H.E. NO. 2015-4

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

In the Matter of

PISCATAWAY TOWNSHIP
BOARD OF EDUCATION,
Respondent,
-and-
PISCATAWAY TOWNSHIP
EDUCATION ASSOCIATION,
Charging Party.

Docket No. CO-2012-271

SYNOPSIS

A Hearing Examiner recommends that a public employer violated section 5.4a(5) and derivatively a(1) of the New Jersey Public Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. when it unilaterally required a unit of employees to use paid sick and other leaves concurrently with leave taken pursuant the Family and Medical Leave Act, 29 U.S.C.A. §2601 et seq. The employer had previously enabled unit employees to use such leaves consecutively, despite a policy mandating that the leaves be taken concurrently.

Whether paid leave is taken consecutively or concurrently with family and medical leave is a mandatorily negotiable subject. Lumberton Ed. Assn. and Lumberton Tp. Bd. of Ed., P.E.R.C. No. 2002-13, 27 NJPER 37 (¶32136 2001), aff'd. 28 NJPER 427 (¶33156 App. Div. 2002). The Hearing Examiner credited the testimony of the employer's former Director of Human Resources who administered such leaves consecutively for six years. Also, the Hearing Examiner determined that proffered examples of employee leaves taken in that period corroborated the alleged practice.

A Hearing Examiner's Report and Recommended Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission, which reviews the Report and Recommended Decision, any exceptions thereto filed by the parties, and the record, and issues a decision that may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law. If no exceptions are filed, the recommended decision shall become a final decision unless the Chair or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

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-and- Docket No. CO-2012-271

PISCATAWAY TOWNSHIP
EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent
David Rubin, attorney

For the Charging Party
Oxfeld Cohen, attorneys
(Nancy Iris Oxfeld, of counsel)

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On March 30, 2012, Piscataway Township Education Association (Association) filed an unfair practice charge against Piscataway Township Board of Education (Board). The charge alleges that on November 29, 2011, Board Director of Human Resources Catherine Sousa informed teacher and unit employee Richard Orozco that he was required to use paid sick leave and leave pursuant to the Family and Medical Leave Act, 29 U.S.C.A. §2601 et seq. (FMLA) concurrently and not consecutively. After that date, the Board has allegedly required other unit employees to use paid sick

leave and FMLA leave concurrently. The charge alleges that from 2004 or earlier until 2011, such leaves were used consecutively, despite a Board policy, adopted on March 18, 2004, declaring that the leaves are to be taken concurrently. The Board's conduct allegedly and unilaterally changes a term and condition of employment, violating section 5.4a(5) and (1)[1/] of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act).

On April 24, 2013, the Director of Unfair Practices issued a Complaint and Notice of Hearing. On March 31, 2014 and May 13, 2014, I conducted a hearing at which the parties examined witnesses and presented exhibits. Post-hearing briefs were filed by August 5, 2014. A reply was filed on August 8, 2014.

Upon the record, I make the following:

FINDINGS OF FACT

The Association is the majority representative of a collective negotiations unit of certificated employees, secretaries, clerks and custodians employed by the Board

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1/ These provisions 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."

(1T66).[2/] The Association has negotiated a series of collective negotiations agreements over the past twenty years, each agreement having a duration of three years (1T65; 1T66). The current three year agreement expired on June 30, 2014 and was negotiated in 2011. Previous agreements were negotiated in 2008 and 2005. The agreements do not specify whether sick leave runs consecutively or concurrently with any other leave (1T67; 1T71).

Nancy Grbelja is employed as a UniServ Field Representative by the New Jersey Education Association (NJEA) and has negotiated collective agreements on behalf of the Association for many years (1T65). During collective negotiations, neither party proposed any provision regarding the sequencing of sick leave and family leave. Nor did the Association file any contractual grievances or unfair practice charges (1T75-76). She understood that for many years and until fall, 2011, unit employees used paid sick leave and other paid leaves before using family leave (1T67).

2. On March 18, 2004, the Board adopted a "sick leave" policy, file code 4151.1. It provides in a relevant portion:

> An employee who has been employed in the district at least twelve months and for at least one thousand two hundred fifty hours in the previous twelve months is eligible for sick leave under the federal Family and

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2/ "T" represents the transcript, preceded by a "1" or "2" signifying the first or second day of hearing, followed by the page number(s); "C" represents Commission exhibits; "CP" represents Charging Party exhibits, and "R" represents Respondent exhibits.

> Medical Leave Act. When any such employee with a serious health condition has exhausted his or her entitlement to paid sick leave, personal leave and vacation time, the Board will grant additional, unpaid sick leave until the total amount of the employee's sick leave, both paid and unpaid, is equal to twelve work weeks in any twelve month period. 'Serious health condition' means illness, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice or residential care facility or continuing treatment by a health care provider. When medically necessary, unpaid sick leave granted under this paragraph may be taken intermittently or on a reduced leave schedule.
>
> The Board will consider the application of any eligible employee for an extension of sick leave when the employee has exhausted all statutory entitlements to sick leave. [CP-1]

3. Robert Copeland was Board Superintendent from 2002 until October, 2012 (1T80). He credibly testified that in or around 2004 and afterwards, a committee was designated to present policies to the Board for its approval and that over the years a member of the "central administration" was assigned to be the "staff liaison" for that committee (1T80). A liaison's duties included vetting proposed policies before their presentation to the Board for a vote (1T81). Among the liaisons during Copeland's tenure were three directors of human resources, including John McFadden, Peter Pitucco and Catherine Sousa (1T81). Copeland relied upon the directors as "experts" (1T83). He conceded having no independent recollection of the disputed

sick leave policy (1T82). He was never informed that it was not being followed (1T84).

NJEA representative Grbelja never saw or read the disputed policy before 2011. She surmised that Association leadership was likely unaware also, ". . . because there was no mail communication between Board and Association offices at that time" (1T73-74). In the absence of any rebuttal testimony or contrary facts on the record, I credit her testimony. She was unaware of any change in the administering of sick and other paid leaves and family leave until fall, 2011 (1T67-68).

4. Peter Pitucco was employed by the Board as Director of Human Resources from August, 2004 through October, 2010 (1T16; 1T46). His predecessor in the title was John McFadden (1T19). Pitucco recruited staff, administered leaves of absence and benefits and participated in collective negotiations on behalf of the Board (1T16; 1T18). He was responsible for recommending to the Board for its approval unit employees' leaves of absence under both New Jersey and federal Family Leave Acts (1T20; 1T56). His training includes an undergraduate degree, a MBA degree and education certifications (1T17).

Pitucco admitted that unit employees first used sick leave and then requested family leave (1T20). He testified:

> If it was going to be a leave of absence, most of the time people would put it in writing. They would write a letter either to myself or the Superintendent, sometimes the

> principal, depending on whatever they desired. And then they would outline what they would like to do, whether it be take a medical leave [sic]. And usually they would state their sick time. And then if they anticipated or if their doctor said they needed to be out longer, at that point they would say they would like to take family leave after that. [1T21]

He also admitted that in a circumstance in which an employee did not anticipate a long absence and needed one, his or her paid leave would be used first and then the matter would proceed to a Board vote, ". . . when it went to an unpaid [family] leave" (1T26; 1T27). Pitucco did not recall having read or known about any Board policy obligating employees to take leaves concurrently (1T21; 1T48). He conceded that for the duration of his employment with the Board, he never realized that his department was acting "at odds" with Board policy (1T49). Pitucco specifically denied applying the verbatim portion of the policy specifying that leaves were to be used concurrently [i.e., "When any such employee . . . has exhausted his or her entitlement to paid sick leave, personal leave and vacation time, the Board will grant additional unpaid sick leave until the total amount of the employee's sick leave, both paid and unpaid is equal to twelve work weeks"] (1T25).

5. In September, 2008, the Board produced for the first time an "employee handbook" for the self-described purpose of

". . . acquaint[ing employees] with our personnel policies and procedures" (R-4). Employees receive a handbook annually and sign an acknowledgment form upon receipt (2T46-47). Among the provisions in the 2008 handbook is one entitled, "Family Medical Leave Act (Policy 4151.1/4251.1)." The text advises employees to ". . . refer to policy 4151.1, 4251.1 and applicable law for complete details on the Family Medical Leave Acts" (R-4).

6. Catherine Sousa has been Board Director of Human Resources since November, 2010 (2T5). She promptly read the Board's written "sick leave" policy (2T6; finding no. 2). Sousa's education, training and experience made her familiar with family leave matters (2T7).

Sometime in September, 2011, teacher and unit employee Rick Orozco filed leave requests with the Board (1T69; 2T8). Sousa understood the issue to be whether Orozco's sick leave time would be charged against his eligibility for family medical leave (2T8). On an unspecified date, a meeting on the subject was convened among then-Association President Andrea Wallace, NJEA representative Grbelja, Board Superintendent Copeland, assistant superintendent Teresa Rafferty and Sousa (1T59; 2T9). In the meeting, the Association representatives claimed that Orozco was ". . . entitled to both using his sick days and [then] his family medical leave allotment" (2T9). Sousa disagreed and referenced the written policy, of which the Association representatives were

unaware (1T73; 2T9). Wallace said that she would provide Sousa a list of staff who had been allowed to use their sick days before taking family medical leave (2T9; see finding no. 7).

7. The Board prepared and presented a list of 162 unit employee leaves of absence it approved from March, 2004 through June, 2012 (R-2; 2T10-11). The multi-page exhibit charts names; start and end dates for "unpaid leaves;" dates of FMLA leaves; dates of paid illness and personal leaves, ". . . before FMLA;" and start dates for State of New Jersey Family Leave[3/] (R-2).

The Association prepared a list of 31 unit employees whose leaves of absence ". . . were handled [at] variance with the [March 2004] policy" (2T11; R-1). Specifically, the list sets forth names of unit employees who used all of their paid sick leave before taking family medical leave (2T9). The Board in

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3/ New Jersey Family Leave Act, N.J.S.A. 34:11B-1, et seq. (FLA). Leave requests under this statute are for bonding with a child (for up to 12 weeks starting with birth date) or caring for an ill family member. Leave is not granted for the employee's illness or injury (2T14).

Leave under the FMLA is provided for up to 12 weeks for bonding, caring for an ill family member and/or the employee's illness or injury. 29 U.S.C. §2612(a)(1). Those weeks may be paid or unpaid, depending on what benefits have been negotiated or extended. But the employer must generally maintain the employee's health insurance coverage during the leave and restore the employee to the same or equivalent employment after the leave. 29 U.S.C. §2614(c)(1).

turn produced an exhibit setting forth the names of the employees, together with charted details about their leaves (R-1).

8. Several unit employee leave histories, together with supporting documents were the subject of testimony by former and current Board Human Resource Directors Pitucco and Sousa, respectively.

Unit employee Jeffrey Gibbs used paid leave, followed by FMLA leave in both the 2007-08 and 2008-09 school years (1T29-30; 1T34, 1T36; CP-2; CP-3). More specifically, Gibbs' 2007-08 "attendance calendar," charting every weekday from July, 2007 through June, 2008 shows that Gibbs commenced paid sick leave in April 2008, followed by paid vacation leave in June and followed by FMLA leave commencing June 17, 2008 (CP-2; 1T29-31). In July, 2008, Gibbs continued FMLA leave until September 1 (holiday) and commenced an unpaid medical leave on September 10. Gibbs' and Pitucco's exchange of letters confirm the leaves (CP-3; 1T33-34).

Sousa reviewed the calendars and correspondence pertaining to Gibbs (2T16-17). She testified that the records demonstrated ". . . a clerical error in how the leave request was processed" (2T19). She explained that, ". . . since [Gibbs' illness] was a continuing ongoing medical event, the proper way to address that leave was to go back to the start date" (2T18).

Unit employee Wynanne Wright used weeks of paid sick leave before using FMLA leave (1T37; CP-4; CP-5). Sousa testified that the records, like those concerning Gibbs, show the Board's untimely receipt of information about the illness and that Wright's leave, ". . . should have been calculated [retroactively] but was figured from [September 21, 2009] forward (2T20-21; 2T60).

The same pattern of unit employees using paid sick leave before taking FMLA leave applied to Lisa Jarusiewicz in the 2009-2010 school year (CP-6; CP-7; 1T40-41); Gaye McGee/Hamilton in the 2007-2008 school year (CP-8; CP-9; 1T43); and Adrienne Parks in the 2005-2006 school year (CP-10; CP-11; 1T43-44). Similarly, Sousa testified that the records for Jarusiewicz and McGee/Hamilton show "errors" in calculation or eligibility for benefits (2T24; 2T31-32). Sousa testified that Parks did not have any paid sick leave time to use before she commenced FMLA leave. When FMLA leave was exhausted, the Board approved unpaid medical leave, consistent with Board policy (T32-33). In the absence of any rebuttal, I credit Sousa's testimony. Parks' attendance calendar reveals that she used 16 paid sick days in the 2005-2006 school year before commencing FMLA leave. About 7 weeks lapsed between her last paid sick day and first FMLA leave day off (CP-10).

Three other employees - Benita Osburn-McClean, Portia Robinson and Selina Meyers - whose names are among the 31 comprising the Association's list, commenced FMLA leave because they had exhausted their paid sick leave allotment, according to Sousa (2T41-42, see finding no. 7). In the absence of any factual rebuttal by the Association, I credit her testimony.

9. Sousa conceded that unit employee leaves of less than 60 days would not have left a discernable record of paid sick leave days and FMLA leave days having been taken consecutively or concurrently. Stated another way, FMLA leave may be taken for a maximum of 12 weeks (or 60 days); if an employee used paid sick days for a portion of a leave of less than 60 days, the Board's record would merely reflect a total number of leave days off (2T36). A substantial portion of the recorded leaves were for less than 60 days, permitting one to conclude that the leaves were taken consecutively or concurrently (2T13; 2T36).

10. Board records of other unit employee leaves (those of Miller, Aiello, Elsters, Tyska and Ziobro) show that paid sick leaves were used before FMLA leaves or that computation of those leaves were tainted by errors in the application of FMLA, FLA, the Board's written sick leave policy or the method of computation (R-1; 2T34; 2T35; 2T37-40; 2T43; 2T60; 2T61). Pressed on cross-examination to provide the name of any unit employee whose 61st day of absence due to illness was

memorialized as (unpaid) medical leave, Sousa demurred, testifying: "Without having specific calendars on all of these people, I can't give you a specific example and know it to be accurate just from what I have here" (2T65; 2T72).

ANALYSIS

N.J.S.A. 34:13A-5.3 entitles a majority representative to negotiate on behalf of unit employees over their terms and conditions of employment. Section 5.3 also defines an employer's duty to negotiate before changing working conditions:

> Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established.

See also Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n., 78 N.J. 25, 48 (1978).

Family and medical leave, whether paid or unpaid are mandatorily negotiable terms and conditions of employment. Whether such leaves will be taken concurrently or consecutively with paid leave is mandatorily negotiable. Lumberton Ed. Ass'n. and Lumberton Tp. Bd. of Ed., P.E.R.C. No. 2002-13, 27 NJPER 372 (¶32136 2001), aff'd. 28 NJPER 427 (¶33156 App. Div. 2002).

The Board contends that where a majority representative has acquiesced to an employer's unilateral setting or changing a term and condition of employment, no violation of the obligation to negotiate will be found where the employer simply acted consistent with that practice. South River Bd. of Ed., P.E.R.C.

No. 86-132, 12 NJPER 447 (¶17167 1986), aff'd. NJPER Supp.2d 170 (¶149 App. Div 1987).

No facts support a finding that the Association "acquiesced" to the Board's March 2004 unilaterally promulgated "sick leave" policy, if knowledge is imputed to the concept of acquiescence. The Association was unaware of the written policy and the Board produced no evidence demonstrating that the Association should have known about it. Nor did the Association acquiesce to the Board's belated implementation of the written policy in 2011, when unit employee Orozco was informed that he could not take paid sick leave followed by family leave. The Association filed a timely charge.

The record shows that for more than six years the Board implemented consecutive leaves -- paid leaves followed by family leaves -- for all unit employees. The Board's designated representative for administering employee leaves from 2004 through the fall of 2010, then-Director of Human Resources Pitucco, admitted that practice and was unaware of the contrary policy. Superintendent Copeland merely relied on Pitucco's judgment and recommendations, as did the Board. Many examples illustrating the sequences of unit employee leave-taking corroborate Pitucco's testimony.

The Board failed to disprove the practice. Board records of employee leaves of less than 60 days do not demonstrate

sequencing; that is, they are consistent with consecutive and concurrent paid leave and family leave absences. Current Board Director of Human Resources Sousa conceded the inadequacy of those records for that forensic purpose, an acknowledgment that bolsters the credibility of Pitucco's testimony. Board records of employee leaves of more than 60 days amply show that paid leave was used before FMLA leave. The Board argues that those documented unit employee leaves are tainted by various computational or interpretative "errors." I find that all such "errors" have no legal significance because the Commission is not concerned about ". . . how a longstanding practice came to exist, but that it did exist." Barnegat Tp. Bd. of Ed. and Barnegat Federation of Teachers, P.E.R.C. No. 91-18, 16 NJPER 484, 485 (¶21210 1990), aff'd. NJPER Supp.2d 268 (¶221 App. Div. 1992).

In Barnegat Tp. Bd. of Ed., the employer argued that its discontinuation of a practice of permitting custodial and cafeteria employees to convert unused personal days into accumulative sick days was lawful, ". . . because it was simply correcting an unknown and unauthorized error by its payroll clerk." Id. In finding a violation of section 5.4a(5) and derivatively a(1) of the Act, the Commission eschewed the notion that the error was "isolated" or "informal," writing that the Board Secretary and payroll clerk authorized the disputed forms to employees that set forth calculations and conversions of

personal days into sick days. The Commission concluded that the Secretary and clerk should have known their error and the employer ". . . cannot now disown any duty to negotiate before correcting an error its agents created and should have detected." Id.

In this case, the "errors" are visible through the lens of a written policy that was unwittingly ignored for more than six years by the Board's hierarchy. The term and condition of employment established in that period -- consecutive use of paid leave and family leave -- cannot be disavowed unilaterally. I find that the Board's refusal to apply paid leaves followed by family leaves to unit employee Orozco and others who followed him violates 5.4a(5) and derivatively a(1) of the Act.

The Association argues that the evidence shows that the Board has provided the benefit -- consecutive leaves -- by an implied contractual commitment based on an established practice (Association brief at 3, 13). I disagree and find that the Board violated the Act by changing an existing employment condition without first negotiating. Middletown Tp. and Middletown PBA Local 124, P.E.R.C. No. 98-77, 24 NJPER 28 (¶29016 1998), aff'd. 334 N.J. Super. 512 (App. Div. 1999), aff'd. 166 N.J. 112 (2000).

To prove an implied commitment, the Association must show that the practice has been, 1) unequivocal, 2) clearly enunciated and acted upon and 3) readily ascertainable over a reasonable

period of time as a fixed and established practice accepted by both parties. Id., 24 NJPER at 29. If the Association succeeds, the Board will be bound to maintain the established past practice during the life of the contract. In light of the 2004 Board policy announcing concurrent taking of paid and family leaves and the Board's reasonable and detrimental reliance on Pitucco's recommendations to the contrary for more than six years, I do not find that the practice is knowingly "clearly enunciated" within the Commission's meaning of "established past practice" in Middletown Tp. The Commission has warned that no violation of this type of case will be found,

". . . unless the charging party proves that an employer has repudiated rather than simply breached a contractual commitment." Roselle Bd. of Ed., P.E.R.C. No. 98-145, 24 NJPER 307, 308 (¶29147 1998); State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). The record in this case does not support a finding of contractual repudiation. See Passaic Cty. Reg. H.S. Dist. No. 1 Bd. of Ed., P.E.R.C. No. 91-11, 16 NPER 446 (¶21192 1990).

In another type of case involving an alleged change in an existing working condition, the majority representative does not claim (or cannot prove) an express or implied contractual right to prevent that change while the employer does not claim an express or implied contractual right to impose that change

without negotiations. Such a change triggers the duty to negotiate under section 5.3 of the Act. As stated in Sayreville Bd. of Ed., P.E.R.C. No. 83-105, 9 NJPER 138, 140 (¶14066 1983):

> [A]n employer violates its duty to negotiate when it unilaterally alters an existing practice or rule governing a term and condition of employment . . . even though that practice or rule is not specifically set forth in a contract . . . Thus, even if the contract did not bar the instant changes, it does not provide a defense for the Board since it does not expressly and specifically authorize such changes.

Unlike the other type of case, the representative need not show an actual contractual entitlement or a binding past practice. To prove a violation, absent an applicable defense, the representative need show only that the employer changed an existing employment condition without first negotiating. If a violation is found, an employer ordinarily will be obligated to negotiate in good faith before that employment condition is changed again but will not be obligated to maintain the employment condition until the end of the contract. Id., 24 NJPER at 30. See also New Jersey Turnpike Auth., P.E.R.C. No. 99-49, 25 NJPER 29 (¶30011 1998).

This is the second type of case. The Association has proved that for more than six years unit employees took paid leaves before using family leave benefits and that in the fall of 2011, unit employee Orozco and others who followed were unilaterally denied consecutive leaves. Consecutive leave benefits must be

restored to all unit employees, including those who were denied upon application. The Board may then seek to negotiate a change.

RECOMMENDATION

I recommend that the Commission find that Piscataway Township Board of Education violated 5.4a(5) and (1) of the Act when it unilaterally required unit employees represented by Piscataway Township Education Association to use paid sick and other leaves and leave pursuant to the Family and Medical Leave Act, 29 U.S.C.A. §2601 et seq. concurrently and not consecutively.

RECOMMENDED ORDER

Piscataway Township Board of Education is ordered to:

A. Cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by unilaterally changing a term and condition of employment without negotiations; specifically, the consecutive taking of sick and other paid leaves, followed by the taking of family leave, pursuant to the Family and Medical Leave Act, 29 U.S.C.A., §2601 et seq.

2. 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, particularly by unilaterally changing the consecutive

taking of sick and other paid leaves, followed by the taking of family leave, pursuant to the Family and Medical Leave Act, 29 U.S.C.A., §2601 et seq.

B. Take this action:

1. Rescind the unilaterally implemented rule requiring unit employees to use paid leaves and family leave pursuant to the Family and Medical Leave Act, 29 U.S.C.A., §2601 et seq. concurrently.

2. Restore the term and condition of employment enabling unit employees to use paid leaves and leave pursuant to the Family and Medical Leave Act, 29 U.S.C.A., §2601 et seq. consecutively.

3. Make whole any unit employees who have been denied the consecutive use of paid leaves and family leave, pursuant to the Family and Medical Leave Act, 29 U.S.C.A., §2601 et seq.

4. Negotiate in good faith with the majority representative over any proposed change in the restored term and condition of employment.

5. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as "Appendix A." Copies of such, on forms to be provided by the Commission, will be posted immediately upon receipt thereof and after being signed by the Respondent's authorized representative

will be maintained by it for at least sixty (60) consecutive days. Reasonable steps will be taken by the Respondent to ensure that such notices are not altered, defaced or covered by other materials.

6. Within twenty (20) days of receipt of this order, notify the Chair of the Commission what steps the Respondent has taken to comply with this order.

Jonathan Roth
Hearing Examiner

DATED: October 6, 2014
Trenton, New Jersey

Pursuant to N.J.A.C. 19:14-7.1, this case is deemed transferred to the Commission. Exceptions to this report and recommended decision may be filed with the Commission in accordance with N.J.A.C. 19:14-7.3. If no exceptions are filed, this recommended decision will become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further. N.J.A.C. 19:14-8.1(b).

Any exceptions are due by October 16, 2014.

NOTICE TO EMPLOYEES

PURSUANT TO
AN ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION
AND IN ORDER TO EFFECTUATE THE POLICIES OF THE
NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,
AS AMENDED,
We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by unilaterally changing a term and condition of employment without negotiations; specifically, the consecutive taking of sick and other paid leaves, followed by the taking of family leave, pursuant to the Family and Medical Leave Act, 29 U.S.C.A., §2601 et seq.

WE WILL cease and desist from 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, particularly by unilaterally changing the consecutive taking of sick and other paid leaves, followed by the taking of family leave, pursuant to the Family and Medical Leave Act, 29 U.S.C.A., §2601 et seq.

WE WILL rescind the unilaterally implemented rule requiring unit employees to use paid leaves and family leave pursuant to the Family and Medical Leave Act, 29 U.S.C.A., §2601 et seq. concurrently.

WE WILL restore the term and condition of employment enabling unit employees to use paid leaves and leave pursuant to the Family and Medical Leave Act, 29 U.S.C.A., §2601 et seq. consecutively.

WE WILL make whole any unit employees who have been denied the consecutive use of paid leaves and family leave, pursuant to the Family and Medical Leave Act, 29 U.S.C.A., §2601 et seq.

WE WILL negotiate in good faith with the majority representative over any proposed change in the restored term and condition of employment.

Docket No. CO-2012-271 Piscataway Township Board of Education
(Public Employer)

Date: _____ By: _____

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, PO Box 429, Trenton, NJ 08625-0429 (609) 984-7372

APPENDIX "A"