

P.E.R.C. NO. 84-25

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF THE
TOWNSHIP OF GLOUCESTER,

Respondent,

-and-

Docket No. CO-81-193-172

GLOUCESTER TOWNSHIP SCHOOL
SERVICES PERSONNEL ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission holds that the Board of Education of the Township of Gloucester committed an unfair practice when it refused to negotiate with the Gloucester Township School Services Personnel Association concerning the salary for a newly created secretarial position.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF THE
TOWNSHIP OF GLOUCESTER,

Respondent,

-and-

Docket No. CO-81-193-172

GLOUCESTER TOWNSHIP SCHOOL
SERVICES PERSONNEL ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, McGinnis Associates
(William McGinnis, Jr., President)

For the Charging Party, Selikoff & Cohen, P.A.
(John E. Collins, of Counsel)

DECISION AND ORDER

On December 30, 1980, the Gloucester Township School Services Personnel Association ("Association") filed an unfair practice charge against the Board of Education of the Township of Gloucester ("Board") with the Public Employment Relations Commission.^{1/} The charge alleged that the Board violated the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically subsections 5.4(a)(1), (3), and (5)^{2/} when,

^{1/} This charge was amended on February 10, 1982, and at the hearing on March 12, 1982.

^{2/} 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; (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."

after changing a ten month secretarial position to a twelve month position, it unilaterally established the salary for that position.

On June 18, 1981, the Director of Unfair Practices issued a Complaint and Notice of Hearing pursuant to N.J.A.C. 19:14-2.1. The Board filed its Answer in which it asserted that it set the employee's salary in accordance with the parties' agreement.

On March 12, 1982, Commission Hearing Examiner Joan Kane Josephson conducted a hearing at which the parties examined witnesses and presented evidence. They waived oral argument but filed post-hearing briefs by March 16, 1983.

On July 29, 1983, the Hearing Examiner issued her report and recommendations, H.E. No. 84-9, 9 NJPER ____ (¶____ 1983) (copy attached). She found that the parties' contract contained salary guides for ten month school secretaries and for twelve month principals' secretaries but did not cover the newly created position of twelve month assistant principal secretary. Since this new position was separate from the other two positions, the Hearing Examiner concluded that the Board violated subsections 5.4(a)(1) and (5) in unilaterally setting a new salary. In re Matawan-Aberdeen Reg. Bd. of Ed., P.E.R.C. No. 82-56, 8 NJPER 31 (¶13013 1981); In re Pequannock Twp. Bd. of Ed., P.E.R.C. No. 83-67, 9 NJPER 404 (¶14184 1983).^{3/}

^{3/} The Hearing Examiner found no evidence to support the Association's allegation that the Board violated subsection 5.4(a)(3) and therefore recommended that that portion of the Complaint be dismissed. We also note that the increase in work year was not alleged to be a violation of the Act.

The Hearing Examiner served a copy of her report on the parties. The cover letter stated that Exceptions were due August 11, 1983. No Exceptions have been filed and neither party has requested an extension of time.

In the absence of Exceptions and based on our review of the record, we adopt the Hearing Examiner's findings of fact and recommendations.

ORDER

IT IS ORDERED that:

A. The Board of Education of the Township of Gloucester cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly by refusing to negotiate with the Association with respect to the salary for a newly created position within the collective negotiations unit.

2. Refusing to negotiate in good faith with the Association concerning terms and conditions of employment of employees in the Gloucester Township School Service Personnel Association, particularly by refusing to negotiate the salary for a newly created position.

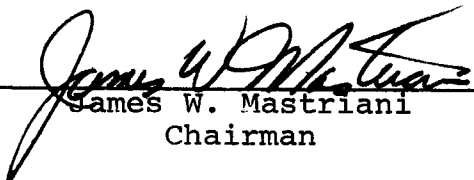
B. That the Board take the following affirmative action:

1. Negotiate in good faith, upon demand, with the Association regarding the salary for the position of twelve month school secretary retroactively to July 1, 1980.

2. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice on forms to be provided by the Commission, shall be posted immediately upon receipt thereof and, after being signed by the Respondent's authorized representative, shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken by the Respondent to ensure that such notices are not altered, defaced, or covered by other materials.

3. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply herewith.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

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

DATED: Trenton, New Jersey
September 15, 1983
ISSUED: September 16, 1983

NOTICE TO ALL 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 NOT interfere with, restrain or coerce our employees in the exercise of the rights guaranteed to them by the Act, particularly by refusing to negotiate with the Association with respect to the salary for a newly created position within the collective negotiations unit.

WE WILL NOT refuse to negotiate in good faith with the Association concerning terms and conditions of employment of employees in the Gloucester Township School Service Personnel Association, particularly by refusing to negotiate the salary for a newly created position.

WE WILL negotiate in good faith, upon demand, with the Association regarding the salary for the position of twelve month school secretary retroactively to July 1, 1980.

BOARD OF EDUCATION OF THE TOWNSHIP OF GLOUCESTER
(Public Employer)

Dated _____ By _____ (Title)

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,
429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.

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

In the Matter of

BOARD OF EDUCATION OF THE
TOWNSHIP OF GLOUCESTER,

Respondent,

-and-

Docket No. CO-81-193-172

GLOUCESTER TOWNSHIP SCHOOL
SERVICE PERSONNEL ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent violated Subsections 5.4(a)(1) and (a)(5) of the New Jersey Employer-Employee Relations Act when, after establishing a 12-month school secretary position, it unilaterally and without negotiations set the salary for that position. There previously existed 10-month school secretary positions and salary guides, and 12-month principal's secretary positions and salary guides. The Hearing Examiner found the 12-month school secretary to be a separate position for which the Respondent could not unilaterally determine the salary for the extended year.

The Hearing Examiner recommends that the Respondent be ordered to negotiate the compensation for the position retroactively to the date of the expanded school year.

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.

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

In the Matter of

BOARD OF EDUCATION OF THE
TOWNSHIP OF GLOUCESTER,

Respondent,

-and-

Docket No. CO-81-193-172

GLOUCESTER TOWNSHIP SCHOOL
SERVICE PERSONNEL ASSOCIATION,

Charging Party.

Appearances:

For the Respondent
William J. McGinnis, Jr.
McGinnis Associates

For the Charging Party
Selikoff & Cohen, Esqs.
(John E. Collins, Of Counsel)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on December 3, 1980 ^{1/} by the Gloucester Township School Service Personnel Association (the "Charging Party" or the "Association") alleging that the Gloucester Township Board of Education (the "Respondent" or the "Board") has engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act") in that the Respondent unilaterally set the

1/ The charge was amended on February 10, 1982 and at the hearing on March 12, 1982 to (1) correct certain clerical errors and (2) update the extent of the alleged damages (C-2 evid.).

salary of a member of the charging party's unit that was outside the salary guides contained in the parties' collective negotiations agreement. The charging party alleges this to be a violation of N.J.S.A. 34:13A-5.4(a)(1), (3) and (5). ^{2/}

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 June 18, 1981. The Board filed an answer stating that the employee's salary was consistent with the parties' collective negotiations agreement. A prehearing conference was held on July 23, 1983 at which time the parties agreed to exchange certain information. On December 2, 1981, the charging party requested that a hearing be scheduled. A hearing was held on March 12, 1982 in Trenton, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. The charging party submitted a posthearing brief on September 9, 1982. The respondent submitted a posthearing brief on March 16, 1983. ^{3/}

An Unfair Practice Charge, as amended, having been filed with the Commission, a question concerning alleged violations of the Act exists and, after hearing and after consideration of the posthearing briefs of the parties, the matter is appropriately before the Commission by its designated Hearing Examiner for deter-

^{2/} 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; (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 employees in that unit, or refusing to process grievances presented by the majority representative."

^{3/} Submission of this brief was delayed because the representative of the respondent was incapacitated as the result of an airplane crash.

mination.

Upon the entire record the Hearing Examiner makes the following:

FINDINGS OF FACT

The Board of Education of the Township of Gloucester is a public employer within the meaning of the Act and is subject to its provisions. The Gloucester Township School Service Personnel Association is an employee representative within the meaning of the Act and is subject to its provisions.

The Association is the exclusive representative for collective negotiations of a unit of Board employees which includes, among other personnel, the school secretaries which are described as "non-confidential or administrative secretarial and clerical positions." (J-2 in evid. recognition clause).

The contracts between the parties have included two salary guides for the secretarial staff which are a guide for 12-month secretaries and a guide for 10-month secretaries. These guides provide for the secretaries to the principals who work 12 months and are paid on the 12-month guide and school secretaries who report to the school assistant principals and are paid on the 10-month guide.

Mrs. Helen Zambrzycki had been a 10-month school secretary since November 1971. On July 1, 1980 the length of her work year was increased to 12 months. She continued to function as a school secretary reporting to an assistant principal. She was not advanced to a secretary to a principal.

Mrs. Zambrzycki was not placed on the 12-month guide; she continued to be paid on the 10-month guide and that salary was prorated to compensate her for the additional two months. ^{4/} Mrs. Zambrzycki questioned the new salary with the Board's Personnel Director, Robert A. Suessmith, who told her the Board did not intend to discuss her salary with the Association. Suessmith testified that the Association was not informed of Mrs. Zambrzycki's changed work year or of the computation of her salary. He also testified the Board did not feel it was necessary to notify the Association or pursue negotiations on this issue since the Board was "not the mover in negotiations." (Tr. p. 101)

In November 1980 Mrs. Zambrzycki attended an Association meeting of the secretaries. Carmella Cecchi, the President of the local association, and Donald A. Shaw, an NJEA negotiations consultant who represents the charging party-Association in negotiations, were at the meeting. At that meeting, for the first time, Cecchi and Shaw became aware of Zambrzycki's situation. They instantly decided an unfair practice charge should be filed. They noted the charge had to be filed by December to comply with the Act's statute of limitations.

At this time the Association and the Board were involved in negotiations for a successor agreement. There were no formal negotiations for the salary guide of the 12-month school secretary. Shaw and Suessmith did have discussions concerning this position "off the table." (Tr. p. 52) Shaw testified credibly:

^{4/} In prior cases when 10-month secretaries were made 12-month secretaries, they were also advanced to principal's secretaries.

...We had filed at this point an unfair labor practice charge after we had been apprised of the situation. It was during the negotiations that we spoke stating that rather than tie up negotiations because negotiations were proceeding along and it seemed to be a very sensitive issue, that we would allow it to be determined in another arena, PERC at this point. So we allowed this to continue on into where we are today and just concluded negotiations. (Tr. p. 52)

After the conclusion of the negotiations, Suessmith was responsible for having the contract prepared. He included in the new contract three secretarial guides: (1) Principal's secretary (12 months); (2) 10-month office secretary; and (3) 12-month office secretary (CP-3 in evid.) Suessmith agreed with Shaw that no agreement had been reached on a salary guide for a 12-month school secretary guide. ^{5/}

DISCUSSION AND ANALYSIS

The undersigned recommends that the Commission find that the Board unilaterally created a new position of school secretary-12 months and then unilaterally established the salary for that position in violation of subsections 5.4(a)(1) and (5). The Association did not waive their right to negotiate this salary because a collective negotiations agreement contained the unilaterally imposed salary. The Board's own witness, who was responsible for negotiations with this unit, never suggested that agreement was reached on this issue and admitted he unilaterally inserted the salary on the guide. As soon as the charging party became aware of the change in Mrs. Zambrzycki's position they raised their

^{5/} Mrs. Cecchi signed the contract before Shaw was aware of the inclusion of the third guide. The negotiators for the parties clearly had not agreed on a third salary guide for a 12-month school secretary. The parties agreed on a percentage increase for employees and Suessmith computed guides, but the status of Mrs. Zambrzycki's salary remained in dispute.

objection. There was no agreement reached at any juncture during the negotiations; the parties agreed that this dispute would be reserved.

The respondent created a new position and unilaterally determined the salary. This is not a 12-month principal's secretary position for which there is a bilaterally agreed salary guide. ^{6/}
In 1980 a 10-month school secretary position was permanently expanded to a 12-month position. The position remains a 12-month position. ^{7/}

The employer may not, as the respondent argues, unilaterally determine the salary for this position by deciding to prorate the 10-month salary. The Commission has held that the unilateral action of an employer in setting salary violates the obligation to negotiate. Matawan-Aberdeen Reg. Bd/Ed, P.E.R.C. No. 82-56, 8 NJPER 31 (1981); Peguannock Twp. Bd/Ed, P.E.R.C. No. 83-167, 9 NJPER ____ (¶ 1983). These cases confirm that this is plainly a violation of subsections (a)(5) and derivatively (a)(1) of the Act.

Upon the entire record in this case, the undersigned recommends that the Commission find that the respondent violated subsection (a)(5) and derivatively (a)(1) when, after establishing a 12-month school secretary position, it unilaterally and without negotiations set the salary for that position. ^{8/}

^{6/} If she had been advanced to the 12-month principal's position, it would have been appropriate for Mrs. Zambrzycki to have filed a grievance under the contract as respondent suggests.

^{7/} There was another secretarial position similarly changed, but only allegations and proofs concerning Mrs. Zambrzycki were entered in this charge.

^{8/} No evidence was adduced as to the alleged violation of §5.4(a)(3) and I therefore recommend that the Commission find there has been no violation of that subsection.

It is hereby recommended that the Commission issue the following

ORDER

A. The Respondent Board of Education of the Township of Gloucester cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly by refusing to negotiate with the Charging Party with respect to the salary for a newly created position within the collective negotiations unit.

2. Refusing to negotiate in good faith with the Charging Party concerning terms and conditions of employment of employees in the Gloucester Township School Service Personnel Association, particularly by refusing to negotiate the salary for a newly created position.

B. That the Respondent Board take the following affirmative action:

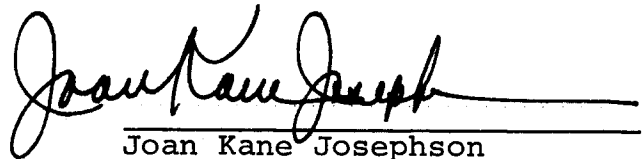
1. Negotiate in good faith, upon demand, with the Charging Party regarding the salary for the position of 12-month school secretary retroactively to July 1, 1980.

2. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice, on forms to be provided by the Commission, shall be posted immediately upon receipt thereon and, after being signed by the Respondent's authorized representative, shall be maintained by it for at least sixty (60) consecutive

days. Reasonable steps shall be taken by the Respondent Board to ensure that such notices are not altered, defaced or covered by other materials.

Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent Board has taken to comply herewith.

C. That the allegations that the Respondent Board violated subsection 5.4(a)(3) of the Act be dismissed in their entirety.


Joan Kane Josephson
Hearing Examiner

Dated: July 29, 1983
Trenton, New Jersey

NOTICE TO ALL 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 NOT interfere with, restrain or coerce employees in the exercise of the rights guaranteed to them by the Act, particularly by refusing to negotiate with the Charging Party with respect to the salary for a newly created position within the collective negotiations unit.

WE WILL NOT refuse to negotiate in good faith with the Charging Party concerning terms and conditions of employment of employees in the Gloucester Township School Service Personnel Association, particularly by refusing to negotiate the salary for a newly created position.

WE WILL negotiate in good faith, upon demand, with the Charging Party regarding the salary for the position of 12-month school secretary retroactively to July 1, 1980.

BOARD OF EDUCATION OF THE TOWNSHIP OF GLOUCESTER
(Public Employer)

Dated _____

By _____
(Title)

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 James Mastriani, Chairman, Public Employment Relations Commission, 429 E. State State Street, Trenton, New Jersey 08608 Telephone (609) 292-9830.