P.E.R.C. NO. 87-125

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF SOUTH AMBOY,
COUNTY OF MIDDLESEX,

Respondent,

-and- Docket No. CO-85-132-79

SOUTH AMBOY EDUCATION ASSOCIATION

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge filed by the South Amboy Education Association against the Board of Education of South Amboy. The charge alleged the Board violated the New Jersey Employer-Employee Relations Act when it required that teachers write curriculum guides on their own time for all subjects taught. The Association further alleges it sought to negotiate compensation for this increase in workload, but the Board failed to respond to its request. The Commission finds that the Board engaged in negotiations concerning these issues.

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SOUTH AMBOY EDUCATION ASSOCIATION,

Charging Party.

Appearances:
For the Respondent, Raymond A. Cassetta, Consultant

For the Charging Party, Klausner & Hunter, Esqs.
(Stephen E. Klausner, of counsel)

DECISION AND ORDER

On November 19, 1984, the South Amboy Education Association ("Association") filed an unfair practice charge against the Board of Education of South Amboy, County of Middlesex ("Board"). The first count was withdrawn prior to hearing. The second count alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1) and (5),[1/] when it required

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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."

that teachers write curriculum guides on their own time for all subjects taught. The Association further alleges it sought to negotiate compensation for this increase in workload, but the Board failed to respond to its request.

On December 21, 1984, a Complaint and Notice of Hearing issued.

On January 31, 1985, the Board filed an uncertified Answer denying the allegations. It claims that teachers have been writing and revising curriculum guides for many years; that the issue of pay for writing and revising guides was included in the parties' negotiations, mediation and fact-finding sessions and that the topic was withdrawn before the conclusion of the fact-finding process.

On November 22, 1985, Hearing Examiner Marc Stuart conducted a hearing. The parties examined witnesses and introduced exhibits. They waived oral argument but filed post-hearing briefs.

On August 22, 1986, the Hearing Examiner issued his report and recommended decision. H.E. No. 87-15, 12 NJPER 666 (¶17252 1986) (copy attached). He concluded the Board did not violate the Act because, although there was an increase in workload, the parties engaged in good faith negotiations before the new system's implementation and ultimately signed a memorandum of understanding withdrawing all outstanding issues on the table during negotiations. He declined to decide whether the Board's negotiator responded to the Association's pay proposal with an expletive.

On September 12, 1986, the Association filed exceptions. It maintains the Hearing Examiner did not understand the issue before him. It asserts there were four different types of documents the teaching staff members had been required to prepare. These are: (1) guides prepared in the summer by volunteers for special stipend; (2) guides prepared at in-service workshops during the school year; (3) lesson plans prepared at home during the school year, and (4) curriculum guides prepared at home with no additional compensation and without in-service work days. It further asserts the first three documents existed and were used prior to September 1984, the disputed curriculum guides did not exist and were not required until September 1, 1984, and a grievance over the curriculum guide issue related to the old curriculum guide only. It relies on its president's testimony that after the Board attempted to revise the old guide and to eliminate in-service workshops, the Association attempted to negotiate the issue. When the Board abandoned this practice by continuing to give teachers release time, the issue was abandoned only to be resurrected when the new procedure was required. Finally, the Association excepts to the Hearing Examiner's finding that it failed to prove the Board's negotiator used an expletive.

On October 6, 1986, the Board filed a response. It urged the Hearing Examiner's report be adopted. It maintains the Association raised the issue of curriculum guides during negotiations, but decided not to protract negotiations or prevent a

contract from being signed over the issue when it had obtained the salary and benefits it desired.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 3-5) are generally accurate. We adopt and incorporate them here. The Hearing Examiner also made findings of fact in his analysis. We incorporate those findings as well. We add, however, that the Board's negotiator wrote an expletive on a piece of paper as a response to the Association's pay for guide development proposal. The Association's witness had a detailed recollection of the incident. The Board's negotiator testified he didn't remember.

We first address the Association's motion to bar the Answer because it violated N.J.A.C. 19:14-3.1. That rule provides, in part:

> The respondant shall specifically admit, deny or explain each of the charging parties allegations set forth in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation not specifically denied or explained, unless the respondent shall state that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the commission, unless good cause to the contrary is shown.

The Hearing Examiner denied the Association's motion. He found that the Answer stated the equivalent of a general denial and then specifically asserted a number of affirmative defenses. He also found that despite the Board's procedural failure to certify its Answer, it provided the Association with adequate notice of its position on the charge.

A charging party is entitled to a detailed, specific, certified Answer to the Complaint. A specific Answer does not burden the respondent and provides the charging party with the knowledge of the defenses which will be used. The Answer here states that teachers have been writing guides for many years and that the topic of pay for writing or revising guides was negotiated, but withdrawn by both parties during fact-finding. We will not disturb the Hearing Examiner's decision to admit the Board's Answer in this case.

We next address the merits. The Hearing Examiner found that the implementation of the new curriculum guide system increased workload. That finding is supported by the testimony of an Association witness. Neither party excepted to that finding. Accordingly, we find that the new curriculum guides increased teacher workload.

In the unfair practice charge, the Association alleges that the Board refused to negotiate compensation for this increase. It is not contesting the decision to change curriculum guide procedures, nor is it claiming that the status quo should be restored pending negotiations. The dispute is only over the alleged failure to negotiate compensation.

Although the Board unilaterally changed its curriculum guide requirements, it did not unilaterally establish a compensation schedule for the changed duties prior to the exhaustion of dispute

resolution procedures. See City of Jersey City, P.E.R.C. No. 77-58, 3 NJPER 123 (1977); see also Mt. Holly Tp. Bd. of Ed., P.E.R.C. No. 84-27, 9 NJPER 596 (¶14252 1983). The Association alleges that the Board announced the change in requirements on September 4, 1984; that it requested negotiations over compensation on September 16, and that the Board refused. But, the facts do not support the allegation. Compensation for curriculum guide development was an issue throughout negotiations. A specific dollar proposal was presented before and during the mediation process. As late as November 1984, the issue of pay for curriculum development was before the fact-finder.

The Association seeks an order finding the Board to have violated subsections 5.4(a)(1) and (5) and directing the Board to negotiate compensation for the workload increase. We agree that the Board had an obligation to negotiate pay for curriculum guide development. However, the record amply demonstrates that the Board did in fact negotiate concerning this issue. Accordingly, we find that the Association failed to prove that the Board refused to negotiate over compensation for the increase in workload.

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
March 23, 1987
ISSUED: March 24, 1987

H.E. NO. 87-15

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

In the Matter of

BOARD OF EDUCATION OF SOUTH AMBOY,
COUNTY OF MIDDLESEX,

Respondent,

-and-

Docket No. CO-85-132-79

SOUTH AMBOY EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent Board of Education of South Amboy, County of Middlesex, did not violate §5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act when in September, 1984, it instituted a new procedure involving the preparation of curriculum guides for all subjects. Although the new procedure involved an increase in workload, the parties engaged in good faith negotiations prior to the new system's implementation, and, ultimately, signed off on a memorandum of understanding withdrawing "all other outstanding issues on the table during negotiations."

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. 87-15

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

In the Matter of

BOARD OF EDUCATION OF SOUTH AMBOY,
COUNTY OF MIDDLESEX,

Respondent,

-and- Docket No. CO-85-132-79

SOUTH AMBOY EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent
Raymond A. Cassetta, Consultant

For the Charging Party
Klausner & Hunter
(Stephen E. Klausner of counsel)

HEARING EXAMINER'S
RECOMMENDED REPORT AND DECISION

The South Amboy Education Association filed an unfair practice charge with the Public Employment Relations Commission on November 19, 1984, containing two counts, the first of which was withdrawn prior to hearing, and the second alleging that on or about September 4, 1984, the Board of Education of South Amboy, County of Middlesex, indicated to teaching staff members that they would be required to write curriculum guides for all subjects taught, and that such was to be done on each teacher's own time. Thereafter, the Association alleges it sought to negotiate this increase in workload; however, the Board failed to respond to the Association's request.

The Association asserted that this conduct violated 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, might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on December 21, 1984. On January 28, 1985, the Board filed a letter answer to the Association's charge alleging that teachers represented by the Association have been writing and revising curriculum guides for many years, that the topic of pay for writing and revising curriculum guides was included in the negotiations, mediation and fact-finding processes between the parties, and that the topic was eventually withdrawn by both parties prior to the conclusion of the fact-finding process.[2/]

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."

2/ At the hearing, the Association objected to the admission of the Board's letter answer, arguing that the Association's charges were not specifically addressed or denied, and that the answer was not certified. I overruled the Association's objection and admitted the document on the theory that the presence of minor procedural defects should not prejudice the Board's right to have its answer considered in evidence in the absence of a substantial showing that the Association has been prejudiced, under the instant circumstances (T 5-14). I agreed that the answer lacked the proper certification, however, I disagreed that the answer failed to specifically

Footnote Continued on Next Page

An evidentiary hearing, at which the parties were given an opportunity to examine and cross-examine witnesses, present relevant evidence and argue orally, was conducted on November 22, 1985.[3/]

Both the Association and the Board filed post-hearing briefs on June 9, 1986.

Upon the entire record, the hearing examiner makes the following:

FINDINGS OF FACT

1. The Board of Education of South Amboy, County of Middlesex, is a public employer within the meaning of the Act (T 15).[4/]

2. The South Amboy Education Association is a public employee representative within the meaning of the Act, representing the employees who are the subject of this unfair practice proceeding (T 15).

3. Prior to September 1984, teachers were responsible for completing lesson plans and curriculum guides during the school year without any additional compensation (T 22-23; T 79-80). However, it

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2/ Footnote Continued From Previous Page

address the Association's charges. Although its construction differed from that of the Charge, and although it failed to address every point, it did provide specifics and it did give adequate notice to the Charging Party of the Board's defense.

3/ The parties requested, and were granted, three prior adjournments of the hearing in this matter.

4/ "T" refers to the hearing transcript dated November 22, 1985.

was an established practice to provide teachers with supplementary pay for curriculum guides completed during the summer months (T 20-T 21), and compensatory time for guides completed during the school year (T 22). Beginning in September 1984, teaching staff members were told that they would have to complete curriculum guides for all subjects taught, [5/] in a new format (T 26); however, if more than one teacher taught the same class they could share the task of completing the guide (T 26). Eventually, curriculum guides and lesson plans were combined into a single function known as the NCR (T 79).

4. Negotiations for the 1984-85 school year began in January or February, 1984 (T 176). The issue of additional compensation for curriculum guides was discussed repeatedly during protracted negotiations without reaching any determination on the issue (T 89-94). Following negotiations, the parties entered mediation and then fact-finding, at which point, the Association, with the Board's tacit approval, withdrew from the fact-finder's consideration, the issue of additional compensation for curriculum guides.[6/] (T 155-156; R 5).[7/] Ultimately, on May 6, 1985, the

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5/ Previously, curriculum guides were required in every course taught except reading (T 79).

6/ The Association expressed its desire to reserve its rights to pursue this issue in "another forum", ostensively through these unfair practice proceedings (R-5).

7/ "CP" refers to Charging Party's exhibits
"R" refers to Respondent's exhibits
"J" refers to Joint exhibits
"C" refers to Commission exhibits

parties signed a memorandum of agreement, containing various terms and conditions of employment including new salary guides and additional compensation for various Association members serving in varying capacities, and stating, "[a]ll other outstanding issues on the table during the negotiations are dropped by the parties" (R 7).

LEGAL ANALYSIS

The Association's charge alleges a refusal by the Board to negotiate over the imposition of the new curriculum guide procedure in September 1984. Assuming that the Board's decision was made as a valid exercise of its prerogative to establish and carry out its educational goals,[8/] and assuming an increase in workload[9/] the Board is required to negotiate, in good faith, prior to implementing its new procedure. The record establishes that this was done. The Association's own witness testified that the issue was discussed repeatedly during the course of protracted negotiations, and that "numbers" (compensation) were tossed around throughout the negotiations (T 91). Following impasse, the record indicates that the issue of compensation for curriculum guide work, along with

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8/ The Association does not dispute the Board's motives for instituting this new policy.

9/ Although the evidence on this issue, even without the Board's evidence (See T 107-108; T 150, for evidence by Board witnesses suggesting no increase in workload) is not unequivocal (See T 36-37, indicating the suggestion of some duty-free time for curriculum guide work without clearly establishing any amount), I do find that the implementation of this new system represented an increase in workload.

several other issues, was transferred to the appointed mediator and then to the fact-finder to be considered as an outstanding issue. However, before the fact-finder rendered his final award, the record demonstrates that the issue was removed by the Association (T 167) from the fact-finder's consideration, and the fact-finder ultimately issued his award absent that issue. Finally, following the issuance of the fact-finder's recommendations, the parties voluntarily entered into a memorandum of agreement which incorporated changes in terms and conditions of employment, new salary guides and increased compensation for various functions, and which expressly stated that by their signatures, the parties agreed to withdraw any other outstanding issues on the table during the course of negotiations (R 7, pg. 3). Thus, the record establishes that the memorandum of agreement by its very terms, excluded all other previous issues from further consideration.

In its post-hearing brief the Association argues in its first point, that the Board's failure to specifically admit, deny or explain each of the allegations in the complaint is deemed an admission. However, a review of the Board's answer (C 2) reveals that the Association stated the equivalent of a general denial, and then specifically asserted, affirmatively, that teachers have been writing and revising curriculum guides for many years, that the topic of pay for writing or revising curriculum guides was included in the negotiations, mediation and fact-finding processes and that this topic was finally withdrawn by both parties prior to the conclusion

of the fact-finding process. Despite the Board's procedural error in failing to certify its answer, I believe it adequately provided the Association with a statement of its position on the charge, and accordingly, at hearing, I denied the Association's motion to bar the admission of C 2 from the record. I indicated, however, that in the event the Board asserted defenses that were not contained in its answer, I would reconsider the Association's motion. The Board asserted no such defenses and the motion was never renewed by the Association until it did so in its post-hearing brief. Based on the foregoing, my recommendation remains the same. Absent the element of surprise, I cannot recommend as drastic a remedy as refusing to admit the Board's answer and deeming each of the Association's allegations admitted by the Board.

The Association cites Downe Township Board of Education, H.E. No. 86-44, 12 NJPER 252 (¶ 17106 1986), in support of its argument; however, in Downe, the Board finally admitted in its answer on the Association's motion, the allegations that the Hearing Examiner ultimately deemed admitted, whereas here the Board furnished sufficient information to demonstrate a clear denial of the Association's allegations. Therefore, I do not find Downe to be controlling on this issue.

In its second point, the Association argues that the Board's failure to negotiate in good faith the issue of compensation for teachers' writing curriculum guides prior to implementation is a violation of N.J.S.A. 34:13A-5.4(a)(1) and (5). However, the record

fails to establish, by a preponderance of the evidence, anything other than "hard bargaining" by the Board on this point. It does not conclusively establish that the Board lacked an "open mind" on this issue, and it does suggest plausible rationales for the Board's "hard" position, (i.e. overall increased salary guides, the presence of some duty free time (T 136-137), the presence of some shared responsibilities in the development of these curriculum guides (T 26, 66), and although I have found otherwise, the argument and possibly the belief that the new procedure represented no increase in workload. Thus, as previously stated, I conclude that the Board did, in fact, negotiate the issue of compensation for teachers' writing of curriculum guides, and that the entire course of the parties' actions, including the repeated discussion of this issue during protracted negotiations, the transfer of this issue along with other issues to mediation and fact-finding, the withdrawal of this issue prior to the fact-finder's recommendations, and the eventual signing off on a memorandum of agreement stating that the parties voluntarily drop any other outstanding issues, collectively demonstrate the process of mutual, good-faith negotiations culminating in a final accord between the parties.

The record suggests that the Association filed a grievance[10/] over the curriculum guide issue, approximately seven

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10/ See T 114-115, 117-121, for discussion of a grievance filed in February, 1984, by the Association over the implementation of the new curriculum guide procedure.

months prior to the new procedure's implementation, abandoned the grievance in mid course, and chose to continue to pursue the issue in negotiations. It is not clear from the record exactly when the grievance was abandoned and the negotiations on this issue began; however, it appears that it was prior to September, 1984. Moreover, the Association does not appear to be arguing that the Board unilaterally implemented the new procedure and then, as an afterthought, chose to pursue the issue in later negotiations. If anything, these facts support the finding that this item had already been the subject of negotiations prior to the actual implementation of the new procedure in September, 1984.

The Association does allege, however, that it could not have been possible to negotiate the issue to the extent that the Board alleges because the Association could not have raised the issue until after September 4, 1984, after which, only one face-to-face negotiations session occurred. The Association interprets the Mouncy testimony as supportive of this theory. I find the Mouncy testimony to be ambiguous in this regard. Although she did testify that negotiations on this issue began at the "onset of the year 84-85" (T 90), this could also mean from the inception of negotiations for the 84-85 school year which was considerably earlier in 1984. Moreover, she clearly and repeatedly testified that the item was on the table from the beginning of negotiations until almost the very end (T 90), that numbers (compensation) were tossed around on several occasions (T 91), that these negotiations went on for a long time and lasted

beyond the fact-finding recommendation (T 91-92). Thus, despite the Association's argument that this item could not have been negotiated at more than one session, its own witness appears to be testifying to the contrary, and this version is supported by the Board's witnesses and by the record generally (T 125-126; T 151-153).

The Association further argues that at the only negotiations session following the Board's implementation of the new procedure, the Board responded to the Association's first attempt to negotiate this item with an expletive, thus, demonstrating an unwillingness and refusal to bargain on this issue. I have previously found that negotiations over this issue had been ongoing from a much earlier time. Therefore, the argument that the Board's response to the Association's first attempt to negotiate amounted to a refusal to negotiate, cannot be supported. Even assuming, under the Association's scenario, that the expletive was made, and without attempting to offer any justification therefor, I believe another equally plausible explanation is that this was merely the Board's crude way of rejecting the proposal the Association had just placed on the table, and not necessarily signalling the Board's refusal to negotiate the issue. Furthermore, the testimony is in direct conflict over whether this expletive remark was even made, and since it could not alter my conclusion under this record, I decline to make a factual finding on this issue. Finally, it has been established in previous case law that during confrontive and "highly charged" labor relations proceedings, parties are frequently permitted some leeway

in terms of the bounds of acceptable behavior, short of interfering with a party's right to engage in protected activities. See ex. Thomas A. Edison State College, P.E.R.C. No. 86-27, 11 NJPER 574 (¶ 16201 1985).

In its final point, the Association argues that under the Residuum Rule, the testimony of the Board Superintendent that the change in the curriculum guide procedure represented no increase in workload to teachers, must be rejected since the Board presented no eye witness testimony to refute "the Association's assertion that there was a substantial increase in the workload." However, since I have determined that the issue was negotiated in good faith by both parties, I do not believe that the effect of the Residuum Rule can be controlling in this case.

On the issue of the nature and the adequacy of bargaining, in Millburn Board of Education, P.E.R.C. No. 80-115, 6 NJPER 182 (¶ 11087 1980), the Commission determined that despite the Education Association's claim that the Board's implementation of a new school calendar eliminating parent-teacher conference weeks represented a change in terms and conditions of employment without negotiation, the record indicated that the parties had, in fact, met and adequately negotiated the issue. The Association asserted that "discussions" between the Association and the Board did not amount to "negotiations", and that the Board demonstrated no flexibility except with regard to "tangential issues." Rejecting the Association's arguments, the Commission determined that the use of the term

"discussion" was not controlling, and that what some term "discussion" can frequently amount to meaningful negotiations. Moreover, the Commission determined that the totality of circumstances demonstrated adequate and meaningful negotiations between the parties, and the fact that the Board's proposal was not acceptable to the Association did not render the negotiations meaningless. Finally, the Commission found that given its conclusion that the Board engaged in meaningful negotiations with the Association, it was unnecessary to determine whether the Association had waived or abandoned its efforts to have the prior system restored. Here, the record is even more supportive of the South Amboy Board than the record in Millburn, supra. It does not suggest the commencement of negotiations "after the fact," as was the Association's argument in Millburn, supra, nor does this Association so allege. Instead, the consensus of witness testimony indicates that negotiations on this issue began earlier in 1984, and months before the new system's implementation, and continued for more than a year. Most significantly, however, the parties in South River demonstrated a course of conduct amounting to meaningful negotiations, despite the occasional use of the term "discussions," in reference to this issue, all of which is in direct conflict with the allegations contained in the Association's charge. Thus, in the presence of a finding of meaningful negotiations at the appropriate juncture, the issue of an increase in workload becomes meaningless, and the result becomes the same as in Millburn, supra.

In State of New Jersey, E.D. No. 79, 1 NJPER 39 (1975), aff'd sub nom, State v. Council of N.J. State College Locals, 141 N.J. Super 470 (App. Div. 1976), the Executive Director held that the convening of five negotiations sessions and eighteen mediation sessions with no movement by the State on the issues of salary and fringe benefits, did not sufficiently demonstrate a violation of the Act's requirement of good faith negotiations. The totality of the parties' conduct indicated that the State did not seek to avoid an agreement with a "fixed determination," that "hard bargaining" does not constitute "bad faith" bargaining, that the public employer is not compelled to negotiate within a vacuum without concern for the economic climate or legislative support for the additional expenditures of a collectively negotiated settlement, and that the State's good faith was reflected in its willingness to grant summer salary increases despite intransigence on other issues. Here, despite the parties' inability to reach agreement on additional remuneration for curriculum guide work, the record reveals the presence of protracted negotiations over this issue, and mutual agreement over many other issues which had been in dispute. Furthermore, I believe the Board's agreement to submit this issue to the mediator and the fact-finder indicates an affirmative intent on behalf of the Board to consider this issue as being equal to the six other issues acknowledged by the parties to be necessary for resolution prior to a contract. Thus, the totality of circumstances here, as in State of New Jersey, supra, 1 NJPER 39, indicates no

adequate showing of "bad faith" bargaining. Granted, the removal of the item by the Association, from the fact-finder's consideration deprives us of the final resolution of the issue, were the issue to have been considered necessary for determination prior to the implementation of any memorandum of agreement. However, the case law is not ambivalent in its dictate that bad faith bargaining is not to be determined solely by the final outcome on any particular issue, and that "hard bargaining" does not necessarily constitute bad faith bargaining. In State of New Jersey, supra, 1 NJPER 39, as here, both respondents present an arguably supportable basis for their respective positions,[11/] and absent a clear showing of meaningless or "bad faith negotiations," no violation of the Act can be found.

Therefore, I conclude that the Board's implementation of its proposed change in the curriculum guide procedure in September, 1984, did not constitute a violation of the Act. See, In re State of New Jersey, P.E.R.C. No. 77-40, 3 NJPER 78 (1977), aff'd App. Div. Docket No. A-2681-76 (6/12/78).

CONCLUSIONS OF LAW

I conclude that this record fails to establish, by a preponderance of the evidence, that the Board violated N.J.S.A. 34:13A-5.4(5) and (1) by its implementation of a new curriculum guide procedure on or about September 4, 1984.

11/ See previous discussion at page 8, supra.

RECOMMENDED ORDER

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

Marc Stuart
Hearing Examiner

DATED: August 22, 1986
Trenton, New Jersey