

P.E.R.C. NO. 84-106

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RANDOLPH TOWNSHIP BOARD
OF EDUCATION,

Respondent,

-and-

Docket No. CO-81-65-159

RANDOLPH EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delgated to him by the full Commission, declines the request of the Randolph Education Association for a compliance order. Adopting a Hearing Examiner's recommendations, the Chairman concludes that the Randolph Township Board of Education has complied with the Commission's order in P.E.R.C. No. 82-119, 8 NJPER 365 (¶13167 1982), aff'd App. Div. Docket No. A-5077-81T2 (6/24/83).

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Appearances:

For the Respondent, Rand & Algeier, Esqs.
(Robert M. Tosti, of Counsel)

For the Charging Party, Schneider, Cohen & Solomon, Esqs.
(Bruce D. Leder, of Counsel)

DECISION AND ORDER

On June 4, 1982, the New Jersey Public Employment Relations Commission issued a decision finding that the Randolph Township Board of Education ("Board") violated subsections 5.4 (a) (1) and (4)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it demoted Albert Booth from his position as a maintenance-groundsman to the position of a custodian because the Randolph Education Association ("Association") had filed an unfair practice charge seeking a higher salary for him. P.E.R.C. No. 82-119, 8 NJPER 365 (¶13167 1982).

^{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 (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act."

The Commission ordered the Board to reinstate Booth to his position as a maintenance-groundsman and to pay him back pay, together with interest, at the rate reflecting the difference between what he would have received had he not been demoted and what he did receive as a custodian. On June 24, 1983, the Appellate Division of the Superior Court affirmed the Commission's decision and order. App. Div. Docket No. A-5077-81T2 (6/24/83).

On September 14, 1983, the Association initiated compliance proceedings before the Commission because a dispute had arisen concerning the proper calculation of back pay under the Commission's order.

On November 29, 1983, the Chairman of the Commission issued a Notice of Hearing pursuant to N.J.A.C. 19:14-10.2.

On January 5, 1984, Hearing Examiner Nathaniel L. Fulk conducted a hearing. The parties examined witnesses, introduced exhibits, entered stipulations, and filed post-hearing briefs.

On February 2, 1984, the Hearing Examiner issued his report and recommended decision. H.E. No. 84-39, 10 NJPER ____ (¶ ____ 1984). He concluded that the Board had complied with the order. He specifically found that the Board's obligation to pay interest terminated on September 1, 1983 when, following the Superior Court's affirmance of the Commission's decision, it reinstated Booth as a maintenance-groundsman and offered to pay him an appropriate amount of back pay.

On February 16, 1984, the Association filed a statement in lieu of brief. It contends only that the Hearing Examiner

erred in finding that the Board's obligation to pay interest ceased on September 1, 1983. The Board has filed a response.

Pursuant to N.J.S.A. 34:13A-6(f), the full Commission has delegated authority to me to decide the instant case. I have reviewed the record. The Hearing Examiner's findings of fact (pp. 3-4) are accurate with one exception.^{2/} I adopt and incorporate them here. I also agree with and adopt his recommended conclusions and accordingly deny the Association's request for a compliance order.^{3/}

ORDER

The Association's request for a compliance order is denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

DATED: Trenton, New Jersey
March 5, 1984

^{2/} The second sentence of finding no. 3 on page 4 of the report is amended to change the figure of \$12,291 to \$14,291.

^{3/} After the issuance of the original Commission decision and before his reinstatement as a maintenance-groundsmen, Booth had moved up on the steps of the custodians' salary guide. The Hearing Examiner's opinion accurately reflects his advancement and the amounts he earned. The Hearing Examiner has also made specific recommendations concerning the Board's monetary obligations to which neither party has excepted; in the absence of exceptions, I adopt these recommendations.

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SYNOPSIS

In a proceeding to determine the compliance of Randolph Township Board of Education with the Order of the Public Employment Relations Commission in Randolph Township Board of Education and Randolph Education Association, P.E.R.C. No. 82-119, wherein it was found that Albert Booth was wrongfully demoted from his position of maintenance-groundsman to custodian, a Hearing Examiner recommends the Commission correct the typographical error found in its Order. The Order required the Board to pay Booth the difference between his salary as a fifth step custodian and the fifth step for maintenance-groundsman when the record clearly establishes that Booth was at Step 8 on the custodian salary guide when he was promoted to maintenance-groundsman and would have moved to Step 9 on the custodian guide had he not been promoted.

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HEARING EXAMINER'S COMPLIANCE HEARING
REPORT AND RECOMMENDED DECISION

On June 4, 1983, the New Jersey Public Employment Relations Commission ("Commission") found that the Randolph Township Board of Education ("Board") unlawfully demoted Albert Booth from his position as a maintenance-groundsman to that of a custodian. The Commission found that Booth was demoted because the Randolph Education Association ("Association") had filed an unfair practice charge on his behalf. ^{1/} The Commission found that prior to Booth's promotion to maintenance-groundsman he was a custodian at Step 8 of the custodian salary guide and that on July 1, 1980, he would have

^{1/} Specifically it was found that the Board violated the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-5.4(a)(1) and (4).

been moved to Step 9. ^{2/} On July 1, 1980, Booth was promoted to a maintenance-groundsman position and placed on Step 4 of the maintenance salary guide at an annual salary of \$12,791. ^{3/} After receiving word that the Association had filed an unfair practice charge, the Board notified Booth that he was to be reassigned to his former position at his prior salary effective October 27, 1980.

The Commission ordered the Board to restore Booth to his position as a maintenance-groundsman at the fifth step of the maintenance salary guide and make him whole for lost wages from October 27, 1980. Specifically the Commission ordered the Board to, "...make payment to Booth at the rate of \$555 per annum from October 27, 1980 through June 30, 1981, and thereafter at the rate reflecting the difference between Booth's salary as a fifth step custodian and the fifth step for maintenance-groundsman on the salary guide for 1981-82, together with interest at the rate of 12% per annum from October 27, 1980."

The Commission's decision was appealed by the Board, and was upheld by the Appellate Division in Randolph Education Association v. Randolph Township Board of Education, App. Div. A-5077-81-T2 (June 24, 1983).

On September 14, 1983, the Association notified this agency that a dispute had arisen concerning the total amount of back pay owing to Booth and requested that the Commission enforce its Order. In response, the Board stated that there was a typo-

^{2/} Booth earned an annual salary of \$10,649 as a custodian at Step 8.

^{3/} On July 1, 1981, he would have been moved to Step 5 of the maintenance-groundsman salary guide, and each July 1 thereafter he would have moved an additional step.

graphical error in the Commission's Order. The Board stated that the Order mistakenly required the Board to pay Booth the difference between Booth's salary as a fifth step custodian and a fifth step maintenance-groundsman rather than as an eighth step custodian.

It appearing that the Commission Order may not have been complied with and that a factual dispute regarding the computation of the award exists, a Notice of Hearing regarding compliance proceedings was issued on November 29, 1983, by the Chairman, pursuant to N.J.A.C. 19:14-10.2. This hearing was conducted on January 5, 1984, at which time the parties were given an opportunity to examine witnesses, present evidence and argue orally. The parties filed post-hearing briefs by January 17, 1984.

Upon the entire record, the Hearing Examiner makes the following findings of fact:

FINDINGS OF FACT

1. In June of 1980 Albert Booth held the position of custodian and was at Step 8 of the custodians' salary guide earning \$10,749 ^{4/} annually. He applied for the position of maintenance-groundsman and was appointed to that position effective July 1, 1980. He was then placed at Step 4 of the maintenance salary guide earning \$12,891 annually.

2. On September 17, 1980, the Association filed an unfair practice charge alleging that the Board violated the Act in not placing Booth at Step 9 of the maintenance salary guide. The Board then reassigned Booth to his former position as custodian effective October 27, 1980. Booth was placed at Step 9 of the custodian's

4/ Although the custodian's salary guide at Step 8 establishes a salary of \$10,649, Booth received an additional \$100 for longevity pay. All other salary figures mentioned in this decision also include the additional \$100.

salary guide rather than at Step 8 because according to the terms of the parties' collective negotiations agreement, employees would move up one step on July 1, 1980, in order to receive their yearly increment. At Step 9 Booth earned \$12,336 annually.

3. During the 1981-82 school year Booth was at Step 10 of the custodian's salary guide earning \$13,436 annually. Had Booth remained a maintenance-groundsman he would have been at Step 5 on the maintenance salary guide earning \$12,291.

4. During the 1982-83 school year Booth was at Step 11 of the custodian's salary guide earning \$14,536. On September 1, 1982, Booth was promoted to the position of Head Custodian earning \$15,530 annually. Had he remained a maintenance-groundsman, Booth would have been at Step 6 on the maintenance salary guide earning \$15,691.

5. On September 1, 1983, Booth was made a maintenance-groundsman at Step 7 of the maintenance salary guide.

DISCUSSION AND ANALYSIS

Error in the Order

It is apparent that the Commission's Order requiring the Board to pay Booth the difference between Booth's salary as a fifth step custodian and a fifth step maintenance-groundsman was a mistake. The record clearly shows that Booth was at Step 8 on the custodian's salary guide in 1979-80 and was paid at Step 9 in 1980-81. The Commission's Order contained a typographical error which was never corrected either by the Commission or the Appellate Division. This error was overlooked by the parties as well.

Since this is a matter of first impression, it would be helpful to consider how such a situation is treated in another forum. Rule 1:13-1 of the Rules of the Superior Court provides:

Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight and omission may at any time be corrected by the Court on its own initiative, or on the motion of any party, and on such notice in terms as the Court directs, notwithstanding the pendency of an appeal.

Although this rule is not controlling, it certainly establishes appropriate guidelines for the Commission. The Commission's Order was designed to make Booth whole for monies he lost as a result of the Board's unfair practice; it was not designed to give Booth any more than he would have received had he remained a maintenance-groundsman. In the interest of fairness and equity the Board should not be held responsible for the Commission's oversight nor should Booth receive any undue benefit. For this reason the undersigned recommends that the Commission's Order be changed to reflect the fact that Booth was at the Eighth Step of the custodian's salary guide in 1979-80 and not the Fifth Step.

Back Pay and Interest

In order to accurately reflect the exact amount owing to Booth, the undersigned has made the following calculations:

(a) In 1980-81 Booth began the school year as a maintenance-groundsman at Step 4 earning \$12,891 annually. On October 27, 1980 he was reassigned to his previous custodian position at Step 9 and paid \$12,336 annually.

The difference between these salaries is \$555 - the extra

amount Booth should have received if he had worked as a maintenance-groundsman the entire year. Since he worked almost four months in that position he received just under one-third of that amount equaling \$174. The difference still owed to him for the 1980-81 year is \$381. Interest from July 1, 1980 to September 1, 1983 on \$381 at 12% per annum equals \$99, making the total amount owing to Booth for 1980-81, \$480. ^{5/}

(b) During 1981-82 Booth was paid as a Step 10 custodian earning \$13,436. He should have occupied the position of maintenance-groundsman and been paid at Step 5 earning \$14,291. The difference between the two figures is \$855. Interest from July 1, 1982 to September 1, 1983 on \$855 at 12% per annum equals \$120, making the total amount owing to Booth for 1981-82 \$975.

(c) During July and August of the 1982-83 year Booth was paid as a Step 11 custodian earning \$14,536. In September of 1982 Booth was promoted to the position of head custodian at Step 11 earning \$15,530. For July and August Booth earned \$2422, and as a head custodian for the remaining ten months Booth earned \$12,940, making a total of \$15,362. Booth should have earned \$15,691 as a Step 6 maintenance-groundsman. The difference between the two figures is \$329. Interest from July 1, 1983 to September 1, 1983, at 12% per annum equals \$7, making the total amount owing to Booth for 1982-83, \$336.

^{5/} The Association contends that the interest should not be cut off as of September 1, 1983, when Booth once again assumed the position of maintenance-groundsman, but rather should continue until the date final payment is made. The undersigned disagrees. On August 19, 1983, the Board offered to pay Booth an amount substantially similar to the final figure as calculated by the undersigned. It showed every intention of complying with the Commission's Order (as corrected) and in fact promoted Booth to maintenance-groundsman on September 1, 1983. Requiring the Board to continue to make interest payments beyond that date would be unfair and would penalize it for the Commission's error.

(d) In the beginning of the 1983-84 year Booth was still a head custodian and at Step 12 he was earning \$16,023. ^{6/} He was promoted to maintenance-groundsman at Step 7 on September 1, 1983. For July and August of 1983 he received \$2674. As a maintenance-groundsman Step 7 Booth should have earned \$16,332 annually. For July and August of 1983 he should have earned \$2722. The difference between the two figures is \$48. Interest from July 1, 1983 to September 1, 1983, at 12% per annum equals \$1, making the total amount owing to Booth for 1983-84, \$49.

The total amount owing to Booth for the period of October 27, 1980, to September 1, 1983, equals \$1840. Accordingly it is recommended that payment be made to Booth at that figure.


Nathaniel L. Fulk
Hearing Examiner

Dated: February 2, 1984
Trenton, New Jersey

^{6/} The parties have yet to execute a contract covering the 1983-84 year. Both was paid under the salary guide as established for 1982-83.