

P.E.R.C. NO. 79-41

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WEST DEPTFORD
BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-78-146-75

WEST DEPTFORD EDUCATION
ASSOCIATION,

Charging Party.

SYNOPSIS

In an unfair practice proceeding, the Commission adopts the findings of fact and conclusions of law of the Hearing Examiner that the Board of Education violated the Act by unilaterally withdrawing the use of school facilities from the Association. The Board was ordered to cease and desist from that activity and affirmatively to provide the use of school facilities to the Association consistent with the previous practice.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WEST DEPTFORD
BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-78-146-75

WEST DEPTFORD EDUCATION
ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Capehart and Schatchard, P.A.
(Alan R. Schmoll, Esq.)

For the Charging Party, Joel S. Selikoff, Esq.
(Steven R. Cohen, Esq.)

DECISION AND ORDER

An Unfair Practice Charge was filed with the Public Employment Relations Commission on January 3, 1978 by the West Deptford Education Association (the "Association") alleging that the West Deptford Board of Education (the "Board") 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, it was alleged that the Board violated the Act when, at a public meeting on October 10, 1977, it withdrew the use of all school facilities from the Association. The Association claimed that this action was in retaliation for the failure of the membership of the Association to ratify a

proposed successor collective negotiations agreement in September of that year. The Association also claimed that the Board's chief negotiator had assured representatives of the Association that there was no need for a contractual provision regarding the use of school facilities and that the Association therefore withdrew a contract proposal regarding this matter. These actions were alleged to be violative of N.J.S.A. 34:12A-5.4(a) (1), (2), (3) and (5) of the Act.

The Charge was processed pursuant to the Commission's Rules, and it appearing that the allegations of the Charge, if true, might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on May 30, 1978. A hearing was held on August 25, 1978 before Commission Hearing Examiner Alan R. Howe at which both parties were represented and were given an opportunity to examine and cross-examine witnesses, present evidence and to argue orally. Both parties filed post-hearing briefs by December 7, 1978 and the Hearing Examiner issued his Recommended Report and Decision on December 12, 1978. H.E. No. 79-26, 4 NJPER ____ (¶ 1978). This Report included findings of fact, conclusions of law and a recommended order. A copy is attached to this decision and made a part hereof. The original of the report was filed with the Commission and copies were served upon all parties. Thereafter timely exceptions to the Hearing Examiner's Recommended Report and Decision were filed by the Board on December 26, 1978

and on December 28, 1978 the Charging Party submitted its reply to the exceptions filed by the Board.

The Hearing Examiner found that the Board violated N.J.S.A. 34:13A-5.4(a)(1) and (a)(5) of the Act when it unilaterally and without prior negotiations withdrew from the Association the use of school facilities on October 10, 1977. Consistent with an earlier Commission decision, he found that the use of school facilities by the Association is a mandatory subject for negotiations.^{1/} The Hearing Examiner concluded that it was unnecessary to determine whether the Board's action in withdrawing the use of school facilities from the Association was in retaliation for any action taken by the Association. He found no evidence that N.J.S.A. 34:13A-5.4(a)(2) and (a)(3) of the Act had been violated and recommended the dismissal of these alleged violations.

In its exceptions, the Board did not dispute the Hearing Examiner's findings of fact and conclusions of law regarding the withdrawal from the Association of the use of school facilities. However, the Board did except to the breadth of the Hearing Examiner's recommended order and to the language in the recommended notice. The Board states that it has been charged with violating the Act by refusing to negotiate only regarding the unilateral withdrawal from the Association of the

^{1/} In re Union County Regional Board of Education, P.E.R.C. No. 76-17, 2 NJPER 50 (1977).

use of school facilities and that the Commission's order and notice should be confined to that specific action and should not include a more general determination that the Board has refused to negotiate in good faith.

The Association, on the other hand, takes the position that the Hearing Examiner's Recommended Order and Notice are appropriate and comply with the intent of the Act and the authority of the Commission.

After considering the entire record in this matter including the Hearing Examiner's Recommended Report and Decision, the Board's exceptions and the Association's reply to those exceptions, the Commission hereby adopts the findings of fact and conclusions of law of the Hearing Examiner. Specifically, it is found that the Board violated the Act by unilaterally withdrawing from the Association the use of school facilities on October 10, 1977 and that this action violated N.J.S.A. 34:13A-5.4(a)(1) and (a)(5). Furthermore, we find no violation of N.J.S.A. 34:13A-5.4(a)(2) and (a)(3). With respect to the breadth of the order and the notice, we agree with the Board that the order should be confined to the specific violation alleged. Accordingly, we have modified the Hearing Examiner's proposed order and notice to conform with the violation alleged and found.

ORDER

Accordingly, for the reasons set forth above, IT IS HEREBY ORDERED that the Respondent, Township of West Deptford Board of Education, shall:

1. Cease and desist from:

(a) Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act by unilaterally withdrawing from the Association the use of school facilities.

(b) Refusing to negotiate in good faith with the Association regarding changes in terms and conditions of employment by the unilateral withdrawal by the Board of the use of school facilities by the Association.

2. Take the following affirmative action:

(a) Forthwith, advise the Association that it may use school facilities for the purposes utilized by the Association in the past, prior to October 10, 1977.

(b) Negotiate in good faith with the Association with respect to any proposed changes in the use by the Association of school facilities.

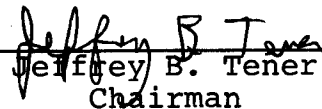
(c) Post in all places where notices to employees are customarily posted copies of the attached notice marked as Appendix "A". Copies of such notice, on forms to be provided by the Commission, shall be posted by the Board immediately upon receipt thereof, after being signed by the Board's representative,

and shall be maintained by it for a period of at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Board to insure that such notices are not altered, defaced or covered by other material.

(d) Notify the Chairman, in writing, within twenty (20) days of receipt of this Order what steps the Board has taken to comply herewith.

3. That the allegations of a violation of Subsections (a)(2) and (3) in the Complaint be dismissed in their entirety.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Hartnett and Parcels voted for this decision. None opposed. Commissioners Hipp and Schwartz abstained. Commissioner Graves was not present.

DATED: Trenton, New Jersey
January 16, 1979
ISSUED: January 17, 1979

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, restrain or coerce our employees in the exercise of the rights guaranteed to them by the Act by unilaterally withdrawing from the Association the use of school facilities.

WE WILL negotiate in good faith with the Association with respect to any proposed changes in the use of school facilities by the Association.

Township of West Deptford Board of Education
(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.

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

In the Matter of

TOWNSHIP OF WEST DEPTFORD BOARD OF EDUCATION,

Respondent,

- and -

Docket No. CO-78-146-75

WEST DEPTFORD EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Board violated the New Jersey Employer-Employee Relations Act when it unilaterally, and without negotiations, withdrew the use of school facilities by the Association on October 10, 1977. There had for many years been a past practice of the Association using school facilities for meetings and other purposes. The Hearing Examiner concluded that the Board acted in bad faith when it unilaterally withdrew the use of school facilities without prior negotiations.

The Association also alleged the Board's above action of October 10, 1977 was in retaliation for the members of the Association having failed twice to ratify an agreement in September 1977 and, further, by having voted to take October 10, Columbus Day, as a holiday. The Hearing Examiner found it unnecessary to decide the question of retaliation, as alleged, and recommended dismissal of these allegations.

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

TOWNSHIP OF WEST DEPTFORD BOARD OF EDUCATION, 1/

Respondent,

- and -

Docket No. CO-78-146-75

WEST DEPTFORD EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Township of West Deptford Board of Education
Capehart and Scatchard, P.A.
(Alan R. Schmoll, Esq.)

For the West Deptford Education Association
Joel S. Selikoff, Esq.
(Steven R. Cohen, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on January 3, 1978 by the West Deptford Education Association (hereinafter the "Association" or the "Charging Party") alleging that the West Deptford Board of Education (hereinafter the "Respondent" or the "Board") 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 Board at a public meeting on October 10, 1977 withdrew the use of all school facilities from the Association and that this action of the Board was in retaliation for the failure of the Association's membership to ratify a proposed successor collective negotiations agreement in September 1977; and that further, the Board, through its chief negotiator, had in October 1976 assured the Association's representatives that there was no need for a contractual provision on use of school facilities, as a result of

1/ As amended at the hearing.

which the Association withdrew a proposed contract provision for such use. All of the foregoing was alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1), (2), (3) and (5) of the Act. ^{2/}

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 May 30, 1978. Pursuant to the Complaint and Notice of Hearing, a hearing was held on August 25, 1978 in Trenton, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. The Respondent filed a post-hearing brief on November 16 and the Charging Party filed its brief on December 7, 1978. ^{3/}

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

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

FINDINGS OF FACT

1. The Township of West Deptford Board of Education is a public employer within the meaning of the Act, as amended, and is subject to its provisions.
2. The West Deptford Education Association is a public employee repre-

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

At the hearing on August 25, 1978, the Association amended the first count of its charge to allege additionally retaliation by the Board for the Association members having taken October 10, 1977 as a holiday.

^{3/} The delay in the filing of briefs is explained first by the fact that receipt of the transcript by the parties was delayed until October 25, 1978. The Charging Party required additional time for its brief due to its counsel's total involvement in the recent Camden teachers' strike which continued for six weeks during October and November. Note: The delay in the holding of the hearing until August 25 was due to a series of conflicts in vacation schedules.

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

3. The parties have for many years had a collective negotiations relationship, the most recent collective negotiations agreement being effective during the term July 1, 1977 to June 30, 1979 (J-1). The Association is recognized as the exclusive collective negotiations representative for all full-time certified personnel.

4. There is not and never has been a provision in the collective negotiations agreement between the parties with respect to the use by the Association of school facilities. However, during the negotiations for the current agreement, which negotiations commenced in September 1976, the Association did propose a contract provision on the use of school buildings, which provided as follows:

"The Association and its representatives shall have the right to use school buildings at all reasonable hours for meetings. The principal of the building in question shall be notified in advance of the time and place of all such meetings. No approval shall be required."

(CP-3, p. 4)

5. When the foregoing contract proposal of the Association was proposed at either the second or third negotiations meeting, the Board's chief negotiator, Alan R. Schmoll, Esq., asked if there had ever been any difficulty in using school facilities. When the Association negotiators replied in the negative, Mr. Schmoll suggested dropping the proposal and it was subsequently withdrawn by the Association.

6. The past practice of the parties, dating back many years, with respect to use of school buildings by the Association had been for an Association representative to propose at the beginning of each school year the dates for Association meetings whereupon the Superintendent would by letter routinely approve the requested dates. There was never a problem with small meetings and no formal approval was ever required or requested.

7. The last negotiations meeting on the current agreement was held on September 21, 1977. The Association members on September 22 refused to ratify the proposed agreement at a meeting held in the school cafeteria. Arrangements were made for a secret ballot vote the next day, September 23, but the result was the same, the agreement again being rejected.

8. Thereafter, over the next two weeks, there were informal discussions between representatives of the Association and Mr. Schmoll on behalf of the Board, as a result of which two revisions were made in the proposed contract settlement, ^{4/} following which the Association members on October 9, 1977 ratified the proposed agreement. At the same meeting on October 9, the Association members voted to take off the next day, which was Columbus Day on the school calendar, as the additional holiday. ^{5/}

9. At a public meeting of the Board on October 10, 1977, a motion was made near the end of the meeting, in the context of the problems with the Association in negotiations, to deny use of all school facilities to the Association effective immediately. The matter was not on the agenda. The vote was 7-2 for adoption. Although the Association learned of this action informally the following day, formal notification was not given until October 20, 1977 (CP-1).

10. The Board's action of October 10, 1977, in withdrawing the use of school buildings from the Association, also applied to the West Deptford Educational Secretaries Association. There are approximately 225 teachers in the Association's collective negotiations unit and there are 20 secretaries in the secretarial unit. The secretaries were not involved in any job actions or failure to ratify a contract as were the teachers who are represented by the Charging Party.

11. As of the October 9, 1977 ratification of the collective negotiations agreement (J-1), there still remained to be resolved the matter of after-school salary schedules and the placement of certain teachers on the salary guide. This was the subject of several subsequent meetings and was resolved by the end of November or the beginning of December. The formal contract was signed on December 12, 1977 (J-1, p. 28).

12. Prior to the filing of the unfair practice charge on January 3, 1978, the Association first elected to file a grievance protesting the withdrawal by the Board of the use of school building facilities. The grievance was filed

^{4/} A "no reprisals" provision was added to cover the fact that certain teachers had been threatened with written reprimands for conduct construed by the Board as "job actions." Secondly, provision was made for an additional holiday during the school year.

^{5/} Mr. Schmoll told the Superintendent in advance of October 10 that the teachers were going to take Columbus Day as a holiday and the Board approved this action of the teachers at its meeting on October 10, 1977.

November 11, 1977 and was denied at each level of the grievance procedure, final action being November 29, 1977 (see R-1 through R-4).

13. An undated document setting forth the policies of the Board was introduced; paragraph 8.5.5 (23) of which provides that the Board of Education "reserves the right to cancel or revoke permits at any time." This provision was cited by the Board at the hearing as the basis for denying the grievance at the final step (R-4).

14. The impact on the Association of the withdrawal of use of school buildings is as follows: (1) the Association's budget has had to be increased for rentals of school property and notices of meetings; (2) the processing of grievances has been impeded by inability to meet and consult with members of the Association on grievances at school, which in at least one instance resulted in failure to comply with the time limitations under the grievance procedure; and (3) small meetings to prepare for such matters as negotiations have been made more difficult.

THE ISSUE

Did the Respondent Board violate the Act when it unilaterally on October 10, 1977 withdrew from the Association use of school building facilities in alleged retaliation for the Association's members having failed to ratify the agreement on September 22 and September 23, 1977 and for having taken off Columbus Day, October 10, 1977?

DISCUSSION AND ANALYSIS

Positions of the Parties

The Respondent Board concedes that, at least under certain circumstances, the use of school facilities by a public employee representative is a mandatorily negotiable subject, referring to Union County Regional Board of Education, P.E.R.C. No. 76-17, 2 NJPER 50 (1976). The Respondent then cites cases pertinent to the doctrine that "totality of conduct" is the touchstone as to whether the Respondent in this case has negotiated in good faith. Next the Respondent cites cases pertinent to the "waiver rule", urging that the Association herein has by its post October ratification conduct waived the right to complain about the Respondent's alleged failure to negotiate in good faith. Then, citing Haddonfield Borough Board of Education, P.E.R.C. No. 77-31, 3 NJPER 71 (1977), the Respondent contends that the Association has not proven by a preponderance of the evidence that the Respondent committed discrimina-

tory actions with anti-union motivation. The Respondent does not address the question, as urged by the Association, that part of the alleged retaliation against the Association was the failure of its members to ratify the negotiated collective agreement on September 22 and September 23, 1977.

The Association first contends that the Respondent, by withdrawing the Association's access to school facilities, has unilaterally altered a mandatorily negotiable term and condition of employment and has violated Subsections (1) and (5) of the Act. In support of this position, the Association also cites Union County Regional Board of Education, supra, and several cases from other jurisdictions. Urging that there exists a binding past practice, the Association also cites New Brunswick Board of Education, P.E.R.C. No. 78-47, 4 NJPER 84 (1978), appeal pending, App. Div., Docket No. A-2450-77. The Association also notes that in negotiations for the current collective negotiations agreement the Board persuaded the Association to withdraw a contract proposal with respect to the use of school facilities, based on the assurance by the Board's chief negotiator that the Board had no plans to deny the Association access to school facilities. The Association dismisses any contention by the Respondent Board that "negotiations" continued after the October 9 ratification of the collective negotiations agreement by the Association. Further, the policy which the Board invoked as a basis for the withdrawal of school facilities, namely, paragraph 8.5.5 (23) (R-4), was not evolved in the process of negotiations, and was not cited by the Board in its communication to the Association regarding withdrawal of school facilities (CP-1). The Association also notes that the Board, through its superintendent, had approved the use of school facilities by the Association for 1977-78 school year prior to the ratification vote of the Association for the successor collective negotiations agreement. Finally, the Association contends that the Respondent Board violated Subsections (2) and (3) of the Act, citing in support of the alleged violation of Subsection (a)(3), the Haddonfield decision, supra.

The Respondent Board Violated
Subsections (a)(1) and (5) of
The Act When, on October 10,
1977, It Unilaterally Withdrew
The Use Of School Facilities
By The Association

The Hearing Examiner finds and concludes that the Respondent Board

violated Subsection (a)(5), and derivatively Subsection (a)(1)^{6/} of the Act, when it unilaterally, and without prior negotiations, withdrew from the Association the use of school facilities on October 10, 1977. In so concluding, the Hearing Examiner cites New Brunswick Board of Education, supra, for the proposition that there existed a binding past practice upon the Board in connection with the Association's use of school facilities for meetings over many years. The New Brunswick case was concerned with the alteration of a salary practice in the context of an eleven-month contract. However, the rationale clearly applies to the instant case.

The Commission first observed that:

"N.J.S.A. 34:13A-5.3 states in pertinent part that: 'Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established.' It is well established in the private sector that during the term of a collective negotiations agreement there is a continuing obligation to collectively negotiate, among other things, the resolution of disputes not covered by the existing agreement. This above provision of the Act evidences the Legislature's acceptance of this principle. Where, during the term of an agreement, a public employer desires to alter an established practice governing working conditions . . . employer must first negotiate such proposed change with the employees' representative prior to its implementation." (Footnotes omitted)(Emphasis supplied).

4 NJPER at 85

Specifically, in its holding, the Commission said that:

"...Even though under the then existing law the Board could unilaterally alter the practice of eleven-month contracts, it could not unilaterally alter the established salary practice for this eleventh month of employment without first negotiating the issue. This unilateral alteration of an existing term and condition of employment during the term of an agreement constituted an unfair practice complete in itself." (Footnotes omitted)(Emphasis supplied).

4 NJPER at 85

That the use of school facilities by the Association is a "term and condition" is made clear by the decision of the Commission in Union County Re-

^{6/} See Galloway Township Board of Education, P.E.R.C. No. 77-3, 2 NJPER 254, 255 (1976).

gional Board of Education, supra, a case which, on its facts, pertains to the use of school bulletin boards and other facilities for the purpose of the incumbent collective negotiations representative communicating with its members. There the Commission said (2 NJPER at 52):

"...The School Boards have an interest in conducting the schools, including the efficient use of these school facilities, in as stable a manner as is legally possible. Their authority is effected, however, by the Act's requirement that they negotiate in good faith with the majority representative of their employees concerning terms and conditions of employment. On such condition of employment is the ability of the employees to communicate in furtherance of the rights guaranteed by the Act. The School Boards thus have an obligation to negotiate over access to school facilities by its employees in furtherance of their legal collective activities..." (Emphasis supplied).

Thus, based upon New Brunswick and Union County, supra, it is clear that the past use of school facilities by the instant Association is an established term and condition of employment, as to which there must be mandatory negotiations between the parties in order to effect any change. ^{7/} It is noted here that the withdrawal of the use of school facilities by the Board had a substantial impact on the operations and effectiveness of the Association (see Finding of Fact No. 14, supra).

Further, in support of the instant finding and conclusion of the Hearing Examiner, the Hearing Examiner finds that the Respondent Board is estopped from unilateral withdrawal of the use of school facilities by the Association, in view of its representation to the Association in negotiations for the current collective negotiations agreement that there was no need for the Association to urge the inclusion of their proposal in the agreement regarding school facilities because there had never been a problem in the past. Obviously, but for this representation by the Board's chief negotiator, the Association would not have withdrawn its proposal for inclusion of a provision with respect to the use of school facilities in the current collective negotiations agreement.

^{7/} Byram Board of Education and Byram Township Education Association, 152 N.J. Super 12, 27-29 (App. Div. 1977), affirming P.E.R.C. No. 76-27, 2 NJPER 143 (1976).

The Hearing Examiner specifically rejects the contention of the Respondent Board that there was any conduct by the Association that could constitute a waiver by the Association of its right to proceed on the instant charge.^{8/} The Board argues that a waiver occurred on the part of the Association when it did not, during the wrap-up following ratification on October 9, continue to press for the inclusion of a contract provision on use of school facilities following the Board's withdrawal of the use of school facilities on October 10. The Hearing Examiner finds and concludes that the several wrap-up sessions following formal ratification on October 9, 1977, were not "true" negotiations with respect to terms and conditions of employment, but were rather devoted solely to the placement of certain teachers on the salary guide based upon after-school activities. Although not urged by the Board, the Hearing Examiner concludes that resort by the Association first to the grievance procedure did not amount to a waiver of the right to file an unfair practice charge.

The Hearing Examiner finally finds and concludes that the Board is not insulated from a finding that it committed unfair practices by the fact that its withdrawal of the use of school facilities applied equally to the Educational Secretaries Association. Obviously, the Board would want to maintain even-handedness in its dealings with two collective negotiations units in so far as the use of the school facilities is concerned. The Hearing Examiner notes that teachers' unit outnumbers the secretaries unit by a ratio of at least 10 to 1. Clearly, the Association cannot be affected by the failure of the Secretaries Association to file unfair practice charges with the Commission.

The Hearing Examiner makes no finding and draws no conclusion that the Board's action of October 10, 1977, in withdrawing the use of school facilities from the Association, was in retaliation or reprisal for either the failure of the Association's members to ratify the collective negotiations agreement on September 22 or September 23, 1977 or the fact that the Association's members took October 10, 1977 as a holiday. The resolution of the question of retaliation or reprisal is, in the opinion of the Hearing Examiner, not necessary or pertinent to deciding the basic issue presented and, thus, the applicability of Haddonfield, supra, will not be considered.

The Hearing Examiner finds no violation by the Board of Subsections (a)(2) and (a)(3) of the Act and will recommend that these allegations be dismissed.

^{8/} The doctrine of waiver is to be sparingly applied and limited to instances of clear and unequivocal conduct or contract language. See, for example, North Brunswick Township Board of Education, P.E.R.C. No. 79-14 (pp. 8,9) (1978), of

* * * *

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

CONCLUSIONS OF LAW

1. The Respondent Board violated N.J.S.A. 34:13A-5.4(a)(1) and (5) when it unilaterally, on October 10, 1977, withdrew the use of school facilities by the Association.

2. The Respondent Board did not violate N.J.S.A. 34:13A-5.4(a)(2) and (3) by its actions of October 10, 1977.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER:

A. That the Respondent cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act by unilaterally withdrawing from the Association the use of school facilities.

2. Refusing to negotiate in good faith with the Association changes in terms and conditions of employment, including unilateral withdrawal by the Respondent of the use of school facilities by the Association.

B. That the Respondent take the following affirmative action:

1. Forthwith, advise the Association that it may use school facilities for the purposes utilized by the Association in the past, prior to October 10, 1977.

2. Negotiate in good faith with the Association with respect to any changes in terms and conditions of employment, including any proposed change in the use by the Association of school facilities.

3. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A". Copies of such notice, on forms to be provided by the Commission shall be posted by the Respondent 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 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 has taken to comply herewith.

C. That the allegations of a violation of Subsections (a)(2) and (3) in the Complaint be dismissed in their entirety.



Alan R. Howe
Hearing Examiner

DATED: December 12, 1978
Trenton, New Jersey

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, restrain or coerce our employees in the exercise of the rights guaranteed to them by the Act by unilaterally withdrawing from the Association the use of school facilities.

WE WILL negotiate in good faith with the Association with respect to any changes in terms and conditions of employment, including any proposed change in the use of school facilities by the Association.

TOWNSHIP OF WEST DEPTFORD BOARD OF EDUCATION

(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) 292-9830