

P.E.R.C. NO. 97-11

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BELLEVILLE BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-95-147

BELLEVILLE SUPERVISORS ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the Belleville Board of Education violated the New Jersey Employer-Employee Relations Act when it refused to negotiate with the Belleville Supervisors Association concerning compensation for workload increases for unit supervisors. The Complaint was based on an unfair practice charge filed by the Belleville Supervisors Association.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Respondent, Gaccione, Pomaco & Beck  
(Frank Pomaco, of counsel)

For the Charging Party, Lake & Schwartz  
(Robert M. Schwartz, of counsel)

DECISION AND ORDER

On October 31, 1994, the Belleville Supervisors Association filed an unfair practice charge against the Belleville Board of Education. The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (3) and (5),<sup>1/</sup> by assigning

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<sup>1/</sup> These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (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."

supervisors to lunchroom supervision, thereby unilaterally increasing their worktime and workload.

On January 23, 1995, a Complaint and Notice of Hearing issued. On February 11, the Board filed its Answer asserting that it acted pursuant to a managerial prerogative, contractual right, and past practice. It further asserts that lunchroom supervision does not extend the workday, but merely restricts how supervisors spend the workday.

On March 23, 1995, the Association filed an amendment alleging that the Board violated subsection 5.4(a)(5) when it negotiated over the supervisors' employment conditions with an organization other than their exclusive representative. The Complaint was amended, but the Board did not file an Amended Answer.

On May 16, 1995, Hearing Examiner Jonathon Roth conducted a hearing. The parties examined witnesses, introduced exhibits, and filed post-hearing briefs.

On August 22, 1995, the Hearing Examiner issued his report and recommended decision. H.E. No. 96-3, 21 NJPER 315 (¶26201 1995). Finding that the Board had increased the supervisors' workload by assigning them to supervise 75 minute lunchroom periods, he concluded that the Board violated the Act by refusing to negotiate over compensation for the increased workload. He also concluded that the Board did not violate the Act by negotiating with the Association of Belleville School Administrators over lunchroom supervision for supervisors.

On September 8, 1995, the Board filed exceptions. It contends that: undue emphasis should not be placed on the number of duties in the supervisors' job description; the Association did not notify the Board that it wished to discuss compensation; and the Association did not prove that supervisors were working longer or that they needed to work longer.

On September 11, 1995, the Association filed exceptions. It urges adoption of the Hearing Examiner's first recommendation, but rejection of the conclusion that the Board did not violate its rights as the supervisors' exclusive representative by negotiating with the administrators' representative over the assignment of lunchroom duty to supervisors.

We have reviewed the record. We incorporate the Hearing Examiner's findings of fact (H.E. at 2-9). We reject the Board's contention that "[a]t no time was the Board ever notified that the Association wished to discuss compensation." The Association's president testified that she approached the superintendent a number of times and that there were no negotiations (T28).

The unilateral imposition of working conditions contradicts the Legislature's goal that terms and conditions of public employment be established through bilateral negotiation between the public employer and a majority representative. Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25, 48 (1978); N.J.S.A. 34:13A-5.3. However, this collective negotiations scheme also recognizes that some matters are outside the scope of negotiations

because binding agreement on them would significantly interfere with the determination of governmental policy. See Local 195, IFPTE v. State, 88 N.J. 393 (1982).

Workload and compensation for teaching staff members are mandatorily negotiable subjects to be addressed through the collective negotiations process. At the same time, a school board has a duty to ensure student safety and control. Restrictions on that duty significantly interfere with the determination of governmental policy and are therefore not mandatorily negotiable. In re Byram Tp. Bd. of Ed., P.E.R.C. No. 76-27, 2 NJPER 143 (1976), aff'd 152 N.J. Super. 12, 24-25 (App. Div. 1977). This case focuses on the interplay of these two rights -- the Board's right to assign supervision duties to ensure student safety and the Association's right to negotiate over workload and compensation.

The Association does not contest the assignment of lunchroom supervision to supervisors and merely seeks compensation for alleged workload increases. But the fact that the Board had an uncontested right to assign lunchroom duties to supervisors does not answer whether it had a duty to negotiate over compensation for those assignments. The question we must focus on is whether a workload increase has occurred, thereby triggering a duty to negotiate over possible extra compensation for this increase.<sup>2/</sup>

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<sup>2/</sup> Even where a workload increase results from a reduction in force, a duty to negotiate over compensation will arise where the increase is significant and measurable. Rahway Bd. of Ed., P.E.R.C. No. 88-29, 13 NJPER 757 (¶18286 1987).

Supervisors have a contractual workday of 8:00 a.m. to 4:00 p.m. Their duties are enumerated in job descriptions. Those duties include curriculum improvement and articulation; checking lesson plans; observing and evaluating department personnel; conducting in-service training; and ordering supplies. Not all duties are performed daily. Different supervisors have different job descriptions, but they all include this provision: "All other duties and assignments as determined by the Superintendent of Schools or his designee."

Before the 1994-95 school year, the principal of each elementary school supervised students during their lunch period. Beginning in 1994-95, supervisors were assigned to supervise elementary school students during their lunches. These lunch periods lasted 75 minutes. In addition, the supervisors had to travel to and from elementary schools in order to supervise these lunch periods. One supervisor testified that after the assignments, she reported for work between 6:30 a.m. and 7:00 a.m. rather than 7:45 a.m. She also testified that she did more work at home. Another supervisor testified that she no longer took her 20 minute lunch break and that she worked longer hours at the end of the day.

The Board contends that the addition of 75 minutes of lunchroom supervision plus travel time did not increase the supervisors' workload. While we agree with the Board that the Association did not present additional witnesses to verify the supervisors' testimony about staying late or skipping lunch, nothing

in the record contradicts or undercuts that testimony. Nor does any evidence show that supervisors could add 75 minutes of student supervision plus travel time each day and still complete all their assigned duties without extending their workday. While the supervisors' workday may be characterized as unstructured and self-directed, they have substantial duties in regards to observing and evaluating teachers and in curriculum improvement and articulation. It is reasonable to infer that adding an extra 75 minutes plus travel time of student supervision on top of those duties increases their workload.

The Association's president asked the superintendent to negotiate over some form of compensation for the additional duties. No negotiations occurred. In finding a violation of the duty to negotiate, the Hearing Examiner inferred that negotiations over compensation did not occur because the Board refused to negotiate. That inference is reasonable, uncontradicted in the record, and consistent with the Board's position that negotiations were not required. Accordingly, we adopt the Hearing Examiner's conclusion that the Board violated subsection 5.4(a)(5) and we order negotiations over possible compensation for workload increases, retroactive to September 1994. However, we will not order the Board to post a notice of this violation of the Act.

The Hearing Examiner dismissed the Association's amendment concerning the sidebar understanding with the administrators' representative because the "assignment of supervision duties is not

mandatorily negotiable" and the Board "is not bound by the disputed provision." H.E. at 16. A close examination of that understanding reveals that it is nothing more than a statement of the Board's intent to assign supervisors to lunchroom supervision to assist principals. The Board did not violate the Act by declaring that intent. It violated the Act when it assigned the duties and then refused to negotiate over compensation for increased workload. We have remedied that violation.

We appreciate the charging party's concerns about its right as exclusive representative of supervisors. However, it appears that principals had their own concerns about lunchroom supervision. The sidebar understanding addressed those concerns. Standing alone, that understanding did not violate the Act. Under these circumstances, we believe that our earlier findings and the resulting order adequately recognize and protect the charging party's exclusive right to negotiate terms and conditions of employment for supervisors.

Finally, we adopt the Hearing Examiner's recommendation to dismiss the subsection 5.4(a)(3) allegation.

ORDER

The Belleville Board of Education is ordered to:

A. Cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by refusing to negotiate in good faith with the



Belleville Supervisors Association concerning compensation for workload increases for unit supervisors.

2. Refusing to negotiate in good faith with the Belleville Supervisors Association concerning compensation for workload increases for unit supervisors.

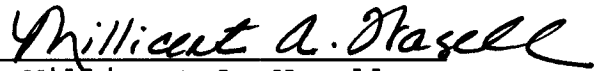
B. Take this action:

1. Negotiate with the Association over the possibility of compensation for workload increases for unit supervisors, retroactive to September 1994.

2. Notify the Acting Chair of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply with this order.

The remaining allegations in the Amended Complaint are dismissed.

BY ORDER OF THE COMMISSION



Millicent A. Wasell  
Acting Chair

Acting Chair Wasell, Commissioners Buchanan, Finn, and Wenzler voted in favor of this decision. Commissioner Ricci voted against this decision. Commissioner Boose abstained from consideration. Commissioner Klagholz was not present.

DATED: August 29, 1996  
Trenton, New Jersey  
ISSUED: August 30, 1996

H.E. NO. 96-3

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

In the Matter of

BELLEVILLE BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-95-147

BELLEVILLE SUPERVISORS ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Belleville Board of Education violated subsections 5.4(a)(1) and (5) of the Act by refusing to negotiate upon demand, compensation for 75 minute lunchroom supervision assignments to supervisors represented by the Belleville Supervisors Association. The Hearing Examiner determined that previous lunchroom assignments to some supervisors did not establish a "past practice" amounting to a term and condition of employment.

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. 96-3

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

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BELLEVILLE BOARD OF EDUCATION,

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Appearances:

For the Respondent, Gaccione, Pomaco & Beck  
(Frank Pomaco, of counsel)

For the Charging Party, Lake & Schwartz  
(Robert M. Schwartz, of counsel)

HEARING EXAMINER'S REPORT  
AND RECOMMENDED DECISION

On October 31, 1994 and March 23, 1995, the Belleville Supervisors Association filed an unfair practice charge and amended charge against the Belleville Board of Education. The charge alleges that beginning in the 1994-95 school year, unit employees were unilaterally assigned 75 minutes daily of lunchroom supervision in elementary schools, requiring additional travel time. The assignment was ordered without negotiations, allegedly resulting in an increase in workload and work time. The amended charge alleges that the Board negotiated terms and conditions of employment for supervisors with the majority representative of another negotiations unit. The Board's actions allegedly violate subsections 5.4(a)(1),

(3) and (5)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

On January 23, 1995, the Director of Unfair Practices issued a Complaint and Notice of Hearing.

On February 11, 1995, the Board filed an Answer, denying it engaged in any unfair practice and asserting it had a contractual right to assign the work; that it was consistent with past practice and that it exercised a managerial prerogative.

On May 16, 1995, I conducted a Hearing at which the parties examined witnesses and presented exhibits. Post-hearing briefs were filed by July 17, 1995.

Upon the record, I make the following:

#### FINDINGS OF FACT

1. The Belleville Board of Education is a public employer within the meaning of the Act. The Belleville Supervisors Association is a public employee representative within the meaning of the Act and represents all certificated "professional supervisors" employed by the Board.

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<sup>1/</sup> These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (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."

2. The parties' applicable collective negotiations agreement runs from July 1, 1993 to June 30, 1996. Article X ("Duties") (c) states, "The school day for all unit members shall be from 8:00 a.m. to 4:00 p.m." Article X(d) states, "The area of responsibility for supervisors is as per the position's job description" (J-1).<sup>2/</sup>

3. The Board also negotiates collectively with the Association of Belleville School Administrators which represents principals, vice principals and directors. Their agreement also runs from July 1, 1993 to June 30, 1996 and includes a "side bar 'A' understanding." It states:

the elementary principals have expressed deep concern over the problem of supervising the lunch recess period...it is the intention of the Board to address this problem by one or more or a combination of the following...The Superintendent will assign one supervisor to each elementary school to assist the elementary principal in supervising the lunch period (J-2).

4. Paula Cummis is supervisor of language arts/reading, K-12 and president of the Association (T15). Her job description, promulgated in 1990, requires her to "develop a total reading and language arts program for the entire school district" (CP-1). The description specifies it is a ten month, 8 a.m.-4 p.m. position with additional summer hours. Qualifications for the position include an advanced degree and a supervisor's or principal's certificate.

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<sup>2/</sup> "J" refers to joint exhibits; "T" refers to the transcript of the proceeding, followed by a page number; "CP" refers to charging party exhibits; "R" refers to respondent exhibits.

The description enumerates 27 duties designed to enhance the "English curriculum." Among them are liaising between teaching staff and administration, ordering classroom equipment and textbooks, checking lesson plans, conducting monthly departmental meetings, participating in the hiring and evaluating of department personnel, completing reports required by the State or district, administering diagnostic tests and assisting in integrating reading programs. The second enumerated duty states, "Supervisor will have no teaching assignments."<sup>3/</sup> The 27th "duty" states, "Any other duties or assignments as determined by the Superintendent of Schools or his designee" (CP-1).

5. In 1993-94 and 1994-95, Cummis supervised 38 teachers whom she observed and formally evaluated (T17, 18). Cummis did not have a regular lunchroom duty assignment in 1993-94 (T23; T40).

In the 1993-94 term, Cummis began her workday at 7:45 a.m., took a thirty minute (or longer) lunch period and left the building at 4 p.m. (T26; T28). She "occasionally" brought work home (T27). As a K-12 supervisor, Cummis does not visit each elementary school every day. She "officially" reports to a middle school but frequently started her workday at a high school, which opens before other schools (T22).

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<sup>3/</sup> Five of the eight supervisors have no teaching duties. One K-12 supervisor voluntarily teaches one class. Another supervisor teaches two classes and a 7-12 supervisor teaches two classes (T84).

6. Before the 1994-95 term, "some" supervisors working in the high school had 22 minute lunchroom supervision assignments there (T41; T62; T73). "At least one supervisor" had the assignment on a "regular, steady basis" (T41).

7. Karen Fucello is the supervisor of physical education/Health K-12 and athletics K-12. Her 1990 combined job description requires her to "supervise all health and physical education, K-12", and to observe and evaluate all physical education teachers. She is also responsible for arranging details for the district's participation in inter-scholastic competitions, ticketing, publicity, etc. Among her duties is, "Any other duties or assignments as determined by the superintendent or his designee" (CP-3). She has no teaching assignments (T67). Fucello agreed that she had been assigned work under the catch-all, "and other duties or assignments as determined by the Superintendent or his designee" (T69).

In 1993-94, Fucello arrived at work between 7:30 and 7:45 a.m., usually took a 20 minute lunch break, and sometimes quit work at 8 p.m. or later, after attending all home athletic events (T61; T62). Although Fucello visits the elementary schools, her office is in the high school and in 1993-94 she had no lunchroom supervision assignment (T56; T58). She is vice-president of the Association and did not participate in the most recent collective negotiations (T63).

8. On August 8, 1994, Board Superintendent Michael Lally issued a memorandum directing each of seven named supervisors (including Cummis and Fucello) to report "daily" to one identified elementary school from 11:25 a.m. to 12:40 p.m. (CP-2; T97). All supervisors except one were named in the memorandum; that supervisor commenced supervision in January or February 1995 (T30; T48). The memorandum was also circulated to principals and directors.

9. Association president Cummis knew nothing about the assignments before August 8, 1994 (T20). She denies that lunchroom assignments were discussed in collective negotiations (T30).

Superintendent Lally was a member of the Board's negotiations team (T94). He testified that during negotiations he spoke with Association "lead" negotiator Victor Depaw and,

clearly brought forth the need to redefine specific assignments, one of which or one of those assignments would be the assignment to elementary lunch duty, realizing of course, that this was still and is an administrative prerogative, we did bring this forth during the discussions of potentially restructuring their assignments (T95).

On cross-examination, he agreed that nothing in the collective agreement (J-1) refers to lunchroom assignments (T97).

Richard Graves is a supervisor and member of the Association negotiations team. He attended all sessions, and denies that lunchroom supervision was discussed. He did not hear any discussion between Lally and Depaw concerning lunchroom supervision (T124).



No negotiations notes were presented and no writing corroborates Lally's testimony. Lally's testimony is equivocal because he identifies the assignments as a non-negotiable subject, perhaps undermining the Board's intention to add this item to the negotiations mix.<sup>4/</sup> I find only that Lally mentioned "potential restructuring" of supervisor assignments to Depaw.

10. Lally was also asked about the "side bar A understanding" in the administrators agreement (See finding #3). The administrators negotiations team "produced significant data substantiating the need for...supervisory assistance...during the elementary lunch period" (T96). Lally continued,

When I became superintendent we made a viable effort to correct those conditions and place the welfare and safety of children first. We were able to do that because of the schedule and the flexibility of the supervisors situation (T96).

11. After August 8, 1994, Association president Cummis asked Superintendent Lally to negotiate compensation for the lunchroom assignments. No negotiations occurred (T28).

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<sup>4/</sup> Lally was asked on cross-examination,

Q: ...you testified on direct examination that [lunchroom duty] was discussed during negotiations?

A. That was correct. I also said it was discussed and it was an administrative and managerial prerogative, hence, it did not have to be negotiated.

Q: So, it wasn't negotiated?

A: It didn't have to be. [T180].

12. In 1994-95, Cummis started her workday between 6:30 and 7 a.m. She took no lunch period. Her day "usually" ended at 4 p.m. and she brought home more work in 1994-95 than she did in 1993-94 (T26; T27). Cummis spends about five minutes travelling in each direction between the middle school and her assigned elementary school (T24). In 1994-95, the Board did not relieve her (or any other supervisor) of any duty enumerated in her job description (T25) (see finding #4). She attributes the changes in her schedule to the lunchroom supervision assignment, though she conceded that the Board did not delete her lunch period (T39; T45).

13. In 1994-95, Fucello was assigned lunchroom supervision in elementary school #9, about a 5-7 minute drive from her office in the high school (T58). She also was not relieved of any duties enumerated in her job description (T60). She continues to arrive for work between 7:30 and 7:45 a.m. but forgoes lunch breaks altogether. Fucello works longer hours at the end of the day as a result of the assignment -- if, for example, she has a 7 p.m. meeting scheduled, she will work from 4 to 6:30 p.m. These extended hours occurred about 50% more often than in 1993-94 (T62; T72-73).

14. Lally maintained that the assignment is a managerial prerogative, obviating the need to negotiate its "effect." (T108-109). He also maintained that the assignments are "not a factor" in the supervisors' workdays (T111). He testified,

The schedule is rather flexible, perhaps too flexible. As has been indicated, there are no or

minimal teaching assignments. The schedule is undemanding in my judgment in that there is minimal accountability as to where supervisors report other than at 8 a.m. and depart at 4 p.m. For the most part, ...it is an undefined day... (T85).

All supervisors performed well in the 1994-95 term (T94).

### ANALYSIS

The assignment of supervision duties involving student safety and control to teaching staff is not mandatorily negotiable. In re Byram Tp.. Bd. of Ed., P.E.R.C. No. 76-27, 2 NJPER 143 (1976), aff'd 152 N.J.Super. 12 (App. Div. 1977). The method of distributing those assignments and compensation for performing them are mandatorily negotiable. Union Tp. Bd. of Ed. and Union Township Supervisors' Assn., P.E.R.C. No. 89-50, 14 NJPER 692 (¶19295 1988), aff'd NJPER Supp. 2d 215 (¶189 App. Div. 1989) (compensation for assigning supervisory personnel to cafeteria and hall duty is mandatorily negotiable).<sup>5/</sup>

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<sup>5/</sup> In Atlantic Highlands Bd. of Ed., P.E.R.C. No. 87-28, 12 NJPER 758 (¶17286 1986), the Commission was asked to rule on the negotiability of a grievance protesting the assignment of lunchroom supervision to classroom teachers. The Association contended in part that the Board had a "duty to negotiate the severable [workload] consequences" of the assignment, assuming "that neither duty free lunch periods nor preparation time have been encroached upon..." (my emphasis). The Commission determined that the Association "may not submit the Board's requirement that teachers supervise lunch duty to binding arbitration [citation omitted]. However, the severable consequences of this decision, such as compensation and frequency and rotation of such assignments may be submitted to arbitration" [Id. at 759].

Recognizing these principles, the Association does not contest the Board's decision to assign elementary school lunchroom supervision to the supervisors. It maintains however, that the Board has the duty to negotiate, upon demand, compensation for the assignments.

The Board contends that the Association failed to show any increased workload; that the lunchroom assignment "did not take away any duty-free time to which [unit employees] are entitled," and cannot be considered an additional duty because it "falls within their job description." It also argues that supervisor Cummis' testimony failed to show any increase in "work time because of the lack of accountability and structure to a supervisor's workday" and Fucello's "work hours are atypical of a supervisor" (post-hearing brief at p. 3).

Proof of a significant and measurable increase in workload is necessary for a finding that an employer has a duty to negotiate compensation. Bloomfield Bd. of Ed., P.E.R.C. No. 93-95, 19 NJPER 242 (¶24119 1993); Rahway Bd. of Ed., P.E.R.C. No. 88-29, 13 NJPER 757 (¶18286 1987); Linden Bd. of Ed., P.E.R.C. No. 84-137, 10 NJPER 349 (¶15162 1984). Workload increases have been measured by increases in the length of the work week or workday; or increases in the number of teaching periods or pupil contact time; or decreases in the amount of duty-free time or preparation periods. See, e.g., Woodstown-Pilesgrove Reg. H.S. Bd. of Ed. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582 (1980) (increase in workday); Hamilton

Tp. Bd. of Ed., P.E.R.C. No. 90-80, 16  NJPER 176 (¶21075 1990), aff'd  NJPER Supp. 2d 258 (¶214 App. Div. 1991) (increase in pupil contact time);  Newark Bd. of Ed., P.E.R.C. No. 79-38, 5  NJPER 41 (¶10026 1979), aff'd  NJPER Supp. 2d 72 (¶55 App. Div. 1980) (loss of preparation period);  Fair Lawn Bd. of Ed., P.E.R.C. No. 79-44, 5  NJPER 48 (¶10032 1979), aff'd  NJPER Supp. 2d 68 (¶50 App. Div. 1979) (loss of duty-free time);  Englewood Bd. of Ed. v. Englewood Teachers Ass'n,  NJPER Supp. 2d 28 (¶18 App. Div. 1974) (increase in number of teaching periods).

Several important facts of this case are undisputed. The Supervisor's workday is contractually defined from 8 a.m. to 4 p.m. Before September, 1994, "some" supervisors whose offices were in the high school were assigned lunchroom supervision there for 22 minutes per day. In September, 1994, the supervisors were required to travel daily to elementary schools to supervise lunchrooms for 75 minutes. They were not relieved of any duties as an accommodation to this now expanded (unit-wide) and invariably increased responsibility. The Association sought to negotiate compensation for the assignments and the Board refused.

The Board does not directly challenge the testimonies of the supervisors. Cummis arrives an hour earlier (6:30-7 a.m.) than in 1993-94. Fucello works later (to 5 or 6 p.m. on average, one half of any week) and both forgo lunch periods of not less than 20 minutes. Nor did the Board present evidence that other supervisors continue to perform all of their enumerated duties between 8 a.m. and 4 p.m., as they did before September, 1994.

In Ewing Township Bd. of Ed., P.E.R.C. No. 95-99, 21 NJPER \_\_\_\_\_ (¶\_\_\_\_\_ 1995), the Commission found that that Board violated the Act by not negotiating with the Association before increasing the workload of three full-time coordinators by adding a regular teaching assignment to their regular duties (Coordinator work, involving curriculum and evaluation responsibilities is similar to supervisor work in this case). Coordinator job descriptions did not require coordinators to teach in addition to their supervisory responsibilities. Although coordinators did not have a contractually timed workday, the Commission noted that the assignment of one 46 minute teaching period and an additional one to two hours for preparation and grading papers (the least time-consuming example) was an increase in pupil contact time and workday not previously required of those employees. (None of their supervisory duties were removed).

Ewing is consistent with Hamilton Tp. Bd. of Ed. and Hamilton Tp. Administrators and Supervisors Assn., P.E.R.C. No. 87-18, 12 NJPER 737 (¶17276 1986), aff'd NJPER Supp.2d 185 (¶163 App. Div. 1987), certif. den. 111 N.J. 600 (1988). In Hamilton, the Commission found that the Board violated the Act by refusing to negotiate over possible additional compensation for a supervisor assigned teaching duties outside his job description which he performed because of a staff shortage. The supervisor (a "curriculum assistant") did at least an extra hour of work at home, preparing for class and performing assistant duties, like writing

teacher observations. The supervisor performed his normally required duties despite the Board's directive not to extend his workday and to reduce administrative work. Of special relevance is the assistant's not having a set daily schedule and having a "performance responsibility", (the last of 28 in the job description) stating; "performs such other curriculum assistant-industrial arts related tasks as may from time to time be assigned" (H.E. at 12 NJPER 470, n. 3).

The Commission wrote that none of the performance responsibilities "expressly" encompassed classroom teaching and the "general language" of #28 did not do so "impliedly". On the larger issue, the Commission wrote,

This teaching assignment was unrelated to the employee's normal duties and introduced pupil contact responsibilities. The Board's directive to the curriculum assistant not to extend his workday and to reduce his administrative work if necessary does not eliminate the right to negotiations over compensation for duties unrelated to one's normal responsibilities, although this directive may be relevant in negotiating over how much if any, compensation will be paid [Hamilton at 12 NJPER 739].

Ewing and Hamilton demonstrate that the absence of an incrementally defined workday for unit employees does not relieve the public employer of statutory obligations. Specifically, boards of education must negotiate compensation over workload increases resulting from teaching assignments to supervisors not previously required to teach and whose job descriptions did not encompass teaching.

Lunchroom supervision was previously required of "some" supervisors stationed in the high school. The Board contends that the Association waived its right to negotiate over the assigned workload because these 22 minute assignments form a "past practice" for supervisors. It also argues that lunchroom supervision is incorporated into the catch-all duty in supervisor job descriptions.

I disagree. The Board has the burden of proving that the assignment was "established" for at least a majority of unit employees Ewing; see also Bethlehem Tp. Bd. of Ed., P.E.R.C. No. 88-15, 13 NJPER 712 (¶18265 1987); Shamong Tp. Bd. of Ed., P.E.R.C. No. 91-21, 16 NJPER 489 (¶21213 1990). It did not carry this burden. Even if Cummis' and Fuccello's admissions prove a practice, it is limited to those supervisors not required to travel in order to supervise cafeterias. Since all supervisors had to travel to the elementary schools to supervise lunchrooms for 75 minutes, I cannot find that a practice existed amounting to a term and condition of employment. Caldwell-West Caldwell Bd. of Ed., P.E.R.C. No. 80-65, 5 NJPER 536 (¶10276 1979), aff'd in pt., rev'd in pt., 180 N.J.Super. 440 (App. Div. 1981).

Nor has the Board proved that supervisor job descriptions "encompass" or contemplate lunchroom supervision. The catch-all duty is more vaguely worded than the one at issue in Hamilton. Although Fuccello conceded that she had been assigned duties under that provision, nothing in the record suggests they were anything more than temporary, ad-hoc assignments. A catch-all duty in a job



description which is incorporated by reference into a collective agreement is not a "clear and unmistakable" contractual waiver of the Association's right to negotiate compensation over an alleged increase in workload. Red Bank Reg. Ed. Ass'n v. Red Bank Reg. H.S. Bd. of Ed., 151 N.J. Super. 435 (App. Div. 1977), aff'd 78 N.J. 122, 140 (1978).

The Board also contends that the Association failed to prove a workload increase in light of the supervisors' unstructured workdays. Implicit is the contention that the result of the lunchroom assignment is simply an "intensification of work case," where an employee works "harder" within the confines of a negotiated work hours provision. See Bloomfield; Caldwell-West Caldwell Bd. of Ed., P.E.R.C. No. 87-137, 13 NJPER 360 (¶18148 1987), recon. den. P.E.R.C. No. 87-163, 13 NJPER 589 (¶18220 1987).

The argument is more appealing in this case than it would have been in Ewing and Hamilton because supervision is less onerous (and arguably, a less "significant" workload increase) than teaching. A unit employee's voluntary decisions to begin work earlier in the day or stay later and to forgo lunch period does not prove the necessity for those efforts.

On balance, I must recognize that the Association and not the Board presented evidence of the effect of a 75 minute assignment plus travel time in an eight hour workday. Differences between teaching and supervision relate primarily to how much if any, compensation will be paid. They do not eliminate the Association's right to negotiate that compensation.

I recommend that the Board violated subsections 5.4(a)(1) and (5) by refusing to negotiate in good faith with the Belleville Supervisors Association concerning uncompensated increases in workload of supervisors.

I dismiss the amended charge alleging that the Board violated the Act by negotiating terms and conditions of employment for supervisors with the Association of Belleville School Administrators. The disputed clause in the "side bar 'A' understanding" states that the Superintendent will assign supervisors to elementary schools to assist in lunchroom supervision.

The assignment of supervision duties is not mandatorily negotiable. Byram. The Board is not bound by the disputed provision. Under the circumstances of this case, I regard it as the Board's written intention to assign lunchroom supervision to supervisors.

No facts suggest that the Board's actions violated 5.4(a)(3) of the Act. I dismiss that allegation.

RECOMMENDED ORDER

I recommend that the Commission ORDER the Belleville Board of Education to:

A. Cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the

Act, particularly by refusing to negotiate in good faith with the Belleville Supervisors Association concerning uncompensated increases in workload of unit supervisors.

2. Refusing to negotiate in good faith with the Belleville Supervisors Association concerning uncompensated increases in workload of unit supervisors.

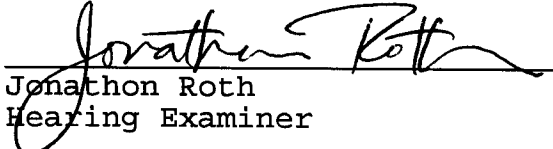
B. Take this action:

1. Immediately enter into negotiations with the Association concerning the uncompensated increases in workload of unit supervisors retroactive to September 1994.

2. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice shall, after being signed by the Respondent's authorized representative, be posted immediately and maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

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

The remaining allegations in the Complaint are dismissed.

  
Jonathon Roth  
Hearing Examiner

Dated: August 22, 1995  
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 with, restrain or coerce employees in the exercise of the rights guaranteed to them by the Act, particularly by refusing to negotiate in good faith with the Belleville Supervisors Association concerning uncompensated increases in workload of unit supervisors.

WE WILL NOT refuse to negotiate in good faith with the Belleville Supervisors Association concerning uncompensated increases in workload of unit supervisors.

WE WILL immediately enter into negotiations with the Association concerning the uncompensated increases in workload of unit supervisors retroactive to September 1994.

Docket No. CO-H-95-147

Belleville 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 the Public Employment Relations Commission, 495 West State St., CN 429, Trenton, NJ 08625 (609) 984-7372.