P.E.R.C. NO. 80-66

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RUTGERS, THE STATE UNIVERSITY,

Respondent,

-and- Docket No. CO-79-137-61

RUTGERS UNIVERSITY COLLEGE
TEACHERS ASSOCIATION,

Charging Party.

SYNOPSIS

In an unfair practice proceeding the Commission adopts the Hearing Examiner's conclusion that the University violated the Act when it unilaterally withheld the payment of salary increments due to the Co-Adjutant faculty for the 1978-79 academic year. The Commission found, consistent with previous Commission and judicial decisions, that the payment of the disputed increment was automatic as opposed to discretionary and therefore had to be paid by the University as part of the maintenance of the status quo during the course of negotiations with the Rutgers University College Teachers Association. The practice of paying the increments and the method of computation were unilaterally established by the University in 1973.

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RUTGERS UNIVERSITY COLLEGE
TEACHERS ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Pitney, Hardin & Kipp, Esqs.
(Mr. Bruce P. McMoran, of Counsel)

For the Charging Party, Joseph Fisch, Esq.

DECISION AND ORDER

On December 6, 1978, an Unfair Practice Charge was filed by the Rutgers University College Teachers Association (the "Association") alleging that Rutgers, The State University (the "University") had 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. (the "Act"). Specifically, the Association alleged that the University violated N.J.S.A. 34:13A-5.4(a)(5)[1/] by unilaterally withholding the payment of annual salary increments due to the Co-Adjutant faculty for the 1978-79 academic year without negotiations with the Association.

1/ This subsection prohibits employers, their representatives or agents from: "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, might constitute an unfair practice within the meaning of the Act, a Complaint and Notice of Hearing was issued on March 6, 1979. A hearing was held on May 8, 1979 in Newark, New Jersey, before Alan R. Howe, Hearing Examiner of the Commission, at which time both parties were represented by counsel and were given the opportunity to present evidence, to examine and cross-examine witnesses and to argue orally. Subsequent to the close of the hearing the parties submitted post hearing briefs, the final one being received on July 20, 1979.

On August 31, 1979, the Hearing Examiner issued his Recommended Report and Decision 2/ which included findings of fact, conclusions of law and a recommended order. The original of the report was filed with the Commission and copies were served upon the parties. A copy of this report is attached hereto and made a part hereof.

Exceptions to the Hearing Examiner's Report and a supporting brief were filed by the University on September 23, 1979. The Association filed a letter response to the University's exceptions dated October 9, 1979 and in that letter took exception to the Hearing Examiner's refusal to award interest in this case.

The Hearing Examiner found that the University had violated N.J.S.A. 34:13A-5.4(a)(5) when it unilaterally refused to

2/ H.E. No. 80-6, 5 NJPER 406 (¶10212 1979).

pay Co-Adjutant faculty at University College a salary increment for the 1978-79 academic year, during the pendency of negotiations with the Association for a first written contract after the Association had been certified as the exclusive majority representative for the unit of Co-Adjutant faculty. The Hearing Examiner found that the University had illegally altered the status quo relating to salary matters by failing to advance Co-Adjutant faculty who had fulfilled conditions set forth in a March 26, 1973 letter from John A. Martin, Vice President for University Personnel, to Dr. David Frost, who is now President of the Association, one incremental step in their particular salary range as of the start of the 1978-1979 academic year.[3/] The Hearing Examiner found that the University had paid Co-Adjutant faculty annual salary increments pursuant to the formula enumerated in the aforementioned March 26, 1973 letter from academic year 1972-1973 through academic year 1977-1978. Citing prior judicial decisions affirming earlier Commission decisions, i.e. Galloway Twp. Board of Education v. Galloway Twp. Education Ass'n, 78 N.J. 25 (1978) and Hudson Cty Board of Chosen Freeholders v. Hudson Cty P.B.A., Local 51, P.E.R.C. No. 78-48, 4 NJPER 87 (¶4041 1978), affmd App. Div. Docket No. A-2444-77 (4/9/79), the Hearing Examiner found that the annual salary increments paid by the University from 1972 through the year ending 1978 were

3/ In apposite part the March 26, 1973 letter from John Martin provided that: "In subsequent years, an adjunct (Co-Adjutant) faculty member at University College will advance one (1) increment step on his or her salary range for each academic year (exclusive of Summer Session) in which six (6) or more credits were taught...." (emphasis supplied)

"automatic" and not "discretionary" and thus concluded that the University unilaterally altered a term and condition of employment during the pendency of negotiations in violation of the Act. The Hearing Examiner in his recommended order directed that the University pay the increments for the 1978-79 year owed to the Co-Adjutant faculty pursuant to the aforementioned formula and continue to make said payments unless or until the parties discontinued or modified the increment practice in collective negotiations. As mentioned before, a request for the award of interest by the Hearing Examiner was denied.

The University filed thirteen exceptions to the Hearing Examiner's Recommended Report and Decision. The significant substantive exceptions[4/] will be analyzed seriatim.

The University first excepts to any reliance on which practices were in effect concerning salary increments paid to Co-Adjutants prior to December 7, 1976 when the Association was certified by the Commission as the exclusive majority representative for purposes of collective negotiations. The University maintains in effect that unilaterally adopted policies affecting terms and conditions of employment of unorganized employees could be unilaterally rescinded at any time and could not serve to define the status quo relating to the salaries of these employees once they were organized and represented by an employee organization. The Commission affirms the Hearing Examiner's conclusions of law, based on pertinent Commission and judicial precedent, that terms

4/ One exception, for example, pertained merely to the insertion of commas in the citation of several University exhibits.

and conditions of employment can be "derived from a contract or some other source", i.e. from past practices affecting employees, whether organized or not.[5/] N.J.S.A. 34:13A-5.3 in apposite part provides that: "Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established." This sentence is directed at conditions which have been established through past practices, and may never have been the subject of negotiations before.[6/]

In a second exception the University asserts that the payment of a salary increment does not maintain the status quo with regard to terms and conditions of employment, but would constitute a change in the terms and conditions of employment of affected faculty members. The University states that the Galloway Township "increments" decision cited by the Hearing Examiner [7/] relied exclusively on a statute, N.J.S.A. 18A:29-4.1, inapplicable to the University which was not a board of education within the meaning of the statute. The University moreover maintains that the

5/ In Galloway Twp. Bd of Ed v. Galloway Twp. Assn. of Educational Secretaries, 78 N.J. 1 (1978) the New Jersey Supreme Court affirmed the Commission's determination that the Board of Education had violated the Act by unilaterally reducing the working day of several secretaries from seven hours to four and changing the starting and departure times for other secretaries. The parties had recently started to negotiate a first contract and the working hours of the secretaries had been unilaterally established by the Board when the secretaries had been unorganized. Nevertheless the Supreme Court affirmed the Commission's determination that the status quo as defined by past practices within the district had been unilaterally changed in violation of N.J.S.A. 34:13A-5.4(a)(5) and derivatively N.J.S.A. 34:13A-5.4(a)(1).

6/ Normal principles of contract law would prohibit a change in those terms and conditions of employment actually spelled out in the contract during the term of an agreement.

7/ Galloway Twp. Board of Education v. Galloway Twp. Education Ass'n, 78 N.J. 25 (1978).

Hudson County decision relied upon by the Hearing Examiner,[8/] which extended the breadth of the Galloway decision to cover non-educational matters relied upon fallacious reasoning, i.e. that the existing negotiations relationship between the parties was being preserved by the payment of these increments during the pendency of negotiations. The University concludes that the collective negotiations process would be compromised and rendered ineffectual if automatic salary increases had to be paid to unit members prior to the conclusion of contract negotiations affecting that particular academic year. The Commission has considered all of the arguments raised by the University in the past when it issued its prior "increment" decisions [9/] and has rejected these arguments. The Commission has done nothing more than mandate the payment of salary increments where it has determined that the parties had agreed to pay longevity or length of service type step increases based at least in part on years of service. In summary we thus reject the University's exception that the payment of a salary increment based at least in part on years of service during the pendency of contract negotiations does not maintain the status quo.

The University, in a series of exceptions, next challenges the Hearing Examiner's findings of fact relating to the payment of

8/ Hudson Cty Board of Chosen Freeholders v. Hudson Cty P.B.A., Local 51, P.E.R.C. No. 78-48, 4 NJPER 87 (¶4041 1978), affmd App. Div. Docket No. A-2444-77 (4/9/79).

9/ Galloway Township, supra., Hudson County, supra and Union Cty Regional H.S. Bd of Ed v. Union Cty Regional H.S. Teachers Ass'n, P.E.R.C. No. 78-27, 4 NJPER 11 (¶4007 1978).

salary increments to Co-Adjutant faculty members. The University first maintains that salary increments were not paid to Co-Adjutant faculty in academic years 1972-73 and 1975-76; and then emphasizes that assuming arguendo that increments were paid each academic year from 1972-73 through the 1977-78 academic year in general accord with paragraph 5 of the Martin memorandum (see footnote 3 on page 3, supra.), these increments were approved by the University on a year-to-year discretionary basis, were not automatically paid as were the increments in the Galloway Township decision, and were thus not part of the status quo to be maintained.

After careful consideration of the entire record in this matter, we find in the instant proceeding that there was a long-standing practice involving members of the Co-Adjutant faculty wherein all Co-Adjutants would receive a salary increment within their respective ranges for each academic year (exclusive of the Summer Session) in which six (6) or more credits were taught.[10/] In other words, the status quo relating to Co-Adjutant salaries encompassed the receipt of a salary increment after the fulfillment of two conditions -- the passage of an additional academic year and the teaching of a certain amount of course credits.

Contrary to the University's assertion, we find that there is substantial record support for the Hearing Examiner's

10/ Since the implementation of the salary plan set forth within the aforementioned "Martin Memorandum" of March 26, 1973, Co-Adjutants who fulfilled the delineated criteria were also advanced one step within their respective ranges with the exception of the 1975-76 academic year when Co-Adjutants received a lump sum equivalent to the annual increment in June, 1976 but did not move a step in their range.

conclusion that Co-Adjutant faculty who had fulfilled the "experience and credit" requirements set forth in the 1973 "Martin Memorandum" received incremental payments for the 1972-1973 and 1975-1976 academic years, albeit in the form of lump sum payments. In the case of the 1975-1976 academic year, as previously stated, Co-Adjutants who received increments were not advanced a step within the salary range in effect that year, contrary to the practice affecting the 1972-1973 (retroactively), 1974-1975, 1976-1977 and 1977-1978 academic years. However, even in the 1975-1976 academic year Co-Adjutants who had satisfied the "experience and credit" requirements did receive lump sum payments in the amount of the increments that the relevant salary guide provided for. We conclude that in addition to oral testimony on the record, Charging Party Exhibits CP-3 [a salary proposal of the University dated March 20, 1979] and CP-4 [a Stipulation of Facts concerning the representation proceeding (Docket No. RO-1042) that resulted in the eventual certification of the Association as the majority representative of Co-Adjutant faculty] support the conclusion that the satisfaction of the six credit teaching requirement and the passage of one academic year entitled Co-Adjutant faculty to a salary increment. The facts in the record refute the University's contention that the granting of these increments was discretionary and not automatic.[11/]

11/ The University at one point in its exceptions challenges the Hearing Examiner's credibility determination concerning testimony with regard to the "discretionary" or "automatic" nature of these salary increments. As we have stated in numerous cases, we will not overrule a Hearing Examiner's credibility determination except in extraordinary circumstances and none are present herein.

The existence of occasional unilateral changes relating to the method of computation of the increment calculation and the precise amount of the increment during the period between 1972 and 1978 do not disturb our finding that salary increments based on the aforementioned "academic year of service and six credit hour requirements" set forth in the 1973 "Martin Memorandum" were automatic in nature and not discretionary.

The University maintains that even assuming arguendo that a unilateral change was made when it refused to pay Co-Adjutant faculty at the University College an increment for the 1978-1979 academic year, the Hearing Examiner's recommendation that the amount to be paid should be based upon the formula set forth in the 1973 Martin Memorandum (CP-1) was erroneous. This formula may be summarized as stating that the Co-Adjutant's rate per semester hour was calculated by the formula SAL x .6 over 20 where SAL equaled a regular 10 month faculty member's salary for each relevant academic rank. The University states that since this formula relates to or "ties-in" the wages of Co-Adjutant faculty members to those of another negotiations unit, i.e. the full time faculty unit represented by the AAUP, the recommended order fashioned by the Hearing Examiner requires the continued enforcement of an illegal parity provision which destroys the negotiations process and involves one certified representative, in this case the AAUP, effectively negotiating the salaries of members of another certified unit, in this case represented by the Association. The University

concludes that in the instant case the most that could be ordered by way of a remedy would be to comply with the salary schedule in effect for the preceding year, i.e. 1977-78 academic year and order that increments be paid in accordance with that particular salary guide.

After consideration of the relevant formula, the Hearing Examiner's recommendations and the University's exceptions against the background of relevant Commission decisions and other state administrative and judicial decisions concerning the enforceability of parity provisions,[12/] we conclude that the University's exception relating to the nature of the relevant conversion formula cannot be sustained. We have previously concluded in this decision that maintaining the status quo relating to co-adjutant salaries required the granting of a salary increment after the fulfillment of the "year of experience and six credit hours" requirement. Past practices involving the computation of this salary increment establish that the conversion formula referred to in the 1973 Martin Memorandum was unilaterally applied by the University to establish the salary guides affecting co-adjutants

12/ See e.g. In re City of Plainfield, supra.; In re City of Newark, supra.; In re Township of Weehawken, P.E.R.C. No. 79-39, 5 NJPER 42 (¶10027 1979); City of Jersey City, P.E.R.C. No. 80-55, 5 NJPER ___ (¶ ___ 1979); In re Rockville Centre Principals Assn, 12 PERB 3041 (¶12-3021 1979); Medford School Committee and Medford Teachers Assn, (MUP - 2349) 3 MLRR 1106 (1977); City of Albany & Albany Permanent Prof. Firefighters Assn, Local 2207, AFL-CIO, 7 PERB 3142 (1974); City of New York and PBA of the City of New York, Inc. & Uniformed Sanitationmens Assn, Local 831, et al, 10 PERB 3006 (1977); Fire Fighters, Local 1219 v. Labor Board, (Conn. Sup. Ct. 1976), ___ Conn. ___, 93 LRRM 2098; and Pennsylvania Labor Relations Board v. Commonwealth of Pennsylvania, 9 PPER 169 (¶9084 1978).

in every year as previously discussed. No negotiated parity provision was being enforced in the past nor is it being enforced at this time by this decision.[13/] What is being maintained is simply the status quo, within the parameters of the Galloway Township increments decision, as defined by five years of past practices relating to the compensation of university college co-adjutants during the pendency of the negotiations for a contract between the University and the Association.[14/] We therefore conclude that the University must make payment of the annual increment for the 1978-79 academic year to all qualifying co-adjutant faculty represented by the Association based upon the conversion formula contained within the March 26, 1973 Martin Memorandum.

The University also excepted to other portions of the Hearing Examiner's recommended Order and Notice to Employees that it deemed to be overly broad. We have sutained certain limited aspects of this exception and have deleted or modified portions of the recommended Order that we believe are too broad.

13/ This formula had been established by Rutgers before there was a majority representative. Additionally, the AAUP had reached agreement with Rutgers before these two parties ever began negotiations.

14/ Consistent with this decision, it is certainly conceivable that the parties could negotiate a totally different framework for the compensation of co-adjutants at the university college covering the 1978-79 academic year and subsequent years. This is not the type of situation that traditionally exists where an illegal parity provision is being enforced.

ORDER

For the foregoing reasons and upon the entire record herein, it is hereby ORDERED that Rutgers, The State University:

A. Cease and desist from:

1. Refusing to negotiate in good faith with the Association, as the majority representative of Co-Adjutant faculty at University College, by unilaterally altering the terms and conditions of their employment during the course of collective negotiations for a first agreement by not paying the Co-Adjutant faculty their annual increments.

B. Take the following affirmative action:

1. Forthwith, make payment of the annual increment for the 1978-79 academic year to all qualifying Co-Adjutant faculty at University College represented by the Association, based upon the six (6) credit teaching requirement and length of service requirement set forth in the March 26, 1973 memorandum drafted by John Martin based upon the formula set forth within that memorandum. The qualifying Co-Adjutants would be advanced one incremental step within the salary ranges in effect for the 1978-79 academic year.

2. Preserve, and upon request, make available to the Commission for examination all relevant payroll records for Co-Adjutant faculty at University College necessary to determine the proper payment of annual increments as ordered herein.

3. Post in all places where notices to employees are customarily posted, copies of the attached notice marked "Appendix A". Copies of such notice, on forms provided by the

Commission, shall be posted by the Respondent, Rutgers, immediately upon receipt thereof, after being signed by the Respondent's representative, and shall be maintained by it for a period of at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondent Rutgers to insure that such notices are not altered, defaced or covered by other material.

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

BY ORDER OF THE COMMISSION

Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Graves, Hipp, Newbaker and Parcells voted for this decision. Commissioner Hartnett voted against this decision.

DATED: Trenton, New Jersey
December 4, 1979
ISSUED: December 5, 1979

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 refuse to negotiate in good faith with the Association, as the majority representative of Co-Adjutant faculty at University College, by unilaterally altering the terms and conditions of their employment during the course of collective negotiations for a first agreement by not paying the Co-Adjutant faculty their annual increments.

WE WILL forthwith make payment of the annual increment for the 1978-79 academic year to all qualifying Co-Adjutant faculty at University College represented by the Association, based upon the six (6) credit teaching requirement and length of service requirement set forth in the March 26, 1973 memorandum drafted by John Martin, based upon the formula set forth within that memorandum. The qualifying Co-Adjutants will be advanced one incremental step within the salary ranges in effect for the 1978-79 academic year.

Rutgers, The State University
(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, 429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.

H.E. NO. 80-6

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

In the Matter of

RUTGERS, THE STATE UNIVERSITY,

Respondent,

- and -

Docket No. CO-79-137-61

RUTGERS UNIVERSITY COLLEGE
TEACHERS ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that Rutgers violated Subsection 5.4(a)(5) of the New Jersey Employer-Employee Relations Act when it unilaterally, during the pendency of negotiations with the Association for a first collective agreement, failed to pay Co-Adjutant faculty at University College an increment for the 1978-79 academic year.

The Hearing Examiner found that Rutgers had altered the status quo in collective negotiations by failing to pay to Co-Adjutant faculty an annual increment, notwithstanding an established practice dating back six years to a March 26, 1973 letter from John R. Martin, Vice President for University Personnel, to Dr. David Frost, who is now President of the Association. The Association was not certified by the Commission until December 7, 1976. The Hearing Examiner concluded that there was an agreement reached in 1973 to pay annual increments under a "formula" related to the salary of full-time faculty represented by the American Association of University Professors, and that this had essentially been followed from academic year 1972-73 through academic year 1977-78.

By way of precedent, the Hearing Examiner relied on prior Commission decisions and the decision of the New Jersey Supreme Court in Galloway Township Board of Education v. Galloway Township Education Association, 78 N.J. 25 (1978) and Hudson County Board of Chosen Freeholders and Hudson County PBA, Local 51, P.E.R.C. No. 78-48, 4 NJPER 87 (1978), aff'd. per curiam, ___ N.J. Super. ___ (App. Div., Docket No. A-2444-77, April 10, 1979). Under this precedent the annual increment for Co-Adjutant faculty was found to be a term and condition of their employment, which could not be unilaterally altered except by collective negotiations with the Association. Rutgers had contended that the payment of annual increments was discretionary and that, therefore, to make such payments during collective negotiations for a first agreement would be a violation of the status quo.

The Hearing Examiner in his recommended Order directed that Rutgers pay the increments for the 1978-79 academic year, and continue to do so unless and

until the parties discontinued or modified the increment practice in collective negotiations. A request for the award of interest was denied.

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. 80-6

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

In the Matter of

RUTGERS, THE STATE UNIVERSITY,

Respondent,

- and -

Docket No. CO-79-137-61

RUTGERS UNIVERSITY COLLEGE
TEACHERS ASSOCIATION,

Charging Party.

Appearances:

For Rutgers, The State University
Pitney, Hardin & Kipp, Esqs.
(Bruce P. McMoran, Esq.)

For Rutgers University College Teachers Association
Joseph Fisch, Esq.

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, 1978 by Rutgers University College Teachers Association (hereinafter the "Charging Party" or the "Association") alleging that Rutgers, The State University (hereinafter "Rutgers" or the "Respondent"), 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 Rutgers unilaterally withheld the payment of the annual increments due to the Co-Adjutant faculty for the 1978-79 academic year without negotiations with the Association and contrary to an agreement of March 26, 1973 to pay such increments, all of which is alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(5) of the Act. 1/

1/ This Subsection prohibits employers, their representatives or agents from:
"(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 March 6, 1979. Pursuant to the Complaint and Notice of Hearing, a hearing was held on May 8, 1979 in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Both parties argued orally and filed post-hearing briefs by July 6; the Association only filed a reply by July 20, 1979.

An Unfair Practice Charge having been filed with the Commission, a question concerning alleged violation of the Act, as amended, exists and, after hearing, and after consideration of the oral argument and 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:

FINDING OF FACTS

1. Rutgers, The State University, is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. The Rutgers University College Teachers Association is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

3. After extended discussions over several years between representatives of the Association and top-level representatives of Rutgers, John R. Martin, Vice President for University Personnel, sent a letter dated March 26, 1973 to Dr. David Frost, [2] setting forth the provisions of a "joint plan" pertaining to Co-Adjutant faculty at University College of Rutgers (CP-1). [3] This joint plan provided for the academic ranking of Co-Adjutant faculty and their placement on a salary guide, following which a formula was set forth for the calculation of annual increments. [3a] The joint plan also provided for lump sum retroactive salary

2/ Dr. Frost is now President of the Association which was certified by the Commission on December 7, 1976 for a unit of Co-Adjutant faculty who met certain criteria not material hereto (Docket No. RO-1042).

3/ Mr. Martin acknowledged that his letter was in effect an "agreement" (Tr. 84).

3a/ Paragraph 3 of CP-1 provides for a 60% "conversion" formula whereby the compensation per credit hour for Co-Adjutant faculty = $\frac{\text{Base Salary} \times .6}{20}$, the "Base

(continued next page)

adjustments, based upon the aforesaid formula, to September 1, 1972 (see CP-1, paragraphs 4 and 6).

4. Dr. James B. Coe, the Associate Dean at University College, has been involved in the administration of salaries for Co-Adjutant faculty since 1969 (Tr. 39).

5. Rutgers introduced through Dr. Coe Exhibit R-1, A-P, which sets forth the annual salaries paid to Co-Adjutant faculty and full-time faculty, represented by the AAUP, for the academic years 1972-73 through 1978-79, as well as the annual salaries for non-academic personnel for the fiscal years 1977-78 and 1978-79. 4/ The annual salaries for Co-Adjutant faculty are consistently set forth in Exhibit R-1 as being based on "per credit" taught 5/ while the salaries for full-time faculty and non-academic personnel are set forth based on gross annual salary. In Exhibit R-1 the annual salaries for all personnel involved are set forth vertically by range (or grade) and horizontally by steps within range. Finally, Exhibit R-1 indicates that, for all personnel involved, there are at least seven steps followed by a "maximum" within each range.

6. Rutgers also introduced through Dr. Coe Exhibit R-2, A-G which, subject to explanations that will follow, sets forth the annual increments paid to Co-Adjutant faculty and full-time faculty represented by the AAUP for the academic years 1972-73 through 1978-79, 6/ as well as the annual increments paid to non-academic personnel for the fiscal years 1976-77 through 1978-79. 7/

7. Exhibit R-2, A-C, supra, indicates clearly that during the academic years 1972-73 through 1974-75 annual increments were paid to Co-Adjutant faculty

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3a/ (continued from previous page)

Salary" being the salary scale for full-time faculty, represented by the American Association of University Professors (AAUP). Paragraph 5 of CP-1 provides, in pertinent part, that: "In subsequent years, an adjunct (Co-Adjutant) faculty member at University College will advance one (1) increment step on his or her salary range for each academic year (exclusive of Summer Session) in which six (6) or more credits were taught..." (Emphasis supplied).

4/ These latter salaries are set forth in R-1M and R-1P.

5/ It is noted that the only increase in annual salary received by Co-Adjutant faculty in the academic years 1972-78 was the annual increment (Tr. 62 and Finding of Fact No. 6, infra).

6/ It is here first noted that no increment for Co-Adjutant faculty was paid for the academic year 1978-79 (R-2G), this being the issue herein presented, infra.

7/ These latter annual increments are set forth in R-2, E-G.

based upon the formula of March 26, 1973 (CP-1, supra), [8] and this was confirmed by Dr. Coe (Tr. 63-65). Mr. Martin, Vice President of University Personnel, supra, also confirmed the foregoing (Tr. 86). [9]

8. In the 1975-76 academic year Co-Adjutant faculty members, for budgetary reasons, were not paid the annual increment commencing in September of the academic year, as in the past, but rather received a lump sum payment equivalent to the annual increment in June (R-2D; Tr. 59, 65, 66). Dr. Coe and Mr. Martin confirmed that the said lump sum payment was consistent with the formula contained in the 1973 letter (CP-1), except that Co-Adjutant faculty did not move a step within range (Tr. 65, 66, 87). [10] Full-time faculty (AAUP) also received an annual increment for the 1975-76 academic year in a lump sum, which was retroactively paid on June 25, 1976 (R-2D, Tr. 59).

9. In the 1976-77 academic year Co-Adjutant faculty were paid the annual increment in accordance with the formula contained in the 1973 joint plan (CP-1) and full-time faculty also received an annual increment (R-2E; Tr. 60, 66, 67, 87).

10. In the 1977-78 academic year Rutgers was at impasse in its negotiations with the AAUP and, as a result, the annual increment paid the Co-Adjutant faculty was for that year only based upon the increment paid to non-academic personnel, the only difference being that Co-Adjutant faculty received larger payments in the higher ranges (R-2F; Tr. 60, 61, 69, 71-74). Mr. Martin confirmed that "in general" the 1973 "formula" had been applied (Tr. 87). Full-time faculty were paid the annual increment retroactively on May 12, 1978 after a collective negotiations agreement was reached in April (R-2F, p. 2).

11. As previously noted, no annual increment was paid to Co-Adjutant

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8/ It is noted that for the academic years 1972-73 through 1974-75 the annual increments for Co-Adjutant faculty are set forth by range and steps within range in the same manner as in Exhibit R-1, supra. Thereafter, Rutgers eliminated steps within range for Co-Adjutant faculty, which then conformed with the schedules of annual increments for full-time faculty and non-academic personnel (see R-2,D-F; Tr. 51, 66, 67).

9/ A Stipulation of Facts, executed by the instant parties in the Fall of 1975 in the representation case (footnote 2, supra), also indicates clearly in paragraphs 17 and 18 thereof that the formula of March 26, 1973 (CP-1, supra) was in fact being implemented during the 1974-75 academic year (see CP-4).

10/ See footnote 8, supra.

faculty for the academic year 1978-79 [11] and this was on the advice of Mr. Martin (Tr. 74). Full-time faculty received an annual increment for the 1978-79 academic year (R-2G).

12. In view of the facts found in Findings of Fact Nos. 7-10, supra, wherein the application of the March 26, 1973 formula (CP-1) to Co-Adjutant faculty for the academic years 1972-78 was confirmed by Dr. Coe and Mr. Martin, [12] the Hearing Examiner refuses to credit Mr. Martin's testimony on direct examination that there was a decision made by Rutgers each academic year regarding the payment of annual increments to Co-Adjutant faculty, based upon budgetary and market considerations (Tr. 80-82; see also, Dr. Coe: Tr. 61, 62). This direct testimony of Mr. Martin is contradicted by his cross-examination (Tr. 86, 87) and purports to modify unilaterally the terms of the 1973 joint plan (CP-1 and Finding of Fact No. 3, supra).

13. Negotiations for a first collective agreement between the parties commenced in May 1978 (Tr. 8, 33) [13] and the negotiations had not been concluded as of the date of the hearing herein, May 8, 1979.

14. When Rutgers failed to pay Co-Adjutant faculty in September 1978 an annual increment for the 1978-79 academic year "pending completion of negotiations" (R-2G), a demand by the Association for payment followed on November 13, 1978 (CP-2). The instant charge of unfair practices was filed on December 6, 1978 (C-1).

THE ISSUE

Did Rutgers violate Subsection (a)(5) of the Act when, during the pendency of collective negotiations for a first agreement, it refused to pay Co-Adjutant faculty an annual increment for the academic year 1978-79? If so, what shall the remedy be?

11/ See footnote 6, supra.

12/ In having so found, the Hearing Examiner has relied upon the testimony of Dr. Frost on direct examination (see Tr. 27) and has also considered his testimony on cross-examination that it was "possible" that there were exceptions to the application of CP-1 of which he was not aware (Tr. 32). Logically, Dr. Coe and Mr. Martin were in a better position to know the actual facts. See also, footnote 14, infra.

13/ Following the certification of the Association by the Commission on December 7, 1976 (footnote 2, supra), Rutgers appealed to the Appellate Division, which on January 26, 1978 affirmed the Commission's certification; on April 18, 1978 the New Jersey Supreme Court denied Rutgers' petition for certification. See Finding of Fact No. 13, H. E. No. 79-35, 5 NJPER 95, 96 (1979), involving the same parties herein; aff'd., P.E.R.C. No. 79-89, 5 NJPER 226 (1979).

DISCUSSION AND ANALYSIS

The Positions of The Parties

The Charging Party, in urging that Rutgers has violated the Act by "an intentional change in the status quo" (brief, p. 4), relies upon the decision of the New Jersey Supreme Court in Galloway Township Board of Education v. Galloway Township Education Association, 78 N.J. 25 (1978), and Hudson County Board of Chosen Freeholders and Hudson County PBA, Local 51, P.E.R.C. No. 78-48, 4 NJPER 87 (1978), aff'd. per curiam, ___ N.J. Super ___ (App. Div., Docket No. A-2444-77, April 10, 1979). The Charging Party notes that a "practice need not be incorporated in an agreement to have become a term or condition of employment" for the affected employees, citing Hudson County, supra, (Charging Party's brief, p. 5). By way of remedy, the Charging Party seeks, inter alia, an Order directing that Rutgers negotiate in good faith, upon request, concerning an increment for Co-Adjutant faculty and, further, that Rutgers be directed to pay an increment to Co-Adjutant faculty for the 1978-79 academic year, in accordance with past practice, retroactive to September 1, 1978 with interest from that date (Charging Party's brief, p. 8).

Rutgers contends that the Association has failed to prove that Rutgers unilaterally altered the terms and conditions of employment of Co-Adjutant faculty, i.e., the Association has not proven "that the increment plan of Rutgers was automatic" (Rutgers' brief,pp.6-9).[14/] Rutgers contends that Galloway, supra, does not apply since that decision was concerned with the payment of increments during the pendency of negotiations for a successor agreement where the Galloway Township Board of Education, having agreed to pay increments, was governed by N.J.S.A. 18A:29-4.1, which statutory provision, Rutgers points out, does not apply to it (Rutgers' brief, pp. 13, 14). Rutgers also cites Piscataway Town-

14/ Rutgers cites N.J.A.C. 19:14-6.8, which provides that the Charging Party has the burden of prosecuting and proving its allegations in the Complaint by a preponderance of the evidence. At the conclusion of the Charging Party's case, Rutgers moved to dismiss any part of the proofs adduced which did not pertain to the payment of the increment to Co-Adjutant faculty for 1978-79, which was denied (Tr. 38). Rutgers proceeded with its proofs on the issue of increments without further motions on the record. As is apparent from the Hearing Examiner's statement of the Issue, supra, and the positions of the parties herein, the matter is ripe for decision upon the Findings of Fact heretofore made.

ship Board of Education, P.E.R.C. No. 91, 1 NJPER 49 (1975), appeal dismissed as moot (App. Div., Docket No. A-8-75), pet. for certif. den., 70 N.J. 150 (1976), which holds that a public employer may not alter the status quo while involved in collective negotiations. But then Rutgers contends that if it had paid Co-Adjutant faculty a salary increase in the form of an increment during the pendency of collective negotiations it would not be maintaining the status quo within the meaning of Piscataway, supra, (Rutgers' brief, pp. 10, 11). Rutgers next cites three cases from other jurisdictions in support of its position that it would be altering the status quo if an increase was paid to Co-Adjutant faculty during negotiations (Rutgers' brief, pp. 14, 15).[15/] Finally, Rutgers discusses the proper interpretation of N.L.R.B. v. Katz, 369 U.S. 736, 50 LRRM 2176 (1962), a case relied upon by the New Jersey Supreme Court in Galloway, supra (Rutgers' brief, pp. 16, 17).

The Charging Party's reply relies essentially on its initial brief, supra, and makes only some additional references to the evidence adduced at the hearing with comments on Rutgers' legal arguments, supra, which need not be dealt with further at this point.

Rutgers Violated Subsection (a)(5) of The Act When, During The Pendency of Negotiations For a First Collective Agreement, it Unilaterally Failed to Pay to Co-Adjutant Faculty an Increment For The 1978-79 Academic Year

The resolution of the stated issue in this case turns on what constituted the status quo when the parties commenced negotiations for a first collective agreement in May 1978. In resolving this issue the Hearing Examiner is aware of the uniqueness of the instant case in that the Association was not certified as the majority representative for Co-Adjutant faculty at the time that Mr. Martin wrote to Dr. Frost on March 26, 1973 (CP-1). [16/]

15/ See Board of Cooperative Educational Services of Rockland County v. N.Y. State P.E.R.B., 41 N.Y. 2d 753, 395 N.Y.S. 2d 439, 363 N.E. 2d 1174, 1977-78 PBC para. 36,015 (1977); Matter of Springfield School Committee and Springfield Federation of Teachers, Local 484, 1977-78 PBC para. 40,514 (Mass. MLRC 1978); Pinellas County P.B.A. v. City of St. Petersburg, 1977-78 PBC para. 40,022 (Fla. PERC 1977).

16/ It is noted again that the second unnumbered paragraph of CP-1 refers to "the elements of our joint plan" (Emphasis supplied) and that Mr. Martin acknowledged that it was in effect an "agreement" (Tr. 84).

Although Rutgers in its brief (pp. 6, 7) observes that there was no collective agreement between the parties in 1973, and that the Association was not in fact certified until December 7, 1976, the Hearing Examiner is of the opinion that he can resort freely to the decisions of the Commission and the Courts, involving factual situations where there existed a prior collective negotiations history, in determining what was the status quo in the instant negotiations for a first collective negotiations agreement.

First, in Piscataway, supra, a case involving the unilateral discontinuance by the employer during negotiations for a successor agreement of hospitalization and medical coverage, the Commission first adopted the view "...that an employer is normally precluded from altering the status quo while engaged in collective negotiations, and that such an alteration constitutes an unlawful refusal to negotiate..." (1 NJPER at 50).

Next, the Commission in Galloway Township Board of Education, P.E.R.C. No. 76-32, 2 NJPER 186 (1976) [17] cited Piscataway in concluding that the employer's "...unilateral determination...not to pay any increments was...an alteration of the status quo..." (2 NJPER at 186). The Commission stated that it was attempting:

> "...to maintain 'those terms and conditions of employment in effect' regardless of whether those terms are derived from a contract or some other source. The status quo represents that situation which affords the least likelihood of disruption during the course of negotiations for the new contract. Because the status quo is predictable and constitutes the terms and conditions under which the parties have been operating, it presents an environment least likely to favor either party." (2 NJPER at 186, 187) (Emphasis supplied).

In Hudson County, supra, the Commission, citing its Piscataway and Galloway decisions, supra, adopted the Hearing Examiner's finding that an established practice of paying increments to employees who qualify during the term of a prior agreement:

> "...constituted a term and condition of employment under which the parties have been operat-

17/ Affirmed by the New Jersey Supreme Court on August 1, 1978, 78 N.J. 25, supra, the analysis of which will be discussed hereinafter.

> ing and, therefore, was an element of the status quo...The Board's unilateral decision not to pay these increments was a negation of this benefit. Accordingly, there was an alteration of the... status quo. The policemen were no longer being paid pursuant to the existing established practice." (4 NJPER at 90) (Emphasis supplied). 18/

As previously noted, the New Jersey Supreme Court in Galloway, supra, relied heavily upon NLRB v. Katz, supra, in affirming the Commission. See 78 N.J. at 48-50. The Court stated that under Katz an employer's unilateral alteration of the prevailing terms and conditions of employment during collective bargaining constitutes an unlawful refusal to bargain since such unilateral action is a circumvention of the statutory duty. Continuing, the Court in Galloway said:

> "...The basis of the rule prohibiting unilateral changes by an employer during negotiations is the recognition of the importance of maintaining the then-prevailing terms and conditions of employment during this delicate period until new terms and conditions are arrived at by agreement. Unilateral changes disruptive of this status quo are unlawful because they frustrate the 'statutory objective of establishing working conditions through bargaining.' NLRB v. Katz, supra..." (78 N.J. at 48) (Emphasis supplied).

The Court in Galloway next observed that the Legislature incorporated a rule similar to Katz in Section 5.3 of the Act 19/ and went on to say that if "...a scheduled annual step increment in an employee's salary is an 'existing rule() governing working conditions,' the...denial of that increment would constitute a modification thereof" without the negotiation mandated by Section 5.3, supra, and would thus violate Subsection (a)(5) of the Act. (78 N.J. at 49).

Referring again to Katz, the Court in Galloway proceeded to inquire as to whether or not the annual step increments in that case were "...'automatic,' in which case their expected receipt would be considered as part of the status quo, or 'discretionary,' in which case the grant or denial of the salary increases would be a matter to be resolved in negotiations." (78 N.J. at 49) (Emphasis

18/ As noted supra, the Commission's decision was affirmed by the Appellate Division on April 10, 1979 and this will be discussed further hereinafter.

19/ "Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established." (Emphasis supplied).

supplied). The Court then said that under the rationale of Katz the employer would violate the Act if it granted discretionary increments but would not violate the Act if granted automatic increments.

In upholding the Commission's finding of a violation of Subsection (a)(5) of the Act the Court in Galloway concluded that the payment of the teachers' annual salary increment was "automatic" and that, therefore, the Board by unilaterally withholding payment of the next scheduled increment unlawfully changed the status quo. 20/

Findings of Fact 7-10, 12, supra, compel the conclusion that the annual increments paid by Rutgers to Co-Adjutant faculty from 1972 through the academic year ending 1978 were "automatic" and essentially followed the "formula" set forth in the 1973 "joint plan" or agreement (CP-1). 21/ Thus, qualifying Co-Adjutant faculty could reasonably expect payment of an annual increment in September of the 1978-79 academic year and this would be consistent with the maintenance of the status quo during negotiations under the Court's analysis in Galloway, supra. As noted previously, Galloway was decided on August 1, 1978, prior to the commencement of the 1978-79 academic year, and Mr. Martin plainly erred when payment of the increment was not made on his advice.

Irrespective of whether or not CP-1 is considered an "agreement," binding upon the parties by its terms, there can be no dispute but that a six-year practice has existed whereby a term and condition of employment for qualified Co-Adjutant faculty has been the payment of an annual increment during the academic year. 22/

20/ The Hearing Examiner takes note of the fact that in Galloway the Board had adopted a two-year salary schedule containing annual increments, as authorized by N.J.S.A. 18A-29-4.1, which became effective with the 1974-75 collective negotiations agreement and then refused payment of the annual increments during negotiations on a successor agreement. The Commission had found that the payment of increments according to the two-year schedule was one of the existing terms and conditions under the 1974-75 agreement and that those "working conditions" continued in effect until modified in negotiations, the only condition precedent to the payment of the increment being the start of the new school year in 1975-76. (See 78 N.J. at 29-31, 51, 52).

21/ See footnote 3a, supra.

22/ It will be recalled that a term and condition of employment can be "derived from a contract or some other source." Galloway Township Board of Education, supra, (2 NJPER at 186) and Hudson County, supra, (4 NJPER at 90). (Emphasis supplied).

It is of no moment that, in the 1977-78 academic year, when Rutgers was at an impasse in its negotiations with full-time faculty represented by the AAUP, the annual increment was based upon the increment paid to non-academic personnel. Mr. Martin confirmed that "in general" the 1973 "formula" had been applied. It is further noted that full-time faculty were paid their annual increments that year retroactively on May 12, 1978. See Finding of Fact No. 10, supra.

Further, Rutgers' contention that Galloway does not apply to it by reason of the non-applicability to Rutgers of N.J.S.A. 18A-29-4.1 is rejected for the reason that the Katz rationale used by the Supreme Court in Galloway strikes the Hearing Examiner as having a broad application.

Finally, the Appellate Division on April 10, 1979 in Hudson County, supra, affirmed the Commission's Order to pay increments in a case that did not involve Title 18A, the Education Law. The employer's refusal there to pay the increments, under the circumstances of an established practice, was deemed an alteration of the status quo and the Commission was affirmed in its Order that the employer cease and desist from unilaterally altering terms and conditions of employment during the course of collective negotiations, which had been found to be a violation of Subsection (a)(5) of the Act.

In view of pertinent New Jersey authority, the Hearing Examiner elects not to consider the three cases cited by Rutgers from other jurisdictions. 23/ In so deciding, the Hearing Examiner is aware that the Rockland County case was distinguished by the New Jersey Supreme Court in Galloway (78 N.J. at 52, footnote 12). It is the Hearing Examiner's view that the Appellate Division decision in Hudson County, supra, is on point and binding upon him.

Although the Hearing Examiner has concluded that Rutgers violated Subsection (a)(5) of the Act by unilaterally altering the status quo during negotiations for a first collective agreement by not paying an increment for the 1978-79 academic year, and will recommend an appropriate remedy, the Hearing Examiner will not, as requested by the Charging Party, include an award of interest. The Hearing Examiner notes that the Commission has considered and declined a request to award interest in Salem County Board for Vocational Education, P.E.R.C. No.

23/ See footnote 15, supra.

79-99, 5 NJPER 239, 241 (1979), a case involving a Subsection (a)(3) [24] discriminatory discharge of a teacher. [25]

There having been no Subsection (a)(1) violation of the Act [26] alleged by the Association in the charge of unfair practices (CP-1), no recommendation will be made in connection therewith.

* * * *

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

CONCLUSIONS OF LAW

The Respondent Rutgers violated N.J.S.A. 34:13A-5.4(a)(5) when, during the pendency of negotiations for a first collective agreement, it unilaterally failed to pay to Co-Adjutant faculty at University College an increment for the 1978-79 academic year.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER:

A. That the Respondent Rutgers cease and desist from:

1. Refusing to negotiate in good faith with the Association, as the majority representative of Co-Adjutant faculty at University College, by unilaterally altering the terms and conditions of their employment during the course of collective negotiations for a first agreement.

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

1. Forthwith, make payment of the annual increment for the 1978-79 academic year to all qualifying Co-Adjutant faculty at University College, represented by the Association, based upon the formula contained in the March 26, 1973 joint plan or agreement (CP-1), and continue to make such payment during succeeding academic years unless and until said joint plan or agreement for the

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24/ This Subsection prohibits employers, their representatives or agents from: "(a)(3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this Act."

25/ The Commission declined to reconsider its decision in P.E.R.C. No. 80-1, 5 NJPER ___ (1979).

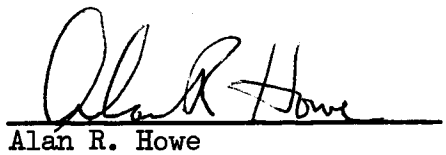
26/ This Subsection prohibits employers, their representatives or agents from: "(a)(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act."

payment of annual increments is discontinued or modified by the parties in collective negotiations.

2. Preserve, and upon request, make available to the Commission for examination all relevant payroll records for Co-Adjutant faculty at University College necessary to determine the proper payment of annual increments as ordered herein.

3. Post in all places where notices to employers are customarily posted, copies of the attached notice marked Appendix "A". Copies of such notice, on forms provided by the Commission, shall be posted by the Respondent Rutgers immediately upon receipt thereof, after being signed by the Respondent's representative, and shall be maintained by it for a period of at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondent Rutgers to insure that such notices are not altered, defaced or covered by other material.

4. Notify the Director of Unfair Practices within twenty (20) days of receipt what steps the Respondent Rutgers has taken to comply herewith.



Dated: August 31, 1979
Trenton, New Jersey

Alan R. Howe
Hearing Examiner

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 negotiate in good faith with the Association as the majority representative of Co-Adjutant faculty at University College regarding terms and conditions of employment.

WE WILL NOT unilaterally alter the terms and conditions of employment of Co-Adjutant faculty at University College during the pendency of collective negotiations for a first agreement.

WE WILL forthwith make payment of the annual increment for the 1978-79 academic year to all qualifying Co-Adjutant faculty at University College, represented by the Association, based upon the formula contained in the March 26, 1973 joint plan or agreement (CP-1), and continue to make such payment during succeeding academic years unless and until said joint plan or agreement for the payment of annual increments is discontinued or modified by the parties in collective negotiations.

RUTGERS, THE STATE UNIVERSITY
(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, 429 East State Street, Trenton, New Jersey 08608, Telephone (609) 292-6780