

P.E.R.C. NO. 82-104

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WOODBIDGE TOWNSHIP BOARD
OF EDUCATION,

Respondent,

-and-

Docket No. CO-81-372-18

WOODBIDGE TOWNSHIP SCHOOL
ADMINISTRATORS ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission adopts a recommendation of a Hearing Examiner and dismisses a Complaint issued on a Charge which the Woodbridge Township School Administrators Association filed against the Woodbridge Township Board of Education. The Charge alleged that the Board violated the New Jersey Employer-Employee Relations Act when it unilaterally left the position of administrative aide open at one school and, as a result, the workload and work time of the school principal increased. The Commission holds that the Association failed to prove that the Board unilaterally increased the contractually specified workload and work time of the principal in question.

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Charging Party.

Appearances:

For the Respondent, Hutt, Berkow, Hollander
& Jankowski, Esqs.
(Robert J. Mascenik, of Counsel)

For the Charging Party, Newman, Herman, Saltman,
Levitt & Feinson, Esqs.
(Robert M. Schwartz, of Counsel)

DECISION AND ORDER

On June 12, 1981, the Woodbridge Township School Administrators Association ("Association") filed an unfair practice charge with the Public Employment Relations Commission. The charge alleged that the Woodbridge Township Board of Education ("Board") violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections (a)(1) and (5),^{1/} when on January 14, 1981, it unilaterally decided to leave the position of administrative aide vacant, and, as a result,

^{1/} 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; and (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."

increased the workload and work time of the principal of the Ross Street School, Dr. Roy Valentine, by requiring him to perform the duties previously carried out by his administrative assistant before the assistant resigned.

On June 28, 1981, the Director of Unfair Practices issued a Complaint and Notice of Hearing pursuant to N.J.A.C. 19:14-2.1. On August 10, 1981, the Board filed an Answer in which it admitted leaving the position of administrative assistant vacant, but denied that this decision resulted in an increase in workload and work time or that the principal was required to perform the administrative assistant's previous duties.

On October 20, 1981, Commission Hearing Examiner Alan R. Howe conducted a hearing and afforded the parties the opportunity to examine witnesses, present evidence, and argue orally. The parties filed post-hearing briefs by November 30, 1981.

On December 4, 1981, the Hearing Examiner issued his Recommended Report and Decision, H.E. No. 82-21, NJPER (¶ _____ 1981) (copy attached). The Hearing Examiner recommended that the Complaint be dismissed. He found that the principal's workload had not increased by virtue of not having an administrative assistant and that the dominant purpose behind the Board's decision to leave that position vacant was educational.

On December 23, 1981, the Association filed Exceptions. It contended that the Hearing Examiner erred when he found that (1) the principal had not suffered an increase in workload, and

(2) the Board acted pursuant to its managerial prerogatives. The Board filed a response on January 25, 1982 in which it accepted the Hearing Examiner's Findings of Fact and Conclusions of Law.

We have reviewed and we adopt the Hearing Examiner's Findings of Fact. We incorporate them here.

We also agree with the Hearing Examiner that the Association has failed to prove that the Board unilaterally increased the contractually specified workload and worktime of the principal of the Ross Street School. The Hearing Examiner's analysis (Slip Opinion at p. 7) of this issue is correct and incorporated here.

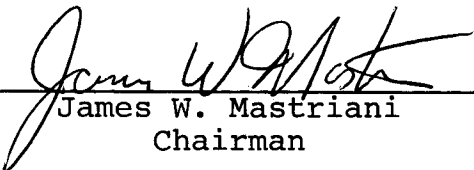
We emphasize the following considerations. The parties' collective agreement treated all elementary school principals the same; no distinctions in compensation or other terms and conditions of employment were based on the number of students in any school or the presence of an administrative assistant in the Ross Street School. The Board had made clear that it would retain an administrative assistant only so long as the student population at the Ross Street School exceeded 500. Before the arrival of an administrative assistant, there were more students (557) at the Ross Street School than after the last administrative assistant resigned (496). The Board never ordered Dr. Valentine to perform duties other principals were not required to perform or to extend his working day. Finally, before and after Dr. Valentine served as the Ross Street School principal, he performed exactly the same duties as the principals of all other elementary schools in

the Board's school district. Under all these circumstances, the Association has not persuaded us that the parties negotiated and established terms and conditions of employment for Dr. Valentine which were different from those concerning all other elementary school principals and dependent upon his, but no other principals, having an administrative assistant.^{2/} Therefore, we do not find a unilateral change in the terms and conditions of employment and dismiss the Complaint.^{3/}

ORDER

IT IS HEREBY ORDERED that the Complaint is dismissed.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hartnett, Butch, Suskin and Hipp voted for this decision. Commissioner Graves abstained. Commissioner Newbaker was not present. None opposed.

DATED: Trenton, New Jersey
May 4 , 1982
ISSUED: May 5, 1982

^{2/} We acknowledge, as did the Hearing Examiner, that Dr. Valentine's individual situation changed because he worked longer hours and performed tasks previously assigned to the administrative assistant. Nevertheless, the Board did not require Dr. Valentine to do anything more than, under its collective agreement with the Association, it expected all other elementary school principals to do.

^{3/} Because of this finding, we do not consider whether the Board's decision fell within the sphere of its managerial prerogatives.

STATE OF NEW JERSEY
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PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

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Respondent,

-and-

Docket No. CO-81-372-18

WOODBRIIDGE TOWNSHIP SCHOOL ADMINISTRATORS
ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent did not violate Subsections 5.4(a)(1) & (5) of the New Jersey Employer-Employee Relations Act when, without negotiations with the Association, it decided on and after December 31, 1980 not to fill the position of Administrative Assistant at the Ross Street School. The dominant issue was an educational goal or objective in the Board's action and thus was not a subject of a mandatory negotiations over any alleged increase in the workload of the School Principal, Roy Valentine. The Hearing Examiner relied on pertinent decisions of the Commission and the Courts as precedent for his decision.

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.

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Appearances:

For the Woodbridge Township Board of Education
Hutt, Berkow, Hollander & Jankowski, Esqs.
(Robert J. Mascenik, Esq.)

For the Charging Party
Newman, Herman, Saltman, Levitt & Feinson, Esqs.
(Robert M. Schwartz, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on June 12, 1981 by the Woodbridge Township School Administrators Association (hereinafter the "Charging Party" or the "Association") alleging that the Woodbridge Township 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 Respondent since on or about December 31, 1980 increased the workload of Roy Valentine, the Principal of the Ross Street School, by requiring him to perform the duties previously performed by his Administrative Assistant, all of which was alleged to be a violation

of N.J.S.A. 34:13A-5.4(a)(1) and (5) 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 July 28, 1981. Pursuant to the Complaint and Notice of Hearing, a hearing was held on October 20, 1981 in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Oral argument was waived and the parties filed post-hearing briefs by November 30, 1981.

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 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 Woodbridge Township Board of Education is a public employer within the meaning of the Act, as amended, and is subject to its provisions.
2. The Woodbridge Township School Administrators Association is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.
3. Roy E. Valentine has been employed by the Board since 1955 and has been an elementary school Principal for ten years, having become the Principal of the

^{1/} 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.

"(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."

Ross Street School in September 1977 where he remained until June 30, 1981.

4. At the time that Valentine became Principal of the Ross Street School in September 1977 he had assigned to him an Administrative Assistant.

5. There had never been an Administrative Assistant position in the entire School District for an elementary school (K-6) prior to the assignment of an Administrative Assistant at the Ross Street School in 1977 nor has there been such an assignment since that time. The reasons for the assignment of an Administrative Assistant at the Ross Street School in September 1977 were twofold: (1) the student population had increased by virtue of the transfer of students from another school which was being closed, namely, the Strawberry Hill School; and (2) the Board responded to parental pressure with respect to anticipated disciplinary problems. The Board agreed to the assignment of an Administrative Assistant for a period of two years. At the time of the assignment of an Administrative Assistant in September 1977 the Ross Street School population was 638 pupils.

6. A job description was prepared for the position of "Elementary School Administrative Assistant" in May 1977 (J-4), which enumerated among the duties and responsibilities in assisting the Principal some 31 one-sentence paragraphs. These duties and responsibilities were summarized by Valentine as consisting of the following: (1) disciplinary problems; (2) bus transportation, including field trips; (3) the distribution of books and materials, involving essentially paper work; (4) the supervision of school and teacher aides; (5) supervising the observation of substitutes and, in 1979-80, regular classroom teachers; and (6) the supervision of playground, lunchroom and fire drills.

7. Valentine, as Principal of the Ross Street School, had an Administrative Assistant from September 1977 to December 31, 1980 when the last assigned Administrative Assistant, Michael Smith, resigned and left the School District. Thereafter Valentine assumed all of the duties of the Administrative Assistant, which

he performed with no additional monetary compensation. The Association filed a grievance over the matter and also requested negotiations. The Board, however, responded in the negative as to both (CP-1, CP-2 and J-2).

8. Valentine testified credibly and without contradiction that on and after December 31, 1980 when he assumed the additional duties and responsibilities of the Administrative Assistant he had to arrive at the School earlier, namely, at 7:00 a.m. instead of at 8:00 a.m. and departed from School between 4:00 p.m. and 4:30 p.m. instead of at 4:00 p.m. During the school day he was under additional pressure in having to oversee a staff of 50 employees, including 20 regular class-room teachers, 10-15 special area teachers and 10-15 aides and custodians. Further, he had a "lunch problem" with no one to relieve him, which required that he leave for lunch at 2:00 p.m. to 2:30 p.m. rather than 1:00 p.m. to 1:15 p.m.

9. Valentine performed the additional duties and responsibilities of the Administrative Assistant from December 30, 1980 through June, 30, 1981, after which he was re-assigned as Principal of the Woodbine Avenue Elementary School commencing September 1981.

10. Prior to becoming Principal of the Ross Street School in September 1977 Valentine was Principal of the Ford Avenue School where, as Principal, he performed the duties of an Administrative Assistant (J-4) though not in the "same quantity." Valentine, as Principal of Woodbine Avenue School, performs the duties and responsibilities of an Administrative Assistant except that he does not have to coordinate pupil transportation (see J-4, para. 2-w). Also, Valentine's staff at the Woodbine Avenue School consists of approximately 32 employees rather than the 50 employees he had at the Ross Street School prior to June 30, 1981.

11. There is no provision in the collective negotiations agreement between the parties (J-1) for additional compensation for School Principals based on the number of students in the school or for any other like factor.

12. The statistical record of the Board established that the school population of the Ross Street School was as follows from September 1974 through June 1981:

<u>Date</u>	<u>Number of Students</u>
9/74	650
9/75	622
9/76	557
9/77	638 (incl. Strawberry Hill)
9/78	589
9/79	555
9/80	510
12/31/80	496
6/81	494

13. The Board never abolished the position of Administrative Assistant at the Ross Street School. When Smith resigned on December 31, 1980 the Board merely left the position vacant. The Board had committed itself to the parents that it would continue to retain an Administrative Assistant as long as the student population remained above 500. As is apparent from Finding of Fact No. 12, supra, the school population of the Ross Street School dropped to 496 students as of December 31, 1980 and continued to drop thereafter.

THE ISSUE

Did the Respondent Board violate Subsections(a)(1) and (5) of the Act when it refused to negotiate an alleged increase in workload for Elementary School Principal Roy Valentine on and after December 31, 1980 when the Respondent decided not to fill the position of Administrative Assistant at the Ross Street School?

DISCUSSION AND ANALYSIS

The Respondent Did Not Violate Subsections(a)(1) And (5) Of The Act When It Refused To Negotiate Regarding Roy Valentine's Alleged Workload Increase On And After December 31, 1980 When the Respondent Decided Not to Fill The Position Of Administrative Assistant At The Ross Street School

Admittedly, the instant case presents a close question. However, the Hearing

Examiner finds and concludes that the Respondent Board did not violate Subsections (a)(1) and (5) of the Act when it refused to negotiate regarding an alleged workload increase of Elementary School Principal Roy Valentine on and after December 31, 1980 when the Respondent decided not to fill the position of Administrative Assistant at the Ross Street School.

The Hearing Examiner is well aware of the decision of the Commission and the Courts, which hold that changes in workload are mandatorily negotiable. See, for example, Newark Board of Education v. Newark Teachers' Union, Local 481, P.E.R.C. No. 79-24, 4 NJPER 486 (1979), P.E.R.C. No. 79-38, 5 NJPER 41 (1979), aff'd. App. Div. Docket No. A-2060-78 (1980) and Bridgewater-Raritan Regional Board Education, P.E.R.C. 81-35, 6 NJPER 449 (1980).

It is noted that the Commission in Bridgewater-Raritan, supra, applied the Woodstown-Pilegrove^{2/} directive that there be "weighing or balancing" as to whether or not the "dominant issue is an educational goal" (81 N.J. at 591). In its decision the Commission cited the Appellate Division decision in Newark Board of Education, supra, where the Court said that "... a teacher's workload is a term and condition of employment which is mandatorily negotiable, even though the change in the workload was caused by a change in educational policy ... (citations omitted) ..."

The initial question to be resolved herein is whether there was proof by a preponderance of the evidence that Principal Roy Valentine's workload was illegally increased on and after December 31, 1980 when the Respondent Board decided not to fill the position of Administrative Assistant at the Ross Street School. The next question is whether the "dominant issue" in the Board's conduct was the attainment of an educational goal and, thus, the proper exercise of a managerial prerogative negating an obligation to negotiate.

2/ Woodstown-Pilegrove Regional School District v. Woodstown-Pilegrove Regional Education Association, 81 N.J. 582 (1980).

The Hearing Examiner is impressed by the following essential facts. There has never been an Administrative Assistant in any of the Respondent's elementary schools except for the period from September 1977 through December 31, 1980 at the Ross Street School. Valentine has worked as a Principal at three schools over the past ten years and only at the Ross Street School did he have an Administrative Assistant. No other Principal of an elementary school in the School District has ever had an Administrative Assistant. The Board agreed to the assignment of an Administrative Assistant in September 1977 at the Ross Street School when, as the result of a merger of the Strawberry Hill School, the population of the Ross Street School reached 638 pupils. This was an increase in school population from the prior year when the population of the Ross Street School was 557 pupils. The Board, in response to parental pressures, agreed to the assignment of Administrative Assistant for period of two years. At the time the Board decided not to fill the position of Administrative Assistant on and after December 31, 1980 the school population at the Ross Street School had dropped to 496 pupils. Finally, there is no provision in the collective negotiations agreement for additional compensation for school Principals based on the number of students in the school or any other like factor.

Under the foregoing facts and circumstances, the Hearing Examiner is persuaded that it would be incongruous and inequitable considering the entire School District at the elementary school level for the Hearing Examiner to find and conclude that Valentine suffered an increased workload between December 31, 1980 and June 30, 1981 at the Ross Street School by virtue of not having an Administrative Assistant. The Hearing Examiner takes especial note of the fact that in September 1974 the school population of the Ross Street School was 650 pupils, 12 pupils in excess of the school population in September 1977 upon the merger of the Strawberry Hill School, and that notwithstanding this fact, there was no Administrative Assistant at the Ross Street School in September 1974.

The Board was clearly exercising a valid managerial prerogative when it concluded that it had fulfilled its commitment to the parents at the Ross Street School that an Administrative Assistant would be continued only as long as the student population remained at 500 pupils: City of Paterson, P.E.R.C. 80-99, 6 NJPER 91 (1980) (filling of vacancies is a permissive subject of negotiations)^{3/}

The Hearing Examiner also cites the Appellate Division decision in Caldwell-West Caldwell Education Association v. Caldwell-West Caldwell Board of Education, 180 N.J. Super. 440 (1981) where the Court held that a small increase in the number of minutes of instruction per day was "... inspired primarily by an educational objective" and that a "... board of education should have sufficient discretion to make this change without prior negotiations so long as the change is not unduly burdensome ..." (180 N.J. Super. at 448).

The Hearing Examiner is persuaded that under the above-cited decisions of the Commission and the Courts the dominant issue in the Board's decision not to fill the position of Administrative Assistant at the Ross Street School was educational and that any resulting change in the workload of Valentine on and after December 31, 1980 was "not unduly burdensome ...", taking into consideration that no other Principal in the School District had ever had an Administrative Assistant.

The Hearing Examiner finds the instant case clearly distinguishable from Jackson Township Board of Education, P.E.R.C. 80-48, 5 NJPER 484 (1979), appeal dismissed, App. Div. Docket No. A-1232-79(1980) where an increase in workload was held to be mandatorily negotiable under the circumstances of no other employee of the Board having been like situated. There the duties assigned to one Frank Morra, after his transfer to a new position in the administration, were considerably increased over and above those in his job description at the time that he commenced his new assignment.

^{3/} The filling of vacancies would appear to be an illegal subject of negotiations under the decision of the New Jersey Supreme Court in Paterson PBA v. City of Paterson, 87 N.J. 78 (1981).

Based on all of the foregoing facts and legal precedent, the Hearing Examiner must recommend dismissal of the instant Unfair Practice Charge.

* * * *

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

CONCLUSION OF LAW

The Respondent Board did not violate N.J.S.A. 34:13A-5.4(a)(1) and (5) when it decided on and after December 31, 1980 not to fill the position of Administrative Assistant at the Ross Street School without negotiations with the Charging Party with respect to an alleged increase the workload of Principal Roy Valentine.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER that the Complaint be dismissed in its entirety.



Alan R. Howe
Hearing Examiner

Dated: December 4, 1981
Trenton, New Jersey