the following named administrative employee is hereby terminated for reasons of financial exigency, and decreased enrollment in the Division of Social Sciences effective August 30, 1978, without reemployment rights and be it further resolved that the following administrative position be abolished for reasons of fiscal exigency, effective August 30, 1978:

Hughes, Walter Coordinator: Career Programs
and Adjunct Faculty

BE IT FURTHER RESOLVED that the President of the College/Secretary of the Board is hereby authorized to give sixty (60) days notice of termination to Dr. Hughes in accordance with the terms of his fiscal year 1979 employment contract.

BE IT FURTHER RESOLVED that the employment of the following Special Project Professional Specialist employee is hereby terminated for reasons of financial exigency, effective August 28, 1978, with reemployment rights as hereinafter set forth and be it further resolved that the following Special Project Professional Specialist position be abolished for reasons of fiscal exigency effective August 28, 1978:

Miller, Rosemary Professional Development Specialist

To continue in the employment of the College as a faculty member with the academic rank of Assistant Professor in the Division of Humanities and Fine Arts commencing on August 29, 1978.

BE IT FURTHER RESOLVED that for record-keeping purposes, the attached "Recommendation for Abolishment of Position and Termination of Employment" form and the attached "Recommendation for Abolishment of Position" form are hereby approved and made a part of the Personnel Information presented to the Board of Trustees for action this date.

APPENDIX F (p2)

RECOMMENDATION FOR ABOLISHMENT OF POSITION AND TERMINATION OF EMPLOYMENT

Title of Position to be Abolished _____ Effective Date of which Position will be Abolished and Employment of Incumbent Terminated _____ Name of Position Incumbent _____

Coordinator: Career Programs and Adjunct Faculty (Administrative) _____ August 30, 1978 _____ Hughes, Walter

GIVING OF NOTICE OF TERMINATION

The President of the College/Secretary of the Board of Trustees, pursuant to paragraph 6 of Dr. Hughes' fiscal year 1979 employment contract, is hereby authorized to give sixty (60) days written notice of termination of employment without reemployment rights to Dr. Hughes, such termination to be effective August 30, 1978.

- PLEASE NOTE:
1. This form supports the Board Resolution entitled "Abolishment of Positions and Termination of Employment" passed by the Board this date.
 2. Dr. Hughes was served both oral and written notice of the aforementioned recommendation on May 23, 1978.

FOR BOARD APPROVAL
JUNE 20, 1978
K. D. McCarty: jra

APPENDIX I (p.3)

RECOMMENDATION FOR ABOLISHMENT OF POSITION

<u>TITLE OF POSITION TO BE ABOLISHED</u>	<u>EFFECTIVE DATE ON WHICH POSITION WILL BE ABOLISHED</u>	<u>NAME OF POSITION INCUMBENT</u>
Professional Development Specialist (Special Project Pro- fessional Specialist)	August 28, 1978	Miller, Rosemary

CONTINUATION OF EMPLOYMENT

Pursuant to her rights of tenure and in accordance with the employment contract which the Board of Trustees approved on March 14, 1978 and which she signed on March 21, 1978, Ms. Miller will continue in the employment of the College as a faculty member with the rank of Assistant Professor in the Division of Humanities and Fine Arts commencing on August 29, 1978.

PLEASE NOTE:

1. This form supports the Board Resolution entitled "Abolishment of Positions and Termination of Employment" passed by the Board this date.
2. Ms. Miller was served both oral and written notice of the aforementioned recommendation on May 26, 1978.

BOR BOARD APPROVAL
JUNE 20, 1978
K. D. McCarty: Jra

STERNS, HERBERT & WEINROTH

A PROFESSIONAL CORPORATION

COUNSELLORS AT LAW

132 WEST STATE STREET

TRENTON, NEW JERSEY 08608

(609) 392-2100

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(609) 924-2108

SUITE 600
1150 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036
(202) 296-3432

OF COUNSEL
ERNEST S. GLICKMAN

June 22, 1978

Stephen B. Hunter, Special Assistant
to the Chairman
Public Employment Relations Commission
429 East State Street
P.O. Box 2209
Trenton, New Jersey 08625

Re: Burlington County College Faculty Association
-and- Burlington County College; Docket No.
CO-78-219

Dear Mr. Hunter:

This will confirm my telephone conversation with you today concerning the resolution which was adopted by the Board of Trustees of Burlington County College on June 20, 1978.

I have no desire to submit any further memoranda or briefs concerning the appropriate relief that should be granted if the Commission determines that an unfair practice has been committed by the Respondent. Obviously, the appropriate remedy would be a cease and desist order, preventing the termination of faculty, inconsistent with the standards of notification contained in the collective negotiations agreement, and a declaration that the individual contracts sent to faculty for the next academic year would be in full force and effect, excluding the 60 day notice clause.

We would ask that the contents of the resolution adopted by the Board not be submitted to the Commission, since it contains a number of statements about "financial exigency", which are irrelevant and prejudicial. Further, we do not view the action taken by the Board of Trustees in eliminating a supplemental assignment to constitute a reduction in force or a termination of a faculty member's contract. My understanding

APPENDIX G (p. 1)

STERNS, HERBERT & WEINROTH

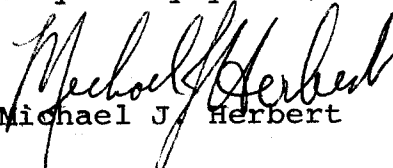
Mr. Stephen B. Hunter

Page Two

June 22, 1978

is that, in view of the fact that no termination of faculty will occur at least for the Fall semester, 1978, that the urgency of presenting this matter at the June meeting has subsided. Accordingly, I have agreed to have the matter submitted to the Commission at its July 20 meeting.

Very truly yours,



Michael J. Herbert

cc: Myron Gottlieb, Esq.
Mr. Frank Nappo
Ms. Rose Kaniper
Ms. Judith Olsen
Mr. John J. Veldof

APPENDIX 6 (p2)