

P.E.R.C. NO. 82-41

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF ESSEX,

Respondent,

- and -

Docket No. CO-80-234-86

ESSEX COUNTY HOSPITAL MENTAL
HEALTH PERSONNEL ASSOCIATION,
LOCAL 1247, AFSCME, COUNCIL 52,

Charging Party.

SYNOPSIS

In an unfair practice proceeding the Commission held that the withholding of increment payments under an expired agreement by the County, and during negotiations for a successor contract, was in violation of N.J.S.A. 34:13A-5.4(a)(1) and (5).

The County failed to pay increments to unit employees as of January 1980, under the terms of the most recent collective negotiations agreement between the parties which expired on December 31, 1978. Increment payments had been made by the County on January 1, 1979, however. The Commission, in reliance on past decisions, held that salary increments contained in an expired contract must be paid during the period of negotiations for a new contract.

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Docket No. CO-80-234-86

ESSEX COUNTY HOSPITAL MENTAL
HEALTH PERSONNEL ASSOCIATION,
LOCAL 1247, AFSCME, COUNCIL 52,

Charging Party.

Appearances:

For the County of Essex

Grotta, Glassman & Hoffman, Esqs. (Thomas J. Savage, Esq.)

For the Charging Party

Rothbard, Harris & Oxfeld, Esqs. (Nancy I. Oxfeld, Esq.
and Barry A. Aisenstock, Esq.)

DECISION AND ORDER

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on February 8, 1980 by the Essex County Hospital Mental Health Personnel Association, Local 1247, AFSCME, Council 52 (hereinafter the "Charging Party" or the "Association") alleging that the County of Essex (hereinafter the "Respondent" or the "County") 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. (hereinafter the "Act"). It was claimed that the Respondent during negotiations for a successor agreement, after maintaining the status quo during the year 1979 by paying employees represented by the Association their annual increment thereafter did not maintain the status quo in 1980 when it failed to pay the annual increment in

that year, all of which was alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1), (2), (5) and (7) of the Act.^{1/}

It appearing that the allegations of the Unfair Practice Charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on April 11, 1980. Pursuant to the Complaint and Notice of Hearing, a hearing was held on June 19, 1980 in Newark, New Jersey before Alan R. Howe, Hearing Examiner for the Commission, at which time the parties entered into a stipulation of facts and waived a Hearing Examiner's Recommended Report and Decision. Pursuant to a briefing schedule the parties filed briefs with the Commission by November 13, 1980, following which the Association filed a Motion to Strike the County's brief to the Commission on the ground that it attached two affidavits, which raised additional facts not stipulated to on June 19, 1980. In the alternative, the Association moved to reopen the hearing.

Under date of December 11, 1980 the Commission issued a Decision and Order on the Association's Motion, supra, in which the matter was remanded to the Hearing Examiner for resolution of any factual issues existing between the parties (P.E.R.C. No. 81-80, 7 NJPER 39).

1/ These subsections prohibit public employers, representatives, or agents, from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act." "(2) Dominating or interfering with the formation, existence or administration of any employee organization." "(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."

Pursuant to the Order of remand by the Commission, the Hearing Examiner conducted an evidentiary hearing on April 8, 1981 in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Only the Charging Party offered evidence and oral argument was waived. Both parties waived the filing of post-hearing briefs by April 28, 1981, electing to rely on the briefs previously filed with the Commission.

On April 30, 1981 the Hearing Examiner issued his Recommended Report and Decision, H.E. No. 81-42, 7 NJPER 270 (¶12120 1981), a copy of which is attached hereto and made a part hereof. He concluded that the County had violated N.J.S.A. 34:13A-5.4(a) (1) and (5) when, during the pendency of negotiations for a successor collective negotiations agreement, it failed to pay unit employees an increment for the year 1980. He therefore recommended to the Commission that the County make payment of the annual increment for the year 1980 to all qualifying unit employees represented by the Association based upon the salary schedule in existence during the term of the expired agreement.

The facts of this case involve the County's failure to pay increments to unit employees as of January 1980, under the terms of the most recent collective negotiations agreement between the parties which expired on December 31, 1978.^{2/}

^{2/} Article XIII of the expired agreement reads: Section 1. Salaries:

a) All regular employees on the payroll as of June 30, 1976 and employed as of January 1, 1977, shall receive a wage increase as of January 1, 1977 of \$900.00. Such increases shall include employees' increments i.e. such employees will receive \$900.00 or his increment whichever is the greater. There will be no pyramiding of increments and wage increases.

(continued)

On January 1, 1979, however, notwithstanding that a successor negotiations agreement had not been consummated, the County paid to unit employees the annual increment for 1979 in accordance with the salary ranges for Psychiatric Social Workers and past practice.^{3/}

During the negotiations for a successor agreement in either late 1978 or early 1979 the subject of increments was raised. Negotiations continued after this time with the assistance of a mediator and the County raised the subject of eliminating the payment of increments and substituting therefor a merit system of compensation; this plan was rejected by the Association. When the County did not pay the annual increment in 1980 in accordance with the salary range (footnote 3) and contrary to past practice, the Association filed the instant Unfair Practice Charge.

2/ (continued)

b) As of January 1, 1978, all employees on the payroll as of June 30, 1977 and employed as of January 1, 1978 shall receive a wage increase as of January 1, 1978 of \$700.00. Such increases shall include employees' increments i.e. such employees will receive \$700.00 or his increment whichever is the greater. There will be no pyramiding of increments and wage increases.

c) Persons eligible for all increases referred to herein and the amounts to which they are entitled will be determined as by past practice.

3/ These salary ranges were found in a memorandum from the Essex County Hospital Center dated December 31, 1978, and are as follows:

SALARY RANGES FOR PSYCHIATRIC SOCIAL WORK SERIES

TITLE	INCRE- MENT	MIN.	STEP 1	STEP 2	STEP 3	STEP 4	MAX.
Psy Soc Wkr, Intern	946	7950	8896	9842	10788	11734	12683
Psy Soc Wkr	1643	10950	12593	14236	15879	17522	19169
Sr Psy Soc Wkr	1813	12250	14063	15876	17689	19502	21315
Soc Case Wkr, Inst	1331	8350	9681	11012	12343	13674	15005

The County has excepted to the Hearing Examiner's Report on several points. Although the County lists eleven different exceptions, many can be joined together and will be treated by the Commission in that manner while others will be materially included in those discussions.

The County's main exception challenges the Hearing Examiner's reliance upon several cases which he deemed to be controlling and his failure to follow cases in out of state jurisdictions ^{4/} with respect to the concept of status quo as it concerns increment payment. We, however, are in complete agreement with the Examiner as to the cases cited by him and his application of those cases to the present situation. ^{5/} The dispute in this matter is an issue which has been the subject of prior litigation and judicial review. Decisions of the Commission, the Appellate Division, and the Supreme Court have consistently held that salary increments contained in an expired contract must be paid during the period of negotiations for a new contract. ^{6/}

4/ Bd. of Cooperative Education Services of Rockland County v. New York State Public Employment Relations Bd., 41 N.Y.2d 753, 395 N.Y.S.2d 439, 363 N.E.2d 1174 (1977).

5/ See Galloway Twp. Bd. of Ed. v. Galloway Tp. Ed. Assn, 78 N.J. 25 (1978); Hudson County Bd. of Chosen Freeholders v. Hudson County PBA Local #51, App. Div. Docket No. A-2444-77 (4/9/79), aff'g P.E.R.C. No. 78-48, 4 NJPER 87 (¶14041 1978); Rutgers, The State University v. Rutgers University College Teachers Assn, App. Div. Docket No. A-1572-79 (4/1/81) aff'g P.E.R.C. No. 80-66, 5 NJPER 539 (¶10278 1979); see also, In re City of Vineland, I.R. No. 81-1, 7 NJPER 324 (¶12142 1981), interim order enforced and leave to appeal denied, App. Div. Docket No. AM-1037-80T3 (7/15/81); In re CWA, I.R. No. 82-2, 7 NJPER ____ (¶_____ 1981).

6/ Id.

The Hearing Examiner properly examined the cases cited by the County and correctly interpreted the existing case law in the State of New Jersey to the facts of this case and rejected the applicability of the out of state jurisdiction to the circumstances herein. We adopt his conclusions of law.

In the face of such strong case precedent, the County argues that the facts of its case distinguish it from the others and that the status quo demands that no increments be paid. The County states that since the increment subject had been negotiated, and a merit pay plan in lieu of increments had also been introduced and negotiated by the parties, it was justified in unilaterally refusing to implement the increment payments in 1980. The act of negotiating in and of itself, however, is not dispositive of the matter absent the parties reaching an agreement or exhausting all obligations which negotiations require.

There is no evidence, nor does the County assert, that a genuine impasse existed on the subject of increments^{7/} on January 1, 1980, the date on which the County unilaterally ceased to pay an additional increment. The County primarily relies on a defense that since it was in the process of negotiating a proposed alteration in the salary structure that it was justified in implementing an incremental freeze out of concern that failure to do so would negatively affect its negotiating posture.

7/ The Commission has recognized the right of an employer to unilaterally implement a final offer under limited circumstances which are not present in the instant case. See, In re City of Jersey City, P.E.R.C. No. 77-58, 3 NJPER 122 (1977); In re Rutgers, The State University, P.E.R.C. No. 80-114, 6 NJPER 180 (¶11085 1980), and Red Bank Teachers Ass'n v. Red Bank Borough Board of Education, P.E.R.C. No. 81-1, 6 NJPER 364 (11185 1980), aff'd App. Div. Docket No. A-4496-79T2 (6/8/81).

Such a view misconstrues the now well established principle that the payment of increments beyond the contract's expiration date during negotiations for a new agreement is a maintenance of the status quo. The payment of increments is merely a negotiated term in the agreement and the preservation of that term beyond the life of the agreement is maintaining the status quo.^{8/}

The County's final exception was to the Hearing Examiner's conclusion that a past practice had existed under the agreement for the payment of annual increments to unit employees and that the County has stated no reasons as to why it failed to pay those increments in 1980. The Commission finds this exception to be without merit. The parties entered into an agreement which expired on December 31, 1978 and which contained a clause stating that unit employees were to receive increments (see footnote 2). In January of 1979, those employees received their increments while negotiations for a successor agreement were going on, but in January 1980 those employees did not. No new agreement had been reached, and the parties having failed to reach a genuine impasse, the expired contract with all of its terms was still in operation, thereby preserving the status quo. On this issue we adopt the findings and conclusions of the Hearing Examiner as expressed in his recommended decision.

Accordingly, upon review of the entire record in this matter, we hereby adopt the findings of fact and conclusions of law made in H.E. No. 81-42 for the reasons previously set forth. We find that the

^{8/} A similar argument was raised by the Board in In re Union County Reg. H.S. Bd. of Ed., P.E.R.C. No. 78-24, 4 NJPER 11 (¶14007 1977), and was also rejected by the Commission's designee.

County's actions did violate N.J.S.A. 34:13A-5.4(a)(1) and (5).

ORDER

For the foregoing reasons, IT IS HEREBY ORDERED:

A. That the Respondent County cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of rights guaranteed by the Act by failing to pay eligible employees annual salary increments according to the terms of a collective negotiations agreement with the Association which expired December 31, 1978, during the course of collective negotiations with the Association for a successor agreement.

2. Refusing to negotiate in good faith with the Association by unilaterally altering the terms and conditions of employment of employees represented by the Association by failing to pay to eligible employees annual salary increments according to the terms of a collective negotiations agreement with the Association which expired December 31, 1978 during negotiations for a successor agreement.

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

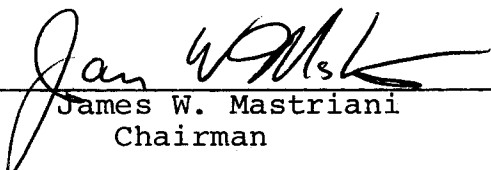
1. Pay to the eligible employees in the unit represented by the Essex County Hospital Center Professional Mental Health Personnel Association, Council 52, the normal salary increments due January 1, 1980 as determined by the formula contained in the collective negotiations agreement which expired on December 31, 1978 covering these unit employees, said increments to be paid during the course of negotiations with the Association for successor agreement.

2. Pay the affected employees in the above mentioned unit the monetary difference between the amount the eligible employees would have received had their increment not been unilaterally withheld, and the amounts they were in fact paid subsequent to January 1, 1980.

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 County 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 County to insure that such notices are not altered, defaced or covered by other material.

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

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hartnett, Parcels, Suskin, Graves, Hipp and Newbaker voted for this decision. None opposed.

DATED: Trenton, New Jersey
October 2, 1981
ISSUED: October 5, 1981

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL NOT interfere with, restrain or coerce employees in the exercise of rights guaranteed by the Act by failing to pay eligible employees annual salary increments according to the terms of a collective negotiations agreement with the Association which expired December 31, 1978, during the course of collective negotiations with the Association for a successor agreement.

WE WILL NOT refuse to negotiate in good faith with the Association by unilaterally altering the terms and conditions of employment of employees represented by the Association by failing to pay to eligible employees annual salary increments according to the terms of a collective negotiations agreement with the Association which expired December 31, 1978 during negotiations for a successor agreement.

WE WILL pay to the eligible employees in the unit represented by the Essex County Hospital Center Professional Mental Health Personnel Association, Council 52, the normal salary increments due January 1, 1980 as determined by the formula contained in the collective negotiations agreement which expired on December 31, 1978 covering these unit employees, said increments to be paid during the course of negotiations with the Association for successor agreement.

WE WILL pay the affected employees in the above-mentioned unit the monetary difference between the amount the eligible employees would have received had their increment not been unilaterally withheld, and the amounts they were in fact paid subsequent to January 1, 1980.

COUNTY OF ESSEX

(Public Employer)

Dated _____

By _____

(Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission,
429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.

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

In the Matter of

COUNTY OF ESSEX,

Respondent,

Docket No. CO-80-234-86

-and-

ESSEX COUNTY HOSPITAL MENTAL HEALTH PERSONNEL
ASSOCIATION, LOCAL 1247, AFSCME, COUNCIL 52,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the County violated Subsections 5.4 (a)(1) and (5) of the New Jersey Employer-Employee Relations Act when it unilaterally, during the pendency of negotiations with the Association for a successor collective negotiations agreement, failed to pay to unit employees an increment for the year 1980 in accordance with past practice.

The Hearing Examiner found that the County had altered the status quo in collective negotiations by failing to pay the annual increment, notwithstanding an established practice contained in the last collective negotiations agreement, which expired December 31, 1978. The County had paid the increment for the year 1979 in accordance with past practice. For some unexplained reason it decided not to do so in 1980.

The Hearing Examiner relied on prior Commission decisions and decisions of the New Jersey Supreme Court and the Appellate Division. Under this precedent the annual increment was found to be a term and condition of employment for employees in the unit, which could not be unilaterally altered except by collective negotiations with the Association. The Hearing Examiner in his recommended order directed that the County pay the increment to unit employees for the year 1980.

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.

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

In the Matter of

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Respondent,

-and-

Docket No. CO-80-234-86

ESSEX COUNTY HOSPITAL MENTAL HEALTH PERSONNEL
ASSOCIATION, LOCAL 1247, AFSCME, COUNCIL 52,

Charging Party.

Appearances:

For the County of Essex
Grotta, Glassman & Hoffman, Esqs.
(Thomas J. Savage, Esq).

For the Charging Party
Rothbard, Harris & Oxfeld, Esqs.
(Nancy I. Oxfeld, Esq. and Barry A. Aisenstock, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on February 8, 1980 by the Essex County Hospital Mental Health Personnel Association, Local 1247, AFSCME, Council 52 (hereinafter the "Charging Party" or the "Association") alleging that the County of Essex (hereinafter the "Respondent" or the "County") 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. (hereinafter the "Act"), in that the Respondent during negotiations for a successor agreement, after maintaining the status quo during the year 1979 by paying employees represented by the Association their annual increment thereafter failed to maintain the status quo in 1980 by failing to pay the annual increment in that year, all of which was alleged to be a

violation of N.J.S.A.34:13A-5.4 (a)(1), (2), (5) and (7) of the Act. ^{1/}

It appearing that the allegations of the Unfair Practice Charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on April 11, 1980. Pursuant to the Complaint and Notice of Hearing, a hearing was held on June 19, 1980 in Newark, New Jersey, at which time the parties entered into a stipulation of facts and waived a Hearing Examiner's Recommended Report and Decision. Pursuant to a briefing schedule the parties filed briefs with the Commission by November 13, 1980, following which the Association filed a Motion to Strike the County's brief to the Commission on the ground that it attached two affidavits, which raised additional facts not stipulated to on June 19, 1980. In the alternative, the Association moved to reopen the hearing.

Under date of December 11, 1980 the Commission issued a Decision and Order on the Association's Motion, supra, in which the matter was remanded to the Hearing Examiner for resolution of any factual issues existing between the parties (P.E.R.C. No. 81-80, 7 NJPER 39).

Pursuant to the Order of remand by the Commission, the Hearing Examiner, after several unavoidable scheduling delays, conducted an evidentiary hearing on April 8, 1981 in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Only the Charging Party offered evidence and oral argument was waived. Both parties waived the filing of post-hearing briefs by April 28, 1981, electing to rely on the briefs previously filed with the Commission.

1/ These Subsections prohibit public employers, representatives, or agents, from:

"(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act.

"(2) Dominating or interfering with the formation, existence or administration of any employee organization.

"(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."

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

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

FINDINGS OF FACT

1. The County of Essex is a public employer within the meaning of the Act, as amended, and is subject to its provisions.
2. The Essex County Hospital Mental Health Personnel Association, Local 1247, AFSCME, Council 52 is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.
3. The most recent collective negotiations agreement between the parties was effective during the year 1978 and expired December 31, 1978 (J-1).
4. Article XIII, Section 1, "Compensation-Salary," of J-1 provided for a schedule of annual wage increases, which included increments, and provided that each unit employee would receive the annual increase or his or her increment, whichever is greater. Section 1 (c) provided that "Persons eligible for all increases referred to herein and the amounts to which they are entitled will be determined as by past practice." (Emphasis supplied).
5. As of December 31, 1978 the salary ranges for Psychiatric Social Workers were as set forth on Exhibit J-2. This Exhibit (J-2) sets forth four job titles and the annual increment, from the minimum salary to the maximum salary, in four steps.
6. As of January 1, 1979, notwithstanding that a successor collective negotiations agreement had not been consummated, the County paid to unit employees the annual increment for 1979 in accordance with J-2 and past practice.
7. In or about March or April 1979 negotiations between the parties

continued with the assistance of a Commission mediator. The subject of increments was discussed in the mediation phase. The County desired to eliminate the payment of increments and substitute therefor a merit system of compensation, which the Association repeatedly rejected.

8. As of January 1, 1980 the County refused to pay to unit employees the annual increment for 1980 in accordance with J-2 and contrary to past practice. This resulted in the filing of instant Unfair Practice Charge February 8, 1980.

9. During 1980 there were only two mediation sessions and both of these occurred early in the year. According to the Association, there have been no further meetings with the Commission mediator for the reason that the Association is awaiting a decision in the instant unfair practice proceedings. ^{2/}

THE ISSUE

Did the Respondent County violate Subsections (a)(1) and (5) of the Act when, during the pendency of negotiations for a successor agreement, it unilaterally failed to pay to unit employees the annual increment as of January 1, 1980 in accordance with past practice?

DISCUSSION AND ANALYSIS

The Respondent County Violated Subsections(a)(1) and (5) of the Act When, During the Pendency of Negotiations For A Successor Agreement It Unilaterally Failed To Pay To Unit Employees The Annual Increment As Of January 1, 1980 In Accordance With Past Practice

The Hearing Examiner finds and concludes that the Respondent County violated the Act as alleged when it unilaterally altered the status quo during the pendency of negotiations for a successor agreement by failing

^{2/} Neither party has invoked "fact-finding" pursuant to N.J.A.C. 19:12-4.1 and thus the mediation phase has not concluded.

to pay to unit employees the annual increment as of January 1, 1980 in accordance with past practice.

At the outset it is noted that the County cannot unilaterally implement its last position on increments since the Commission's impasse procedures have not been exhausted--fact-finding has not been invoked, nor have mediation and fact-finding been waived. Thus, City of Jersey City, P.E.R.C. No. 77-58, 3 NJPER 122 (1977) and Rutgers, The State University, P.E.R.C. No. 80-114, 6 NJPER 180 (1980) are not applicable.

The Commission's first decision regarding the alteration of the status quo during collective negotiations was Piscataway Township 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). In that case the public employer unilaterally discontinued hospitalization and medical coverage during negotiations for a successor agreement. The Commission first adopted the view "...that an employer is normally precluded from altering the status quo 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) ^{3/} 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 environ-

^{3/} Affirmed by the New Jersey Supreme Court in Galloway Township Board of Education v. Galloway Township Education Association 78 N.J. 25 (1978).

ment least likely to favor either party." (2 NJPER at 186, 187) (Emphasis supplied).

In Hudson County Bd. of Chosen Freeholders, P.E.R.C. No. 78-48, 4 NJPER 87 (1978) (aff'd. App. Div. Docket No. A-2444-77, April, 10, 1979) 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 prior agreement:

"...constituted a term and conditon of employment under which the parties have been operating 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 as alteration of the...status quo. The policemen were no longer being paid pursuant to the existing established practice." (4 NJPER at 90) (Emphasis supplied).

The New Jersey Supreme Court in Galloway, supra, relied heavily upon NLRB v. KATZ, 369 U.S. 736, 50 LRRM 2176 (1962), 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 ^{4/} and went on to say that if

^{4/} "Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established." (Emphasis supplied).

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 violation of Subsection (a)(5) of the Act.

Finally, the Appellate Division on April 1, 1981 in Rutgers, the State University v. Rutgers University College Teachers Association et. al., Docket No. A-1572-79, affirmed the Commission's Order (P.E.R.C. No. 80-66, 5 NJPER 539) to pay increments, a second case that did not involve Title 18A. The refusal of Rutgers to pay increments to unit employees, who were in the process of negotiating a first agreement, was, in the face of an established practice of the payment of increments dating back several years, deemed to be an alteration of the status quo and the Commission was therefore affirmed in its decision that the employer cease and desist from unilaterally altering terms and conditions of employment during the course of collective negotiations --a violation of Subsection (a)(5) of the Act.

The instant Findings of Fact, supra, clearly establish a past practice under the agreement (J-1) for the payment of annual increments to unit employees in accordance with J-2 and past practice. Significantly, the County paid the annual increment in 1979 and thereby continued the status quo during collective negotiations for a successor agreement. For some unexplained reason the County elected to alter the status quo in 1980, which resulted in the filing of the instant Unfair Practice Charge.

In view of pertinent New Jersey authority, the Hearing Examiner elects not to consider the three cases cited by the County from other jurisdictions. ^{6/} 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's decisions in Hudson County and Rutgers, supra, are on point and binding upon him.

* * * *

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

CONCLUSIONS OF LAW

The Respondent County violated N.J.S.A. 34:13A-5.4 (a)(1) and (5) when, during the pendency of negotiations for a successor collective negotiations agreement, it unilaterally failed to pay to unit employees an increment for the year 1980.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER:

A. That the Respondent County cease and desist from:

1. Refusing to negotiate in good faith with the Association as the majority representative by unilaterally altering the terms and conditions of their employment during the course of collective negotiations for a successor agreement.

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

1. Forthwith, make payment of the annual increment for the year 1980 to all qualifying unit employees represented by the Association based upon the formula contained in Exhibit J-2.

^{6/} 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).

2. Preserve, and upon request, make available to the Commission for examination all relevant payroll records for unit employees 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 County 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 County to insure that such notices are not altered, defaced or covered by other material.

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

Dated: April 30, 1981
Trenton, New Jersey



Alan R. Howe
Hearing Examiner

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 regarding terms and conditions of employment.

WE WILL NOT unilaterally alter the terms and conditions of employment of unit employees during the pendency of collective negotiations for a successor agreement.

WE WILL forthwith make payment of the annual increment for the year 1980 to qualifying unit employees represented by the Association based upon the formula contained in Exhibit J-2.

COUNTY OF ESSEX

(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 R. Hansen~~ ~~Chairman~~, Chairman, Public Employment Relations Commission, P.O. Box 2209, Trenton, New Jersey 08625 Telephone (609) 292-6780