P.E.R.C. NO. 87-46

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RUMSON-FAIR HAVEN REGIONAL HIGH
SCHOOL BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-86-175-148

RUMSON-FAIR HAVEN REGIONAL
SCHOOL EMPLOYEES ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a complaint based on an unfair practice charge filed by the Runson-Fair Haven Regional School Employees Association against the Rumson-Fair Haven Regional High School Board of Education. The charge alleged the Board violated the New Jersey Employer-Employee Relations Act when during successor contract negotiations, it circumvented the Association by dealing directly with individual staff members concerning terms and conditions of employment. The Commission, in agreement with a Hearing Examiner, finds that the Board did not seek to negotiate with anyone other than the Association concerning any terms and conditions of employment, nor did the Board seek to undermine the Association's status as majority representative.

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RUMSON-FAIR HAVEN REGIONAL
SCHOOL EMPLOYEES ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Reussille, Mausner, Carotenuto, Bruno & Barger, Esqs. (Martin M. Barger, of counsel)

For the Charging Party, Oxfeld, Cohen & Blunda, Esqs. (Mark J. Blunda, of counsel)

DECISION AND ORDER

On January 13, 1986, the Rumson-Fair Haven Regional School Employees Association ("Association") filed an unfair practice charge against the Rumson-Fair Haven Regional High School Board of Education ("Board"). The charge alleges 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), (2), (3) and (5),[1/] when

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; (2) Dominating or interfering with the formation, existence or administration of any employee organization; (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act; 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."

during successor contract negotiations, it circumvented the Association by dealing directly with individual staff members concerning terms and conditions of employment. Specifically, it alleges that on November 20, 1985, the Board issued a memorandum to science teachers concerning the possibility of scheduling science labs before or after the regular school day and that the Board dealt directly with individual staff members concerning their graduation workday and duties.

On April 2, 1986, a Complaint and Notice of Hearing issued. On April 9, 1986, the Board filed its Answer. It denies that it dealt directly with individual staff members concerning terms and conditions of employment.

On May 21 and 22, 1986, Hearing Examiner Alan R. Howe conducted hearings. The parties examined witnesses and introduced exhibits. They filed post-hearing briefs by June 30, 1986.

On July 17, 1986, the Hearing Examiner recommended dismissing the Complaint. H.E. No. 87-4. 12 NJPER ___ (¶_____ 1986). He found that notwithstanding the exclusivity principles enunciated in Lullo v. Int'l Ass'n of Fire Fighters, 55 N.J. 409, 426 (1970) and Newark Bd. of Ed., P.E.R.C. No. 85-24, 10 NJPER 545 (¶15254 1984), the Board did not negotiate directly with the science teachers about their work schedule, but merely sought their opinion. He found also that the Board's request for assistance regarding several contemplated changes in graduation practices did not violate the exclusivity principle. He found a change from voluntary to mandatory attendance at graduation to be a

non-negotiable managerial prerogative. Finally, he concluded that the parties' contract permitted the Board to schedule the workday and graduation practices at its discretion as long as teachers work no more than seven hours per day.

On July 30, 1986, the Association filed exceptions. It contends that the Hearing Examiner erred when he found that: 1) the Board's dealings with science teachers did not violate the exclusivity principle; 2) the Board's actions regarding possible changes in graduation day were lawful; and 3) the contract permitted the Board to change teachers' graduation participation and workday.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 4-9) are accurate. We adopt and incorporate them here.

The gravaman of the Association's charge is that the Board violated the Act when it "dealt directly" with teachers over possible changes in terms and conditions of employment. We find no such violation.

N.J.S.A. 34:13A-5.3 provides, in part:

> Representatives designated or selected by public employees for the purposes of collective negotiation by the majority of the employees in a unit appropriate for such purposes or by the majority of the employees voting in an election conducted by the commission as authorized by the act shall be the exclusive representatives for collective negotiations concerning the terms and conditions of employment of the employees in such unit.

We have consistently stressed that this exclusivity principle is a "cornerstone of the Act's structure for regulating the relationship between public employers and public employees." Newark Bd. of Ed.; Mt. Olive Bd. of Ed., P.E.R.C. No. 84-73, 10 NJPER 34, 36 (¶15020 1983); New Jersey Dept. of Law & Public Safety, I.R. No. 83-2, 8 NJPER 425, 427 (¶13197 1982); see generally, Lullo. Thus, in Newark, we found that the unilateral creation of a salary bonus incentive program and the solicitation of suggestions from individual employees about the nature of the reward program violated the Act because the topics were mandatory subjects of negotiation and the Union's right to exclusive representation status was undermined by the solicitation. In that case, the employer bypassed the majority representative, unilaterally changed terms and conditions of employment and then solicited individual employee suggestions concerning the "nature of the reward." In New Jersey Dept. of Law and Public Safety, the Chairman found that an employer violates the exclusivity principle when it holds meetings with a minority representative, over the objection of the exclusive representative, to adjust grievances concerning terms and conditions of employment. In this case, however, we do not believe the exclusivity principle was violated because there is nothing in the record that shows that the Board sought to negotiate with anyone other than the Association concerning any terms and conditions of employment, nor did the Board seek to undermine the Association's status as majority representative. No negotiations were conducted

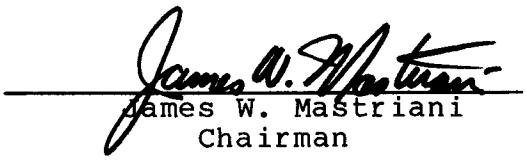
whatsoever. No individual's terms and conditions of employment were adjusted. No unilateral action was taken. Rather, the Board merely circulated a memorandum soliciting science teachers' advice on possible changes in the teaching of science labs and established a Graduation Advisory Committee to review certain contemplated changes in graduation practices. We do not, under the circumstances of this case, believe that such actions constitute "direct dealing." Compare Hawthorne Bd. of Ed., P.E.R.C. No. 82-62, 8 NJPER 41 (¶13019 1982). The Board was seeking input to further the Board's awareness of facts so that a prudent management decision could be made. There is nothing in our Act under these circumstances which would prohibit the Board from making such inquiries.

In view of this determination, we need not address whether the Association waived its right to negotiate changes in hours of work. We do not endorse or adopt the Hearing Examiner's analysis of this issue.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Reid abstained.

DATED: Trenton, New Jersey
October 30, 1986
ISSUED: October 31, 1986

H.E. NO. 87-4

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

In the Matter of

RUMSON-FAIR HAVEN REGIONAL HIGH
SCHOOL BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-86-175-148

RUMSON-FAIR HAVEN REGIONAL
SCHOOL EMPLOYEES ASSOCIATION,

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent Board did not violate §§5.4(a)(1), (2), (3) or (5) of the New Jersey Employer-Employee Relations Act when its Superintendent caused a survey to be sent to science teachers, soliciting their opinion on the possibility of changing the schedule of the science labs by one hour nor by the Superintendent's establishing unilaterally an advisory committee of faculty to explore his desire to make graduation attendance mandatory in June 1986. The Hearing Examiner concluded that the Superintendent had the necessary authority under the terms of the collective negotiations agreement and, thus, there was a waiver on the part of the Association to complain about his conduct. Further, the doctrine of exclusivity was not violated.

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. 87-4

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

In the Matter of

RUMSON-FAIR HAVEN REGIONAL HIGH
SCHOOL BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-86-175-148

RUMSON-FAIR HAVEN REGIONAL
SCHOOL EMPLOYEES ASSOCIATION,

Charging Party.

Appearances:

For the Respondent
Reussille, Mausner, Carotenuto, Bruno & Barger, Esqs.
(Martin M. Barger, Esq.)

For the Charging Party
Oxfeld, Cohen & Blunda, Esqs.
(Mark J. Blunda, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on January 13, 1986, by the Rumson-Fair Haven Regional School Employees Association[1/] (hereinafter the "Charging Party" or the "Association") alleging that the Rumson-Fair Haven Regional High

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1/ As amended at the hearing.

School Board of Education [2/] (hereinafter the "Respondent" or the "Board") has 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 during the course of negotiations for a successor collective negotiations agreement, beginning October 15, 1985, the Board has circumvented the Association by dealing directly with individual staff members, and particularly, by transmitting a memorandum on November 20, 1985, directly to the science teachers concerning a possible change in the scheduling of science labs for the succeeding year, which memorandum requested that the science teachers sign and return the memo indicating their individual preference regarding "modification" of the workday; that the Superintendent furthered this plan by announcing it to the Board and by letter dated November 22, 1985, the President of the Association protested to the Superintendent; that the Board has further undermined the Association's exclusive representative status by seeking to modify the workday from 8:40 a.m.-2:40 p.m. to 12 noon-7:00 p.m. for graduation over the objections of the Association as set forth in a letter dated November 4, 1985; that in furtherance of its efforts to change the workday for graduation the Board formed a staff committee, which ultimately rejected the Board's planned changes for graduation; all

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2/ As amended at the hearing.

of which is alleged to be in violation of N.J.S.A. 34:13A-5.4(a)(1)-(3) & (5) of the Act.[3/]

It appearing that the allegations of the Unfair Practice Charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on April 2, 1986. Pursuant to the Complaint and Notice of Hearing, hearings were held on May 21 and May 22, 1986, in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. There were extensive stipulations of fact made at the hearing on May 21, 1986. Oral argument was waived and the parties filed post-hearing briefs by June 30, 1986.

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

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3/ 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; (2) Dominating or interfering with the formation, existence or administration of any employee organization; (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act; (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

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 Rumson-Fair Haven Regional High School Board of Education is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. The Rumson-Fair Haven Regional High School Employees Association is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

3. The applicable collective negotiations agreement between the parties was effective during the term July 1, 1984 through June 30, 1986 (J-1).

4. On or about October 15, 1985, the parties commenced negotiations for a successor agreement to J-1.

5. At or about this time the Association submitted to the Board a written contract proposal providing, inter alia, for a schoolday consisting of seven hours, beginning at 7:50 a.m. and ending at 2:50 p.m. This proposal also provided that the contract limitation on teaching classes per day of five would also apply to teachers having science labs.

6. Since October 15, 1975, the negotiating committees for the parties have met and engaged in collective negotiations, including discussion of the Association's proposals with regard to

the teacher workday and the contractual schedule for science teachers. As of the date of the hearings in this matter the parties had reached impasse in their negotiations and a mediator had been appointed, who had conducted one session.

* * * *

7. On November 20, 1985, the Superintendent, John J. Ward, caused a memorandum to be sent to all science teachers from Louis Mitchell, the Coordinator of Instructional and Administrative Services (CP-1). This memorandum dealt with a possible change in the scheduling of science labs for the succeeding year. Each of the recipients, there being eight science teachers, was requested to indicate at the bottom of CP-1 whether he or she was interested in alternative scheduling by placing a "check" on the appropriate line and signing and returning same. Among the choices offered was teaching a "before school lab" from 7:00 a.m. to 2:00 p.m. each day or an "after school lab" from 8:40 a.m. to 3:40 p.m. each day.[4/]

8. On November 22, 1985, Susan F. Ryscavage, the President of the Association, sent a letter to Superintendent Ward, protesting the effort to deal individually with the science teachers regarding changes in their work hours (CP-2). Ryscavage requested

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4/ The Superintendent testified that Mitchell had brought up the suggestion of having science teachers conduct their labs before and after school because of the limited number of labs. The adoption of Mitchell's proposed changes would, according to the Superintendent, have meant the staggering of the 7-hour day, which he felt he could take up directly with the staff in order to ascertain their interest.

an "immediate retraction of the request for answers to this survey...." Ryscavage testified that prior to sending CP-2 she had received inquiries from two science teachers as to whether or not they needed to complete the questionnaire (CP-1, supra). After contacting an NJEA representative, John Molloy, she informed the inquiring teachers that they did not have to complete the survey.5/

9. At a November 1985 meeting of the Board's Education Committee the Superintendent indicated that plans were being made for early morning and late afternoon science labs for the following year, which would give students added flexibility to schedule courses. An excerpt of these minutes was introduced in evidence as CP-5. The before school and after school science labs were ultimately offered to students late in January 1986 and continued to April 1, 1986, after which they were dropped for lack of student interest.

10. At no time did the Board include among its contract proposals a change in the scheduling of science teachers and the science labs. The results of the survey (CP-1, supra) have not mentioned in negotiations.6/

5/ Ryscavage testified that in December 1985 she received an anonymous handwritten note in her mailbox which contained the comments of seven of the eight science teachers to the Mitchell survey (CP-1, supra), which indicated that four out of the seven were interested in the staggered science labs (CP-6).

6/ Article 20:1 of J-1 provides, in part, that the work week for teachers shall consist of seven hours per day and Article 20:2

Footnote Continued on Next Page

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11. Since the early 1970's teachers in the district have participated in graduation exercises on a voluntary basis. After the June 1985 graduation the Superintendent spoke to Robert Moir, a veteran teacher and the Second Vice-President of the Association for five years, regarding problems at the graduation and the need for greater staff involvement. Moir agreed with the Superintendent that something needed to be done. Ryscavage was told by Moir that the Superintendent indicated that on graduation day there would be a luncheon and that graduation would be advanced so as to be completed by 7:00 p.m. Thus, the workday for teachers on the day of graduation would be changed from 7:40 a.m.-2:40 p.m. to 12 noon-7:00 p.m. and attendance would be mandatory.

12. During the fall of 1985, the Superintendent discussed with the Association his proposal regarding graduation day for 1986 at what are called "communication" meetings. On September 19, 1985, Ryscavage sent a letter to the Superintendent, advising him that the Association was concerned about the plans of the administration for graduation day. However, Ryscavage testified that the Association was not adamantly opposed to the proposed changes for graduation day but did want to negotiate the matter.

6/ Footnote Continued From Previous Page

provides, in part, that no teacher shall be required to teach more than five classes per day "...except in the case of teachers conducting science laboratory classes..." (J-1, p. 20).

13. On October 22, 1985, the Superintendent sent a memo to nine teachers as members of a Graduation Advisory Committee, which he had unilaterally established, requesting their assistance regarding several contemplated changes in graduation practices (R-1). He requested a response as to whether they were interested in serving on this Committee. Of the nine teachers, all of whom were members of the Association, only Moir declined.

14. The Graduation Advisory Committee met twice, once in October and once in December 1985, and the members of the Committee told Ryscavage that at the first meeting Ward said that mandatory attendance was required for graduation and at the second meeting Ward made the same statement, after which the members of the Committee offered suggestions. Ward thanked the Committee members but stated he was going to mandate attendance at the graduation at all events.[7/]

15. The position of Ward and the administration, regarding the change in the hours of work for graduation day, was that it was permitted under Article 20:1 of J-1, in particular, that the workday of seven hours may include additionally "...such occasional

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7/ On November 4, 1985, Ryscavage wrote to the Superintendent, advising him that any change in the hours of the workday must be negotiated and requested a negotiating meeting (CP-3). Ward never responded to this request by Ryscavage. On the same date, November 4th, the Association sent a questionnaire to all members of the Association, requesting their opinion on proposed changes in the graduation day (CP-4). The Association members' response was that they preferred to attend the graduation on a voluntary basis with compensation.

activities as faculty or departmental meetings, back-to-school night, parent conferences and the like...." Further, Ward and the administration relied upon Article 20:2, which provides, in part, that the workday "...shall be seven (7) hours and shall be scheduled by the Board, at its discretion,...including, but not limited to...non-teaching assignments..." (emphasis supplied). The Superintendent pointed to illustrations where there had been alterations in the workday during the term of J-1, citing the scheduling of guidance counselors from 12 noon to 8:00 p.m. on parent meeting days and the scheduling of professional days for all teaching staff from 8:00 a.m. to 3:00 p.m. approximately three times per year. Article 20:1 of the 1982-84 agreement (CP-7) did not contain the phrase "such additional activities etc.," as appears in J-1, supra, it having provided for five day, seven hours per day work week exclusive of lunch period. Also, Article 20:2 in CP-7 provided for specific times, in defining the student day with the Board reserving the right to schedule the student day "...in its absolute discretion..." (emphasis supplied).

16. The Superintendent testified that even though he had the right under J-1 to modify the workday for graduation he nevertheless abandoned his proposal to modify the hours on graduation day in January 1986.

DISCUSSION AND ANALYSIS

The Respondent Board Did Not Violate the Act By The Conduct Of Its Superintendent Herein Since The Board Had As Valid Defenses Either The Exercise Of Managerial Prerogatives Or A Contractual Waiver By The Association

This case is essentially governed by the provisions of Article 20:1 and 20:2 of the applicable collective negotiations agreement (J-1). When read together they constitute a clear and unmistakable contractual waiver of the objections made by the Association either to the Mitchell questionnaire of November 20, 1985 (CP-1) or to the Superintendent's memo of October 22, 1985, establishing the Graduation Advisory Committee (R-1). The Hearing Examiner's reasons for this conclusion that the Association waived its right to object will be apparent hereinafter.

Before reaching the waiver discussion, the Hearing Examiner deals first with the "exclusivity" argument of counsel for the Association. Notwithstanding such cases as Lullo v. Int'l Assoc. of Fire Fighters, 55 N.J. 409, 426 (1970) and Newark Bd. of Ed., P.E.R.C. No. 85-24, 10 NJPER 545 (¶15254 1984), the Hearing Examiner concludes that the exclusivity principle was not violated by the Superintendent when he undertook a survey of science teacher opinion regarding their preference as to a morning lab, an afternoon lab, either a morning or an afternoon lab or no modification whatever of the workday. Plainly, the Superintendent was not dealing directly with the science teachers in the sense that he was seeking to negotiate with them any changes in their workday. As previously indicated, he was merely seeking their opinion, or as the

questionnaire says, their "interest" in a possible change. There was nothing coercive in the document (CP-1), it being clear that an educational objective was involved, namely, as stated, "...to provide more flexibility in student schedules..." which would afford the science teachers involved "...some flexibility in defining your own work hours..." (CP-1). Thus, "exclusivity" was not violated in this regard.

To the same effect, the Superintendent's memo of October 22, 1985, establishing the Graduation Advisory Committee, which requested the assistance of the nine teachers appointed, regarding several contemplated changes in graduation practices, did not violate the principle of "exclusivity." Interestingly, one of those requested to serve was Moir, an Association Vice-President, and he declined. One of the matters which the Superintendent desired to bring to the Graduation Advisory Committee was his contemplated change in graduation attendance of teachers from voluntary to mandatory.

The decision of a public employer as to whether or not attendance at or participation in extracurricular activities is a non-negotiable managerial prerogative in furtherance of an educational purpose: see, for example, Franklin Borough Bd. of Ed., P.E.R.C. No. 81-126, 7 NJPER 248 (¶12112 1981), aff'g H.E. No. 81-29, 7 NJPER 167, 169 (¶12075 1981); Carteret Bd. of Ed., P.E.R.C. No. 80-30, 5 NJPER 397 (¶10205 1979), aff'd. App. Div. Docket No. A-419-79 (1980); and Ramapo-Indian Hills Reg. H. S. Dist. Bd. of Ed., P.E.R.C. No. 80-9, 5 NJPER 302 (¶10163 1979), aff'd. App.

Docket No. A-4613-78 (1980). Thus, as to the question of mandatory versus voluntary attendance at the forthcoming graduation in June 1986, the Superintendent was raising a non-negotiable managerial prerogative as to which there could be no violation of the principle of exclusivity. It is noted that had the Superintendent injected into the discussions of the Graduation Advisory Committee the question of additional compensation, or had the Association made a demand for additional compensation for mandatory attendance at the graduation ceremony in June of 1986,[8/] then there could have been a violation of the exclusivity principle since compensation for mandatory attendance at extracurricular activities is mandatorily negotiable: see Franklin, Carteret, and Ramapo, supra. However, this never came to pass either at the instance of the Superintendent or the Association. Therefore, the principle of exclusivity was not violated by the Superintendent in his convening and holding two meetings of the Graduation Advisory Committee in October and December 1985.

Having disposed of the Association's argument regarding exclusivity, and the Board's alleged violation of this principle, the Hearing Examiner now proceeds to consider the contract waiver argument made by the Respondent Board. It is first noted that Article 20:1 provides, in part, that teachers shall have a

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8/ The fact that the Committee members stated their preference for voluntary attendance with compensation is irrelevant and may not be imputed to the Association as a demand for negotiations.

seven-hour workday "...and such occasional activities as faculty or departmental meetings, back-to-school night, parent conferences and the like..." (J-1, p. 20). Further, Article 20:2 amplifies the definition of the workday for teachers by providing that it shall be seven hours and shall be scheduled by the Board "...at its discretion,...including, but not limited to,...non-teaching assignments..." (J-1, p. 20).[9/]

The Hearing Examiner concludes that the stringent requirements of the Courts and the Commission, regarding a contractual waiver, have been met by the inclusion of Articles 20:1 and 20:2 in the collective negotiations agreement (J-1, supra). In so concluding, the Hearing Examiner is mindful of the language of the New Jersey Supreme Court in Red Bank Reg. Ed. Ass'n. v. Red Bank Reg. H.S. Bd. of Ed., 78 N.J. 122, 140 (1978) where it was held that for a contractual waiver: "...To be given effect, any such waiver must be clearly and unmistakably established, and contractual language alleged to constitute a waiver will not be read expansively..." Here, the Hearing Examiner finds that the following decisions of the Commission are controlling even though the language contained therein does not use the term "waiver": Pascack Valley Reg. H.S. Dist. Bd. of Ed., P.E.R.C. No. 81-61, 6 NJPER 554 (¶11281 1980); Twp. of Dover Bd. of Health, P.E.R.C. No. 80-89, 6 NJPER 48

9/ Recall that the prior agreement (CP-7) utilized nearly identical language, i.e., "in its absolute discretion" (emphasis supplied).

(¶11024 1979); Rutgers, The State University, P.E.R.C. No. 80-26, 5 NJPER 391 (¶10201 1979); and State of New Jersey, P.E.R.C. No. 79-33, 5 NJPER 27 (¶10118 1978).

In Pascack Valley the Board unilaterally increased pupil contact time by 30 minutes and eliminated one of three unassigned duty-free periods. Even though mandatorily negotiable in the abstract, the Commission dismissed the unfair practice charge on the ground that the Board's changes were "...within the limits established by the collective agreement between the parties..." (6 NJPER at 555). To the same effect, see Dover, supra.

In State of New Jersey, supra, the work week of certain employees was unilaterally increased from 40 hours to 42-1/2 hours. The Commission affirmed its Hearing Examiner and held that a "...contractual clause which is clear and unambiguous must be taken at face value." (5 NJPER at 28). In Rutgers, supra, a change of shifts by the employer was involved. The Commission, while conceding that hours of work are unquestionably mandatory subjects of negotiations, stated that "...Nevertheless, once a particular subject has been negotiated and an agreement embodied in a contract, then the employer need only comply with the contract to meet its duty..." (5 NJPER at 392).

Applying the holdings of Pascack et al, supra, to the instant agreement (J-1), it is clear to the Hearing Examiner that Article 20:2, which permits the Board to schedule the seven-hour workday "at its discretion," afforded the Superintendent the right

to move the science labs about as he pleased so long as the science teachers worked no more than seven hours per day. Thus, his mere solicitation of their opinions as to a contemplated change in the work schedule was plainly within the four corners of Article 20:2.

Similarly, as to the matter of the Superintendent's contemplated changes in graduation practice, the Superintendent had the non-negotiable managerial right to make attendance mandatory and under the authority of Article 20:1 and 20:2 he could schedule the graduation exercise from 12:00 noon to 7:00 p.m. Article 20:1 refers to "occasional activities," which would appear to the Hearing Examiner to include a once-a-year activity such as graduation day. If not cognizable under Article 20:1 then Article 20:2, granting the Board "discretion" as to scheduling, would seem broad enough to allow for the graduation to be scheduled and held between the hours of 12:00 noon and 7:00 p.m.

The Hearing Examiner's conclusion that the Superintendent's actions herein are consistent with Article 20 of J-1 also finds support in the admittedly limited experience of the parties under the agreement, namely, that guidance counselors have been scheduled from 12:00 noon to 8:00 p.m. on parent meeting days and the teaching staff is scheduled on professional days from 8:00 a.m.-3:00 p.m., a 20-minute delay from the normal starting time.

Thus, the Pascack Valley et al decisions compel the conclusion that the Respondent Board did not violate its negotiations obligation to the Association when the Superintendent

caused the Mitchell questionnaire to be circulated among the science teachers and when the Superintendent established unilaterally the Graduation Advisory Committee and conducted two meetings with it. Nor, as found above, was the principle of exclusivity violated by the Superintendent in these two instances.

It is also noted that the Superintendent abandoned his planned changes in graduation day for June 1986 in January 1986, and further abandoned any changes in the scheduling of the science labs on April 1, 1986. Had there been violations of the Act found by the Hearing Examiner regarding the Superintendent's conduct herein, the mere fact that abandonment had taken place would not render the matter moot and a cease and desist order would have been appropriate: Galloway Twp. Bd. of Ed. v. Galloway Twp. Ass'n of Educ'l Sec'ys, 78 N.J. 1, 16 (1978).

* * * *

Based on the foregoing, and the entire record in this case, the Hearing Examiner finds and concludes that the Respondent Board did not violate §§5.4(a)(1) and (5) of the Act in that it was under no duty to negotiate with the Association since the subject matter of the Unfair Practice Charge was subsumed in the collective negotiations agreement (J-1). Further, it is concluded that the Respondent Board did not violate §§5.4(a)(2) and (3) of the Act since there was no "...pervasive employer control or manipulation of the employee organization itself..."[10/] nor has the employer

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10/ North Brunswick Twp. Bd. of Ed., P.E.R.C. 80-122, 6 NJPER 193, 194 (¶11095 1980).

manifested any anti-union animus or hostility toward the Association within the meaning of Bridgewater Twp. v. Bridgewater Public Works Ass'n., 95 N.J. 235 (1984).

CONCLUSION OF LAW

The Respondent Board did not violate N.J.S.A. 34:13A-5.4(a)(1), (2), (3) or (5) by its conduct herein, supra.

RECOMMENDED ORDER

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

Alan R. Howe
Hearing Examiner

Dated: July 17, 1986
Trenton, New Jersey