P.E.R.C. NO. 83-11

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOUND BROOK BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-81-99-105

BOUND BROOK EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge the Bound Brook Education Association filed against the Bound Brook Board of Education. The charge had alleged that the Board violated the New Jersey Employer-Employee Relations Act, specifically subsections 5.4(a)(1) and (5), when it unilaterally extended the time certain elementary school teachers had to spend in the classroom. The Commission finds that the parties' contract authorized the increase in classroom time.

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BOUND BROOK BOARD OF EDUCATION,

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Docket No. CO-81-99-105

BOUND BROOK EDUCATION ASSOCIATION,

Charging Party.

Appearances:
For the Respondent, Westling, Lime & Welchman, Esqs. (William P. Westling, of Counsel)

For the Charging Party, Mandel, Wysoker, Sherman, Glassner & Weingartner, Esqs. (Jack Wysoker, of Counsel)

DECISION AND ORDER

On October 6, 1980, the Bound Brook Education Association (the "Association") filed an unfair practice charge against the Bound Brook Board of Education (the "Board") with the Public Employment Relations Commission. The Association alleged that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), specifically subsections 5.4(a)(1) and (5),[1/] when, in the summer of 1980 and during the life of a collective agreement, the Board enacted a resolution unilaterally extending the time certain elementary school teachers had to spend in the classroom.

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."

On February 23, 1981, the Director of Unfair Practices issued a Complaint and Notice of Hearing. On March 5, 1981, the Board filed an Answer in which it admitted increasing classtime for grades 1 and 2 by 10 minutes each day. Citing In re Pascack Valley Regional High School, P.E.R.C. No. 81-61, 6 NJPER 554 (¶11280 1980) (Pascack Valley), the Board averred that the parties' contract authorized this change because it provides for a 7 hour and 15 minute workday for teachers and the change resulted in a workday of only 6 hours and 10 minutes. The Board also alleged that it notified the Association of the proposed change in May, 1980.

On April 10, 1981, Commission Hearing Examiner Alan R. Howe conducted a hearing at which the parties presented stipulations of fact, exhibits, and the testimony of one teacher. The parties filed post-hearing briefs by May 1, 1981.

On May 8, 1981, the Hearing Examiner issued his report and recommendations, H.E. No. 81-43, 7 NJPER 279 (¶12125 1981). He found that the Board violated subsections 5.4(a)(1) and (5) when it unilaterally increased, by ten minutes per day, the class-room time for eight teachers in grades 1 and 2 at the Lafayette and Smalley Elementary Schools.

On May 21, 1981, the Board filed Exceptions. It asserted that: (1) the parties' contract authorized the change in pupil contact time, so long as the length of the school day was not extended, and (2) it had offered to discuss the change well before implementation, but the Association did not make a timely demand to negotiate.

On August 18, 1981, the Commission, finding the record inadequate, remanded the matter for further evidence on the Board's contractual defense and its claim that it offered to discuss the change before making it. P.E.R.C. No. 82-22, 7 NJPER 508 (¶12226 1981).

On January 18, 1982, the Hearing Examiner conducted a second hearing. The parties examined witnesses and presented evidence. They waived oral argument, but filed post-hearing briefs.

On April 1, 1982, the Hearing Examiner issued his second report and recommendations, H.E. No. 82-44, 8 NJPER ____ (¶_____ 1982) (copy attached). Reasoning that the increase in classroom time only affected eight out of 120 teachers in the unit and was therefore *de minimis*, he found that the Board had not violated subsections 5.4(a)(1) and (5). He relied upon *Caldwell-West Caldwell Ed. Assn. v. Caldwell-West Caldwell Bd. of Ed.*, 180 *N.J. Super*. 440 (1981), a decision which issued after his initial report.

On April 12, 1982, the Association filed Exceptions. It contends that the Hearing Examiner erred in considering whether the change was *de minimis* since the Commission had not remanded the matter for that purpose and, in any event, finding the change *de minimis*. It further argues that the Board did not have a managerial prerogative to make the change since parental convenience, rather than educational policy, motivated it.

On April 20, 1982, the Board filed Cross-Exceptions. It contends once more that the collective agreement authorized

the increase in classroom time. It also contends that the Hearing Examiner erred in excluding testimony concerning negotiations after the implementation of the change.

We have reviewed the record. The record contains substantial evidence supporting the Hearing Examiner's findings of fact. We adopt and incorporate them. We do not, however, adopt adopt the Hearing Examiner's conclusion of law.

Our review of the record, and specifically the terms of the parties' collective agreement, persuades us that the Board had a contractual right to make the change it did. Therefore, the Board did not violate subsections 5.4(a)(5) or (1).

Article 13 entitled "Teaching Hours and Teaching Load," provides, in part:

> 13:1
> WORKDAY
>
> Length of the regular workday for elementary school teachers (K through 6) will be 7 hours and 15 minutes, including the lunch period....

and

> 13:4.2
> [PREPARATION PERIODS FOR ELEMENTARY SCHOOLS]
> (excepting Kindergarten)
>
> The Board will make every effort to permit 3 preparation periods per week for regular classroom teachers in the elementary school (excepting Kindergarten).

In addition, a management rights clause (Article 11:5) states that the Board retains the right to manage the school district and direct employees, except as specifically limited by the agreement, the grievance procedure clause (Article 4:5.1) makes non-arbitrable any matter not specifically covered by a contractual

provision, and a zipper clause (Article 2:4) states that the agreement incorporates the entire understanding of the parties on all matters which were or could have been negotiated. There is no clause preserving the parties' past practices.

Although the Board has increased the classroom time of some teachers by ten minutes a day, while decreasing the classroom time of other teachers by five minutes a day, it is undisputed that the Board has not exceeded the contractually specified length of the work day, increased the number of teaching periods, or intruded upon the contractually provided preparation and lunch periods. The school day starts at 8:30 a.m. and ends six hours and ten minutes later, well within the seven hour and fifteen minute contractual limitation.

Two of our recent cases guide our analysis. In _In re Randolph Township School Board_, P.E.R.C. No. 81-73, 7 _NJPER_ 23 (¶12009 1980), a board of education required a teacher to give speech therapy lessons from 3:00 p.m. to 3:30 p.m. twice a week while the schoolday ended for the other teachers at 3:15 p.m. The contract stated that the work day would not exceed 7 hours and 30 minutes a day and the teaching load would not exceed six periods a day or 28 hours of teaching a week. In holding that the collective agreement authorized the increase in classroom time and the work day, we reasoned:

> As previously noted, the collective bargaining agreement in force states that the normal work day would be no more than seven hours and thirty minutes. When the Board required Ms. Lisa to work an additional 15 minutes per day twice a week, her total work day on those days was extended from seven hours and fifteen minutes to seven hours and thirty minutes. Ms. Lisa's new work schedule was therefore in compliance with the collective bargaining agreement.

* * *

> The Association, in its exceptions, maintained that there was a past practice of working less than the period of time Ms. Lisa was scheduled to be in school on the days in question and that such a past practice should control over the terms of the collective agreement. We disagree. It is not necessary to address any past practice of working less than that period of time required of Ms. Lisa by the Board since the provisions of the collective agreement control over past practices where, as here, the mutual intent of the parties concerning work hours "can be discerned with no other guide than a simple reading of the pertinent language." In re New Brunswick Board of Education, 4 NJPER 84 (¶4040 1978), motion for reconsideration denied, 4 NJPER 156 (¶4073 1978).
>
> The language in the present collective negotiations agreement, with respect to working hours, is clear and unambiguous and readily supports the Hearing Examiner's recommendations that the unfair practice charge herein be dismissed in its entirety.
> Supra at p. 24.

In Pascack Valley, a board of education increased classroom time thirty minutes each day as a result of a change in the number and length of periods. The collective agreement provided that the school work day would not exceed six hours and fifty-one minutes, including a duty free period and a planning period, and the normal teaching load would be five periods. Because the change in classroom time did not offend these contractual limitations, we dismissed the Complaint. See also In re Maywood Bd. of Ed., 168 N.J. Super 45, 59-60 (1979); cf In re Freehold Borough Bd. of Ed., P.E.R.C. No. 83-38, 7 NJPER 604 (¶13369 1981) (assuming workload increased, contract permitted such increase).

In re Dover Bd. of Ed., P.E.R.C. No. 81-110, 7 NJPER 161 (¶12071 1981), aff'd App. Div. Docket No. A-3380-80 (March 15, 1982), is inapposite. There, a school board violated subsections

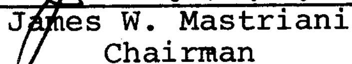
5.4(a)(5) and (1) when it increased the number of class periods from seven to eight, thus increasing classroom time by 35 minutes per day. No contractual defense was asserted; the collective agreement was not even introduced because it contained no germane provisions. In re Dover Bd. of Ed., H.E. No. 81-23, 7 NJPER 65, 70, n.3 (¶12025 1981). Thus, there was no basis for considering whether the parties had agreed to allow the board to vary pupil contact time within contractually set limits on length of the work day, number of class periods, and number of preparation, lunch, or other free periods. Here, by contrast, the collective agreement, when read as a whole, establishes that the Board had the right to make the five and ten minute adjustments in classroom time it did, provided it did not trespass upon the contractual clauses setting the length of the workday and the number of free periods within the work day. Accordingly, Randolph and Pascack control, and we dismiss the Complaint.[2/]

2/ We need not and do not decide the negotiability of the Board's action since we have found a contractual defense. We seriously question, however, whether a change in an otherwise negotiable term and condition of employment becomes non-negotiable solely because it only affects a few employees in a unit. We further caution that this case is of limited precedential value since it turns on a question of contractual interpretation which can only be resolved by consideration of the terms of the particular contract before us, how those terms interrelate with one another, and the nature and extent of a particular change.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

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

DATED: Trenton, New Jersey
July 20, 1982
ISSUED: July 21, 1982

H. E. No. 82-44

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

In the Matter of

BOUND BROOK BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-81-99-105

BOUND BROOK EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Board did not violate Subsections 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act when it unilaterally, and without negotiations with the Association, increased the daily teacher-pupil contact time by 10 minutes for certain of its elementary school teachers. Since only eight out of 120 teachers were affected and since the school day was not lengthed, the Hearing Examiner concluded that any violation of the Act was *de minimis*, citing *Caldwell West-Caldwell Ed. Assn. V. Caldwell-West Caldwell Bd. of Ed.*, 180 *N.J. Super*. 440 (1981).

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. 82-44

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

In the Matter of

BOUND BROOK BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-81-99-105

BOUND BROOK EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Bound Brook Board of Education
Westling, Lime & Welchman, Esqs.
(William P. Westling, Esq.)

For the Bound Brook Education Association
Mandel, Wysoker, Sherman, Glassner & Weingartner, Esqs.
(Jack Wysoker, Esq.)

HEARING EXAMINER'S RECOMMENDED REPORT AND DECISION ON REMAND

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on October 6, 1980 by the Bound Brook Education Association (hereinafter the "Charging Party" or the "Association") alleging that the Bound Brook 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 without negotiations with the Charging Party extended the teacher pupil contact time and workload for certain elementary school teachers in August 1980, all of which was alleged to be a violation of N.J.S.A. 34:13A-5.(a)(1) and (5) of the Act.[1/]

1/ These Subsections prohibit public employers, their representatives, or agents from:
"(1) Interfering with, restraining or coercing employees in the exercise of 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."

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 February 23, 1981. Pursuant to the Complaint and Notice of Hearing a hearing was held on April 10, 1981 in Trenton, 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 memoranda by May 4, 1981.

The Hearing Examiner issued a Recommended Report and Decision on May 8, 1981, in which he found a violation of a Subsections(a)(1) and (5) of the Act: H.E. No. 81-43, 7 NJPER 279 (1981). Under date of August 18, 1981 the Commission remanded the matter to the Hearing Examiner "...for the purpose of reopening the record to receive testimonial and documentary evidence as well as additional legal argument with respect to all relevant issues bearing upon the Complaint in this matter..." P.E.R.C. No. 82-22, 7 NJPER 508, 509 (1981).

Thereafter, efforts were made by parties to settle the matter amicably and when these efforts failed a hearing was scheduled and held in Newark, New Jersey on January 18, 1982. Oral argument was again waived and the parties filed their second post-hearing memoranda by March 15, 1982.

* * * *

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 two post-hearing memoranda 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 Bound Brook Board of Education is a public employer within the menaing of the Act, as amended, and is subject to its provisions.

2. The Bound Brook Education Association is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

3. The relevant collective negotiations agreement between the parties was effective during the term July 1, 1978 through June 30, 1981 (J-1).

4. Article 1:1 of the said collective negotiations agreement provides, inter alia, that the Association is recognized as the exclusive representative for all teachers employed by the Respondent Board (J-1, pp. 1, 2).

5. Article 13:1 of the said collective negotiations agreement provides as follows:

> Length of the regular workday for elementary school teachers (K through 6) will be 7 hours and 15 minutes, including the lunch period. The length of the regular workday for secondary school teachers (7 through 12) will be 7 hours and 25 minutes, including the lunch period. On Fridays the teachers' workday will normally cease at the end of the students' day. (J-1, p.32).

6. Article 2:4 of the said collective negotiations agreement provides as follows:

> This Agreement incorporates the entire understanding of the parties on all matters which were or could have been the subject of negotiation. During the term of this Agreement neither party shall be required to negotiate with respect to any matter whether or not covered by this Agreement. (J-1, p.4).

7. Under date of May 15, 1980 the Superintendent of the Respondent, George H. Daniel, sent a letter to the President of the Association, Edith Trautwein, advising that the Respondent was planning to institute a uniform dismissal time for all students in grades K-6 and indicated that the dismissal time would be 2:45 p.m. (J-2).[2/]

8. On the same day, May 15, 1980, Association President Trautwein wrote to Superintendent Daniel and, at the end thereof, made reference to Article 13:1, supra, and then stated that she would be in touch with Daniel after an Association meeting on May 20, 1980 (CP-1).

2/ The dismissal time change was later modified by the Board (J-3, infra).

9. On May 21, 1980 Trautwein wrote to Daniel, in which she objected on behalf of the affected teachers on several grounds, principally, that the increase in teacher-student contact time, under established past practice, would constitute a change in working conditions (CP-2). Additionally, she questioned whether or not the increase in teacher-student contact time was beneficial to the "younger students."

10. During the first or second week in June 1980 Trautwein met with Daniel and stated that the affected teachers felt very strongly about the proposed change, to which Daniel responded that it was easier for the parents to pick up children with a uniform release time schedule. Both Trautwein and Daniel acknowledged that this meeting was not a negotiations meeting but merely an informal discussion. Trautwein indicated that the teachers were willing to discuss the matter further. Daniel testified credibly that the Association never demanded negotiations nor requested additional compensation.

11. Superintendent Daniel testified credibly that on July 18, 1980 he met informally with Association President Trautwein in an informal discussion regarding the proposed change in dismissal time and that Trautwein made no request for additional compensation.

12. Under date of July 21, 1980 the Board adopted a resolution setting the hours of dismissal for the 1980-81 school year as follows: for K-3 elementary school teachers at 2:40 p.m.;[3/] and for grades 4-6 elementary school teachers at 2:45 p.m. (J-3).

3/ It was stipulated that the preschool or "K" teachers are not involved herein (2 Tr. 4, 8). It was also stipulated that certain special teachers at the Smalley and Lafayette Schools may or may not be involved depending on their teaching schedule (2 Tr. 4-8). All eight elementary teachers in grades 1 and 2 at the two schools are involved (2 Tr. 4, 5).

13. The proposed change in dismissal time was implemented on September 4, 1980 in accordance with the foregoing resolution without collective negotiations with the Association.[4/]

14. As a result of the foregoing action of the Respondent Board the teacher-pupil contact time for eight elementary and certain special teachers in grades 1 and 2 at the Smalley and Lafayette Schools was increased by 10 minutes per day inasmuch as the dismissal time had previously been 2:30 p.m. The teacher-pupil contact time for four 3rd grade teachers at each school was reduced by 5 minutes per day inasmuch as the dismissal time had previously been 2:45 p.m.

15. There was a total of 120 teachers employed by the Board in September 1980.

16. Two affected school teachers testified that, as a result of the increase in teacher-pupil contact time of 10 minutes per day, they were required to provide for tutorial, discipline, preparation and parent-teacher conferences either earlier or later in the school day.

NOTE: The Hearing Examiner sustained an objection by counsel for the Charging Party to the proffer of any evidence regarding events occurring after the implementation of the Board's resolution on September 4, 1980 on the ground of relevance. Counsel for the Respondent made an offer of proof, including Exhibits R-1 through R-3 (for "Identification" only), which concerned negotiations actions by the parties for a successor agreement to J-1.

THE ISSUE

Did the Respondent Board violate Subsections(a)(1) and (5) of the Act when, without negotiations with the Charging Party, it unilaterally increased the teacher-pupil contact time by ten minutes per day for eight elementary teachers and certain special teachers at the Smalley and Lafayette Schools for the 1980-81 school year, *i.e.*, was this change in terms and conditions mandatorily negotiable?

4/ On September 29, 1980 Superintendent Daniel told Judy Donahue, a member of the Association's Grievance Committee, that the Board was acting within its managerial prerogative in having made the change (2 Tr. 76).

DISCUSSION AND ANALYSIS

The Respondent Board Did Not Violate Subsections(a)(1) And (5) Of The Act When, Without Negotiations With The Association, It Unilaterally Increased The Teacher-Pupil Contact Time By 10 Minutes Per Day For Certain Elementary Teachers At The Smalley And Lafayette Schools For The 1980-81 School Year

The Hearing Examiner finds and concludes that the Respondent Board did not violate Subsections(a)(1) and (5) of the Act when, without negotiations with the Association, it unilaterally increased the teacher-pupil contact time by 10 minutes per day for eight elementary teachers and certain special teachers in grades 1 and 2 at the Smalley and Lafayette Schools beginning with the 1980-81 school year.

Since the issuance of the instant Hearing Examiner's Recommended Report and Decision on May 8, 1981, *supra*, a significant development has occurred. The Appellate Division issued a decision on August 7, 1981 in *Caldwell-West Caldwell Education Association v. Caldwell-West Caldwell Bd. of Ed.*, 180 *N.J. Super*. 440, which raises the question as to whether or not the Charging Party's allegations of a violation of the Act should not be dismissed on the ground that any violation is *de minimis*.

In *Caldwell-West Caldwell* the facts essential to the instant case involved a 15-minute increase in classroom time (one mod) for certain CORE teachers, which involved an increase in preparation for classroom instruction and in more student papers to be read and graded, all of which occurred without any change in the overall length of the school day. The Court first cited *Woodstown-Pilesgrove*[5/] where the Supreme Court held that if the dominant issue concerns an educational goal it falls within the managerial prerogative of a board of education and there is no obligation to negotiate the subject matter. The Supreme Court said, *inter alia*:

5/ See *Woodstown-Pilesgrove Board of Education v. Woodstown-Pilesgrove Education Association*, 81 *N.J.* 582 (1980).

> "It is only when the result of bargaining may significantly or substantially encroach upon the management prerogative that the duty to bargain must give way to the more pervasive need of educational policy decisions..." (81 N.J. at 593).

The facts in Woodstown-Pilesgrove concerned two additional hours that teachers were required to work on the day before Thanksgiving. The Board sought to change the dismissal time from 1:00 p.m. to 3:00 p.m., affecting all teachers, and, thus, the question concerned payment for two additional hours of work on the day before a holiday. In these circumstances the Supreme Court found no "..particularly significant educational purpose..." involved and it held that "...the budgetary consideration being the dominant element, it cannot be said that negotiation and binding arbitration of that matter significantly or substantially trenched upon the managerial prerogative of the board of education..." (81 N.J. at 594).

In contrast, the Court in Caldwell-West Caldwell found that the change of one mod per day was "unquestionably" a matter of "educational policy falling entirely within the prerogatives of the Board." (180 N.J. Super. at 447). The Court then said:

> "...The Board must have some flexibility in making managerial decisions. The concept of preexisting practices should not be so rigidly adhered to as to require negotiation of every minute deviation. Unless there is room in the joints for modification and adaptation necessary to make the system work, educational machinery would become stalled in endless dispute... Here the issue was whether a block of seven mods set aside for math and science and a like block of time set aside for English and social studies could be extended one mod or 15 minutes a day in exchange for equivalent mods of cafeteria supervision duty. Being inspired primarily by an educational objective, 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 447, 448). (Emphasis supplied).

While it may be argued that seeking to achieve a common dismissal time of 2:40 p.m. for grades 1 to 3, which adversely affected eight (8) elementary teachers plus certain special teachers out of a total of 120 teachers in the district, is not in furtherance of an educational objective or purpose, the Hearing Examiner finds and concludes that although the educational component in a common dismissal time may not

appear to be of great moment, the resultant additional 10 minutes per day of instruction is consistent with an educational objective or purpose as determined by the Board. Thus, the Hearing Examiner concludes that the instant case is governed by Caldwell-West Caldwell where the Court, in finding no violation of the Act, said:

> "Thus, we are impelled to rule that a change from preexisting practice which is directly related to an educational purpose should not be measured by caliper and micrometer. Boards of education must be given some room to manage between contracts without being forced to bargain over every move they make... Disputes of a relatively minor nature arising in the interim must be quelled, and the aggregate of minor grievances should be resolved by compensatory across-the-board allowances in the next contract." (180 N.J. Super. at 449). (Emphasis supplied).

The cases cited by the Charging Party do not persuade the Hearing Examiner that the result herein should be different.

1. In City of Bayonne Board of Education v. Bayonne Teachers' Association, P.E.R.C. No. 80-58, 5 NJPER 499 (1979), aff'd. App. Div. Docket No. A-945-79 (1980), pet. for certif. den. 87 N.J. 310 (1981) the Commission, after an arbitrator's award, held that a nine-minute change in all High School teachers' duty-free time to a supervisory assignment, prior to the commencement of homeroom classes, involved a mandatorily negotiable term and conditions of employment. It is first noted that the nine-minute change affected on all High School teachers.[6/]

Further, in Bayonne there was a specific contract provision setting forth the "sign in" time and the time for commencement of homeroom classes, a period of 15 minutes, during which teachers had free time. An arbitrator determined, prior to the Commission's decision, that reducing the 15-minute free time by nine minutes was a violation of the agreement and an increase in the teachers' workload. All of the foregoing distinguishes Bayonne from the instant case.

6/ Just as all Middle School teachers were affected in Dover Board of Education P.E.R.C. No. 81-110, 7 NJPER 161 (1981), aff'd. App. Div. Docket No. A-3380-80 (1982).

2. In East Brunswick Board of Education, P.E.R.C. No. 82-26, 7 NJPER 542 (1981), decided after Caldwell-West Caldwell, supra, a grievance sought to be arbitrated was held to be arbitrable where all teaching staff members were directed by the Board to be at their teaching station each day 20 minutes before and after school. The Board asserted that its directive was related to student safety and security. The Association countered that it violated the existing agreement, which provided only that teachers should report to work 20 minutes before the opening of the students' day and then stated that teachers should not be required to remain 20 minutes after the close of the students' day. The Commission found that the change was negotiable and arbitrable under Bayonne, supra. The Hearing Examiner notes that, once again there was a specific contract provision involved, which was allegedly violated, unlike the instant case. Further, the Board's action affected all teachers in the district unlike the eight "plus" teachers involved herein.

3. Finally, In Wanaque Borough District Board of Education, P.E.R.C. No. 82-54, 8 NJPER 26 (1981), also decided after Caldwell-West Caldwell, supra, the Commission held arbitrable a grievance alleging that the school board violated the agreement when it required all teachers, on days of inclement weather, to supervise students during the 15 minutes normally used by teachers for preparation before students are admitted into the school building. The Commission relied upon an earlier Wanaque case [7/] and Bayonne, supra. Unlike the instant case, once again there was in Wanaque duty-free or non-supervisory time for all teachers. Also, unlike the instant case, there was a specific contract provision, which was allegedly violated.

In view of the conclusion of the Hearing Examiner that the charge should be dismissed on de minimis grounds, there is no need to consider the applicability

7/ P.E.R.C. No. 80-13, 5 NJPER 414 (1979).

of a case relied upon the Respondent Board herein, namely, Pascack Valley Regional High School District Board of Education, P.E.R.C. No. 81-61, 6 NJPER 554 (1980).

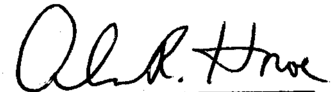
Upon the foregoing, and upon the entire record in this case, the Hearing Examiner makes the following:

CONCLUSION OF LAW

The Respondent Board did not violate N.J.S.A. 34:13A-5.4(a)(1) and (5) when it unilaterally, and without negotiations with the Association, increased the teacher-pupil contact time by 10 minutes per day for eight elementary teachers and certain special teachers in grades 1 and 2 at the Smalley and Lafayette Schools for the 1980-81 school year.

RECOMMENDED ORDER

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



Alan R. Howe
Hearing Examiner

Dated: April 1, 1982
Trenton, New Jersey