

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF  
THE BOROUGH OF OAKLAND,

Respondent,

-and-

Docket No. CO-79-110-78

OAKLAND TEACHERS' ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission holds that the Board of Education of the Borough of Oakland 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), when it unilaterally changed its policy concerning the placement of employees on the salary guide based on graduate school credits. Prior to the change, as the Commissioner of Education conclusively found, the Board had not required that graduate school credits be taken in any particular order to advance on the salary guide. After the change, employees could not use graduate school credits to advance on the salary guide unless such credits were taken after completion of the last degree obtained. While the Commissioner of Education found that the change did not violate the education law, he did not rule on its validity under our Act. The Commission finds that unilateral change invalid because it predominantly concerns employee compensation, and is therefore a mandatorily negotiable term and condition of employment.

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OAKLAND TEACHERS' ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Parisi, Evers & Greenfield, Esqs.  
(Irving C. Evers, of Counsel)

For the Charging Party, Bucceri & Pincus, Esqs.  
(Louis P. Bucceri, of Counsel)

DECISION AND ORDER

On November 6, 1978, the Oakland Teachers' Association ("Association") filed an amended unfair practice charge against the Board of Education of the Borough of Oakland ("Board").<sup>1/</sup> 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. (the "Act"), specifically subsections N.J.S.A. 34:13A-5.4(a)(1) and (5),<sup>2/</sup> when it unilaterally changed its policy concerning the placement of employees on the salary guide based on graduate

<sup>1/</sup> The original charge, filed November 2, 1978, was subsequently withdrawn.

<sup>2/</sup> 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."

school credits. The charge alleged that prior to the change, the Board had not required that graduate school credits be taken in any particular order to advance on the salary guide; thus, for example, an employee who had a master's degree could use additional credits earned before that degree, but not used in order to gain that degree, to move up on the salary guide to MA plus 15 or MA plus 30. After the change, employees could not use graduate school credits to advance on the salary guide unless such credits were taken after completion of the last degree obtained; thus an employee with a master's degree could not use additional credits earned before the master's degree, but not used to obtain that degree, to advance on the salary guide.

On April 12, 1979, the Director of Unfair Practices issued a Complaint and Notice of Hearing. On November 24, 1981, the Board filed an Answer in which it contended that it has always been Board policy to disallow pre-degree credits to be utilized for post-degree salary guide advancement, and that it had a managerial prerogative to determine what courses would count for purposes of advancement on the salary guide.

On November 24, 1981,<sup>3/</sup> Commission Hearing Examiner Alan R. Howe conducted a hearing and allowed the parties to examine witnesses, present evidence, and argue orally. The parties waived oral argument and filed post-hearing briefs by January 18, 1982.

<sup>3/</sup> The delay between issuance of the Complaint and the hearing resulted from an agreement to stay the instant proceedings while a related matter was pending before the Commissioner of Education. See infra at pp. 5-6. This agreement predated City of Hackensack v. Winner, 82 N.J. 1 (1980).

On March 1, 1982, the Hearing Examiner issued his Recommended Report and Decision, H.E. No. 82-36, 8 NJPER \_\_\_\_\_ (¶ \_\_\_\_\_ 1982) (copy attached). He concluded that the Board had violated subsections 5.4(a)(1) and (5) of the Act when it failed to negotiate before changing its policy concerning the salary guide advancement of employees based on their graduate school credits. He recommended that the Commission order the Board to:

- (1) cease and desist from changing the policy unilaterally and refusing to negotiate with the Association concerning the policy;
- (2) pay the following employees back pay: Mary Scerbo (\$2,811); C. Tucker Platt (\$5,972); George Peterson (\$3,654); Judy Vihonski (\$888); Elaine Vasar (\$1,656); Peter Sinski (\$3148); Richard Simler (\$4,223); and Mary Siebold (\$610);
- (3) post notices of the violations and remedial measures taken.

On March 22, 1982, the Board filed Exceptions and a supporting brief which incorporated a copy of its brief before the Hearing Examiner. The Board asserts that the Hearing Examiner erred when he found the Board violated subsections 5.4 (a)(1) and (5), awarded damages to individuals who were not named in the charge, and awarded 12% interest.

The Association also filed Exceptions and a supporting brief. In addition, the Association filed a reply brief to the Board's Exceptions. The Association contends that the Hearing Examiner erred in failing to recommend the reinstatement of the

pre-1978 policy pending negotiation of a new one and in computing the amount of damages incurred by several teachers.

The facts in this case are relatively simple and undisputed.<sup>4/</sup> Prior to October, 1978, the Board maintained a policy, entitled "Professional Personnel Compensation Guides and Contracts," which provided:

Personnel shall be individually responsible for officially informing the school administration, and providing the required supporting evidence, of increments due them for completion of approved training toward advanced degrees.

Adjustments due to new training status shall be considered twice annually in September and February. The changes shall become effective at the time specified in the official board approval.

In October, 1978, the Board changed the policy to provide:

In order for graduate courses to be applied to the Bachelor's plus 15 or the Master's plus 15, 30 or 45, training levels on the teachers' salary guide, said course must have been taken after the Bachelor's or Master's degree, respectively, has been completed.  
[Emphasis added]

The Board made this change without notifying or negotiating with the Association. The collective negotiations agreements between the parties have always contained a salary guide which has specified the salary differentials based on academic achievement, but never any chronological order for the taking of credits in order to move up on the salary guide.

<sup>4/</sup> With some minor exceptions discussed *infra*, the Hearing Examiner's factual findings are supported by substantial evidence.

At about the time this charge was filed, four teachers, including two teachers -- Mary Siebold and Catherine Dystra -- involved in this proceeding, filed Petitions with the Commissioner of Education challenging the Board's rejection of their applications for advancement on the Master's (MA) salary guide. They sought to use credits earned prior to obtaining the MA, but not used in obtaining that degree.

On March 31, 1980, an Administrative Law Judge determined that prior to October, 1978, the Board's "policy was silent as to the order in which the graduate credits and the Master's Degree had to be earned." Consequently, he ruled that prior to the policy change in October, 1978, the Board had to allow teachers to use credits earned before a degree, but not used towards that degree, to move upwards on the salary guide. He specifically awarded back pay. See, McAllen v. Board of Education of the Borough of North Arlington, Bergen County, 1975 S.L.D. 90. He rejected, however, all claims arising after the October, 1978 policy change, finding that the change in policy was permissible under the education statutes. He did not consider the question of whether the October, 1978 policy change violated the New Jersey Employer-Employee Relations Act.

On June 2, 1980, the Commissioner of Education affirmed the decision of the Administrative Law Judge. While he upheld the denial of the post-policy change claims, he expressly noted the contested validity of that change under our statute and

emphasized that his decision was without reference to the rights, if any, under consideration before the Commission.

On October 1, 1980, the State Board of Education affirmed on the basis of the Commissioner's decision.

On June 3, 1981, the Superior Court, Appellate Division issued a per curiam opinion affirming the decision of the State Board of Education. Siebold v. Oakland Bd. of Ed., Docket No. A-787-80 (App. Div. 1981). The Court specifically approved the finding that prior to October, 1978, the Board did not have a policy as to the order in which graduate credits had to be earned if a teacher wished to move up on the salary guide. The Court did not consider the legality of the October, 1978 policy change under our Act.

The Board first argues that prior to October, 1978, it had a policy of not allowing teachers to move up on the salary guide based on graduate credits earned before the last degree they obtained. We agree with the Hearing Examiner that the Board is foreclosed from making this argument in this case. This question was fully litigated in the proceedings before the Commissioner of Education and on appeal. The Board lost. It is now collaterally estopped from arguing that prior to October, 1978, teachers were not entitled to use pre-degree credits, not used in obtaining that degree, in order to advance on the salary guide.

The Board asserts that if it is bound by the determinations concerning the pre-October, 1978 policy in the previous

proceedings, the Association should be equally bound by the determinations concerning the validity of the October, 1978 policy change in those proceedings. The Board asserts that the Hearing Examiner in effect overruled the Administrative Law Judge, Commissioner of Education, State Board of Education, and Appellate Division.

The Board is mistaken. The parties only litigated, and the tribunals only decided, the validity of the October, 1978 policy change under the education statutes. Specifically reserved for decision by this Commission was the validity of that change under our Act. It is that question to which we now turn, unconstrained by collateral estoppel. The issues in the two proceedings are distinct, and collateral estoppel therefore does not apply to these issues.

The validity of the October, 1978 policy change involves solely a question of law, not of fact. The Board admits it acted unilaterally, without notification or negotiation. The sole substantive question is whether, as it asserts, it had a non-negotiable, managerial prerogative to do so. We hold it did not.

Bd. of Ed. Englewood v. Englewood Teachers, 64 N.J 1 (1973) is directly on point. There the Supreme Court held arbitrable a dispute over whether the Board could deny advancement on a salary guide because it did not approve the graduate course the teacher took. The Court stated the dispute was purely a question of compensation and a matter which intimately affected the grievant's terms and conditions of employment without affecting any major educational policies.



In In re North Arlington Bd. of Ed., P.E.R.C. No. 79-12, 4 NJPER 448 (¶4203 1978), the Commission held that movement on a salary guide relates to compensation, which is a mandatorily negotiable term and condition of employment that cannot be changed without negotiation. There, the Board had unilaterally adopted a policy which required that the Superintendent give prior approval for courses taken for advancement on the salary guide above the Bachelor's or Master's level. The Commission held:

...Movement on the salary guide relates to compensation, a clear term and condition of employment which is mandatorily negotiable. In a prior decision [In re Salem Community College, P.E.R.C. No. 78-22, 3 NJPER 375 (1978)] we held that increments are part of salary and, as such, related to terms and conditions of employment. In support of that decision, we cited Bd. of Ed. of Englewood v. Englewood Teachers, 64 N.J. 1 (1973). That case is particularly pertinent because one of the grievances which the court found arbitrable under the parties' collective negotiations agreement involved the question of whether a particular course which a teacher had completed fulfilled the requirement for placement on the salary guide at the "MA+30" level.

Although the instant case involves movement along the salary guide based on educational attainment rather than receipt of normal increments, we are satisfied that the issue nevertheless concerns compensation and cannot be changed unilaterally. Education Assoc. of Passaic v. Passaic Bd. of Ed., 166 N.J. Super. 250 (App. Div. 1977). Accordingly, the Board violated the Act by unilaterally changing this term and condition of employment with its May 17, 1976 salary policy promulgation. Galloway Bd. of Ed. v. Galloway Tp. Ed. Assn, P.E.R.C. No. 76-32, 2 NJPER 186 (1976), App. Div. Docket No. A-3016-75, rev'd 149 N.J. Super. 352 (1977), rev'd 78 N.J. 1 (1978) and Galloway Bd. of Ed. v. Galloway Tp. Assn of Educational Secys, P.E.R.C. No. 76-31, 2 NJPER 182 (1976), App. Div. Docket No. A-3015-75 aff'd in part, rev'd in part, 149 N.J. Super. 346 (App. Div. 1977), aff'd in part, rev'd in part, 78 N.J. 1 (1978).

Accordingly, based on Englewood and North Arlington, as well as the cases cited in these opinions, we determine that the Board violated subsections 5.4(a)(5), and, derivatively, (a)(1) when it unilaterally adopted its October, 1978 policy.<sup>5/</sup>

Having determined that the Board violated the Act by its unilateral change in policy, we now consider the appropriate remedy.

Prior to October, 1978, the status quo, as determined in the Commissioner of Education proceedings, was that any teacher could advance on the salary guide based upon graduate school credits earned before a degree, but not used to obtain that degree. In October, 1978, the Board, as we have found, illegally altered the status quo. The appropriate remedy, and the touchstone for the following discussion, is to return the Association and affected individuals to the position they would have enjoyed had the Board not acted illegally. Accordingly, the pre-October

<sup>5/</sup> The Board suggests that the Association may have waived its claim by failing to make the Board's policy a subject of negotiations prior to filing the charge. Perhaps the reason the Association did not specifically seek to negotiate over this policy is that it already had what it wanted: a provision in the collective agreement on salary guides which would be interpreted to allow teachers to use pre-degree credits for post-degree advancement on the salary guide. In any event, regardless of whether the Association had a contractual right to insist on such an interpretation prior to October, 1978, it had a statutory right, pursuant to subsection 5.3, to insist that proposed new rules or modifications of existing rules governing working conditions not be established before the Board negotiated with it. The Association protested this statutory violation most expeditiously by filing a charge a month after its occurrence.

policy must be reinstated until such time as altered through negotiations. We grant the Association's Exception on this point. Further, adversely affected individuals must be awarded back pay with interest.

The Board argues that the Hearing Examiner erred in recommending the award of damages to employees besides Mary Siebold, the only person specifically named in the amended charge. We disagree.

It is axiomatic that labor organizations have complete authority to act on behalf of their members in filing charges of unfair labor practices. General Furniture Mfg. Co., 26 NLRB 74, 6 LRRM 557 (1940). The charge need only provide the respondent with sufficient information to know what must be defended.

In the instant case, the Association clearly identified the nature of its complaint concerning the October, 1978 policy change. At the conclusion of its charge, the Association stated:

WHEREFORE, charging party prays for an order restoring the status quo ante, together with such other appropriate monetary relief for affected parties as may be required to effectuate the purposes of the Act and such other and further relief as the Commission may deem in order.  
[Emphasis supplied]

Moreover, at the hearing, the Charging Party produced evidence concerning the losses suffered by several teachers as a result of the change in policy. No objection was interposed by the Board to such testimony.

Under the facts of this case, we do not believe that the Association was required to name in the charge all the individuals who

were or would be affected by the policy change in dispute as a precondition to each individual's recovery of damages. The Association made it very clear that it objected to the policy in the name of all affected individuals; the Board made it equally clear that it would not pay any employee who did not qualify under its new policy. Nothing further was needed to demarcate the lines of the dispute.

We now turn to the claims of affected employees for monetary relief. The record contains extensive testimony detailing the salaries received and the advancements requested by the affected employees, as well as documentary evidence showing the dollar amounts corresponding to each level and step of the salary guide for each year in question. Based on this essentially undisputed testimony, we adopt the Hearing Examiner's findings on the entitlement of affected employees to monetary relief with the following modifications:

(1) Mary Scerbo - The Hearing Examiner erroneously stated that she should have been on Step 12 of the salary guide for the 1980-81 school year. His calculations, however, for that year were based on Step 13, the correct placement. Thus, no adjustment need be made in the Hearing Examiner's dollar calculation.

(2) Christene Chakmakian - The Hearing Examiner erred in finding that the record failed to indicate how Christene Chakmakian attained the "MA plus 15" level in September, 1981 without using her six pre-degree credits. The record shows that Chakmakian

first attained 15 credits (i.e., pre-degree plus post-degree credits), beyond her MA in February, 1980; however, due to her awareness of the Board's policy not to accept pre-degree credits for salary guide advancement, she took further post-degree credits and finally achieved "MA plus 15" status in September, 1981. Thus, as was the case with many other witnesses who testified, Chakmakian's "MA plus 15" status was delayed one and one-half years due to the October, 1978 policy. The Hearing Examiner's dollar calculations, however, with respect to Christene Chakmakian are accurate.

(3) Catherine Dystra - The record reveals that Catherine Dystra first became eligible for "MA plus 15" status in February, 1979; however, due to the Board's October, 1978 policy she failed to receive "MA plus 15" status until September, 1979, by which time she had completed 15 post-degree credits. Thus, Dystra suffered a monetary loss of one-half year of "MA plus 15" salary status. Accordingly, she is entitled to an award of \$492 representing the difference in salary of a certified employee on Step 9 of the MA salary guide as compared with Step 9 of the "MA plus 15" salary guide for one-half of the 1978-79 school year.

ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that Respondent Borough of Oakland:

A. 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 unilaterally adopting a policy in October, 1978 without notice to or negotiations with the Oakland Teachers' Association, which required that graduate courses must be taken after the completion of the Bachelor's and Master's degree, respectively, in order for said course to be applied to the "BA plus 15" or "MA plus 15, 30 or 45" levels of the teachers' salary guide.

2. Refusing to negotiate in good faith with the Oakland Teachers' Association concerning terms and conditions of employment of teachers in the unit, particularly by unilaterally adopting a policy in October, 1978 without notice to or negotiations with the Association, which required that graduate courses must be taken after the completion of the Bachelor's and Master's Degree, respectively, in order for said courses to be applied to the "BA plus 15" or "MA plus 15, 30 or 45" levels on the teachers' salary guide.

B. Take the following affirmative action:

1. Forthwith give credit on the salary guide to all employees holding pre-degree credits, permitting them to be

utilized for lateral advancement as was the practice prior to the Board's October, 1978 policy.<sup>6/</sup>

2. Forthwith make payment of the following sums of money to the ten (10) teachers named below together with interest of 12% per annum.<sup>7/</sup>

## Mary Scerbo:

1980-81 - \$1,348  
1981-82 - \$1,463  
\$2,811

## C. Tucker Platt:

1978-79 - \$1,377  
1979-80 - \$1,413  
1980-81 - \$1,526  
1981-82 - \$1,656  
\$5,972

## George Peterson:

1979-80 - \$ 664  
1980-81 - \$1,434  
1981-82 - \$1,556  
\$3,654

## Richard Simler:

1978-79 - \$ 979  
1979-80 - \$ 997  
1980-81 - \$1,078  
1981-82 - \$1,169  
\$4,223

## Judy Vihonski:

1981-82 - \$888

## Mary Siebold:

1979-80 - \$ 293  
1980-81 - \$ 317  
\$ 610

## Elaine Vasar:

1981-82 - \$1,656

## Peter Sinski:

1980-81 - \$1,510  
1981-82 - \$1,638  
\$3,148

## Christene Chakmakian:

2/80-6/1980 - \$424  
1980-81 \$916  
\$1340

## Catherine Dystra:

2/79-6/79 - \$492

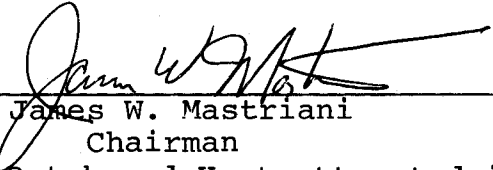
<sup>6/</sup> The Commission wishes to clarify the prohibition against the dual use of credits. Dual use alone is acceptable; however, simultaneous dual use is not. In other words, if one uses a particular credit for "BA plus 15" status and that person subsequently obtains MA status without the use of that particular credit, it is acceptable to use that credit for "MA plus 15," "MA plus 30," and/or "MA plus 45" status on the salary guide. Such constitutes dual, but not simultaneous, use of credits, and the Commission's decision and order presupposes this definition. Accordingly, to the extent that the Hearing Examiner's third paragraph differs with our definition of acceptable dual use and unacceptable simultaneous dual use, we expressly reject it.

<sup>7/</sup> Although Rule 4:42-11 is not binding upon this Commission, it does provide a useful reference in affording a proper award of  
(continued)

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

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

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Butch and Hartnett voted in favor of this decision. None opposed. Commissioners Hipp and Newbaker abstained. Commissioner Suskin was not present at the time of the vote. Commissioner Graves was not in attendance.

DATED: Trenton, New Jersey  
June 3, 1982  
ISSUED: June 4, 1982

7/ (continued) interest to a party injured by another's unfair practice. Since the Rule was amended in September, 1981, to increase the rate from 8% to 12%, and since we have found the Board to have committed an unfair practice by denying certain salary increments which were properly earned and would have been received were it not for the Board's illegal policy, we determine that the Hearing Examiner properly awarded interest at the rate of 12%, said interest attaching to the monies due on June 30 in any given school year. Moreover, the Appellate Division has approved of the Commission's reference to the rule in calculating interest on make-whole awards.  
Salem County Bd. for Vocational Ed. v. McGonigle, App. Div. Docket No. A-3417-78 (9/29/80).



APPENDIX A

# 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 unilaterally adopting a policy in October, 1978 without notice to or negotiations with the Oakland Teachers Association, which required that graduate courses must be taken after the completion of the Bachelor's and Master's degree, respectively, in order for said course to be applied to the "BA plus 15" or "MA plus 15, 30 or 45" levels of the teachers' salary guide.

WE WILL NOT refuse to negotiate in good faith with the Oakland Teachers' Association concerning terms and conditions of employment of teachers in the unit, particularly by unilaterally adopting a policy in October, 1978 without notice to or negotiations with the Association, which required that graduate courses must be taken after the completion of the Bachelor's and Master's Degree, respectively, in order for said courses to be applied to the "BA plus 15" or "MA plus 15, 30 or 45" levels on the teachers' salary guide.

WE WILL forthwith give credit on the salary guide to all employees holding pre-degree credits, permitting them to be utilized for lateral advancement as was the practice prior to the October, 1978 policy.

(Continued on Attached Sheet)

BOARD OF EDUCATION OF THE BOROUGH OF OAKLAND  
(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.

NOTICE TO ALL EMPLOYEES

(continued)

WE WILL forthwith make payment of the following sums of money to the ten (10) teachers named below together with interest of 12% per annum.

Mary Scerbo:

1980-81 - \$1,348  
1981-82 - \$1,463  
\$2,811

C. Tucker Platt:

1978-79 - \$1,377  
1979-80 - \$1,413  
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Catherine Dystra:

2/79-6/79 - \$492

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OAKLAND

Respondent,

-and-

Docket No. CO-79-110-78

OAKLAND TEACHERS' 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 (5) of the New Jersey Employer-Employee Relations Act, when, without notice to or negotiations with the Association, it unilaterally adopted a policy in October 1978, which required that graduate courses must be taken after the completion of the Bachelor's and Master's degree, respectively, in order for said courses to be applied to the "BA + 15" or "MA + 15, 30 or 45" on the teachers' salary guide. The Hearing Examiner found that the Commissioner of Education, in a related proceeding, had determined that prior to October 1978 the Board's policy in this regard had been silent. Relying upon the Bd. of Ed. of Englewood v. Englewood Teachers Association, 64 N.J. 1 (1973) and the Commission's decision in No. Arlington Bd. of Ed., P.E.R.C. 79-12, 4 NJPER 448 (1978), the Hearing Examiner concluded that movement on a salary guide relates to compensation, which is a mandatorily negotiable term and condition of employment that cannot be changed unilaterally.

By way of remedy, the Hearing Examiner ordered that eight (8) teachers be compensated for monies they would have earned had their pre-advanced degree credits been applied after October 1978 to movement on the salary guide. The Hearing Examiner also awarded interest at the rate 12% per annum on the monies due.

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  
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PUBLIC EMPLOYMENT RELATIONS COMMISSION

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Appearances:

For the Respondent

Parisi, Evers & Greenfield, Esqs.  
(Irving C. Evers, Esq.)

For the Oakland Teachers' Association

Bucceri & Pincus, Esqs.  
(Louis P. Bucceri, Esq.)

HEARING EXAMINER'S RECOMMENDED  
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on November 2, 1978 (Count I), <sup>1/</sup> and amended on November 6, 1978 (Count II), by the Oakland Teachers' Association (hereinafter the "Charging Party" or "Association") alleging that the Board of Education of the Borough of Oakland (hereinafter the "Respondent" or the "Board") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (hereinafter the "Act"), in that for a least five years past there had been no requirement that credits utilized to advance on the salary guide from "MA" through "MA + 45" need be taken in any particular order of priority and that the only requirement had

1/ Count I was withdrawn prior to the hearing, infra.

been that such credits be taken in accredited institutions of learning. Notwithstanding the foregoing the Respondent in October 1978, without notification to or negotiations with the Charging Party, unilaterally adopted a policy requiring that graduate courses must be taken after receipt of the respective degree in order to receive credit for the said courses for advancement on the salary guide, all which was alleged to be a violation of N.J.S.A. 34:13-5.4(a)(1) and (5) of the Act.<sup>2/</sup>

It appearing that the allegations of the Unfair Practice Charge, as amended, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on April 12, 1979. Pursuant to the Complaint and Notice of Hearing, a hearing was held on November 24, 1981<sup>3/</sup> in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Oral argument was waived and the parties filed post-hearing briefs by January 18, 1982.

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

2/ These Subsections prohibit employers, their representative of 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."

3/ The delay in holding the hearing was due to prior pending proceedings instituted before the Commissioner of Education, which eventually went to the Appellate Division. The Appellate Division rendered its decision on June 3, 1981 and thereafter, after several scheduling delays, the hearing was scheduled for November 24, 1981. The issues presented to the Commissioner of Education were decided under the Education Law, Title 18A, and were separate and distinct from the issues presented to the Commission in the Unfair Practice Charge. Hence, there is no Hackensack v. Winner issue presented herein (see 82 N.J. 1).

BACKGROUND TO INSTANT PROCEEDING

In or about the time of the filing of Count II of the instant Unfair Practice Charge on November 6, 1978, four teachers employed by the Respondent filed petitions with the Commissioner of Education based upon the Respondent's rejection of their applications for movement on the "M.A. +" salary guide utilizing credits earned prior to attaining the Master's Degree. Two of these teachers are claimants herein and are represented by the Charging Party, i.e., Mary Siebold and Catherine Dykstra.<sup>4/</sup>

Siebold had attained her Master's Degree in 1975 and applied for "M.A. + 15" on the salary guide in September 1978. Dykstra obtained her Master's Degree in 1978 and applied for "M.A. + 15" on the salary guide in February 1979.

Prior to October 1978 the Respondent had a policy pertaining to advanced degrees, which was adopted in 1972, but which contained no criteria for determining whether credits earned prior to the advanced degree, i.e., "M.A. +" could be utilized for placement on the salary guide. However, in October 1978 the Board amended this policy to require that before graduate courses could be applied to the salary guide for advanced degrees "...said courses must be taken after the Bachelor's or Master's degree, respectively, has been completed."

On March 31, 1980 an Administrative Law Judge (ALJ) decided the claims of Siebold and Dykstra. He granted Siebold's claim since hers was made in September 1978, prior to the October 1978 change in policy, supra, but denied Dykstra's claim since hers was made in February 1979, several months after the October 1978 change in policy.<sup>5/</sup>

4/ Since only Siebold and Dykstra are involved in the instant proceeding no reference need be made to the other two teachers who were involved before the Commissioner of Education.

5/ Siebold amended her petition on January 18, 1980 claiming additional graduate credits, which she said would qualify her for "M.A. + 30" on the salary guide. The ALJ denied this claim since the amendment to the petition occurred after the October 1978 change in policy.

The Commissioner of education affirmed the decision of the ALJ on June 2, 1980 and the State Board of Education affirmed the Commissioner on October 1, 1980. Thereafter the matter was appealed to the Appellate Division, which on June 3, 1981 affirmed all prior proceedings (Docket No. A-787-80).<sup>6/</sup>

\* \* \* \*

Upon the entire record, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. The Board of Education of the Borough of Oakland is a public employer within the meaning of the Act, as amended, and is subject to its provisions.
2. The Oakland Teachers' Association is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.
3. A policy of the Respondent, revised in 1972, and entitled "Professional Personnel Compensation Guides and Contracts" provided as follows:
 

"Personnel shall be individually responsible for officially informing the school administration, and providing the required supporting evidence, of increments due them for completion of approved training toward advanced degrees.

"Adjustments due to new training status shall be considered twice annually in September and February. The changes shall become effective at the time specified in the official Board approval." (J-1).
4. The foregoing policy was changed by the Respondent in October 1978 to provide as follows.
 

"In order for graduate courses to be applied to the Bachelor's plus 15 or the Master's plus 15, 30 or 45, training levels on the teachers' salary guide, said courses must have been taken after the Bachelor's or Master's degree, respectively, has been completed." (J-1) (Emphasis supplied).

<sup>6/</sup> As noted in footnote 3, supra, the instant proceeding was stayed by agreement pending the outcome of the Commissioner of Education proceeding and the appeals through the Appellate Division, supra.

5. The October 1978 change in Board policy (see Finding of Fact No. 4, supra)<sup>7/</sup> was undertaken without notice to or negotiations with the Charging Party (Tr. 12).

6. The collective negotiations agreements between the parties have always contained the negotiated salary guide, which has specified the salary differential based on academic achievement, but which has never specified any chronological order for the taking of credits for movement on the salary guide. There was received in evidence as J-2 the pertinent salary guides for the school years 1978-79 through 1981-82, which set forth the salaries for "BA" through "MA + 45."

7. The Superintendent of the Board, William Risser, testified that under the Board policy of 1972 (see Finding of Fact No. 3, supra) the "...almost uniform practice..." was not to permit teachers to utilize credits earned prior to the Master's degree (Tr. 182). However, there were at least four instances where Risser exercised his "discretion" and permitted salary credits for courses taken prior to the degree to be utilized for movement beyond "BA" and "MA" (Tr. 178-183). These four involved Richard Simler, who utilized 6 credits earned prior to his MA for movement to "MA + 15" and "MA + 30;" Mary Siebold, who used course credits taken prior to her BA which were applied toward her "BA + 15;" and similar unspecified credit to Carol Pierce and Betty Aldanburg.

8. The following teachers testified credibly regarding their efforts to apply graduate courses taken prior to the "BA" or "MA" degree, which they thereafter sought to utilize for movement on the salary guide beyond the "BA" and "MA" degree. In each instance the Hearing Examiner has set forth a summary of the amounts claimed to be due, based on the testimony of the particular teacher and the exhibits, measured against the applicable salary guides (J-2).

<sup>7/</sup> A past President of the Association during the years 1978-80 acknowledged that the Association had never requested negotiations with respect to the October 1978 change nor had there ever been negotiations between the parties over Board policies in this area (Tr. 14, 15).



A. Mary Scerbo: Scerbo was hired by the Board in September 1971 as BA, Step 4. Thereafter she earned 15 more credits and attained the level of "BA + 15." In February 1980 Scerbo was placed at the "MA" level. Scerbo's MA degree was earned by utilizing only 3 of her 15 post-BA credits plus new credits. Thus, as of February 1980 Scerbo had her MA degree plus 12 other pre-MA credits, which did not count toward her MA. During the Summer of 1980 Scerbo earned 3 more credits. She then applied on August 19, 1980 for the "MA + 15" level, seeking to use her 3 new credits plus her 12 unused pre-MA credits (CP-1). The Superintendent responded by sending Scerbo a copy of J-1 with the 1978 policy circled. Scerbo responded by letter dated September 15, 1980, in which she reasserted her request (CP-2). The request was again denied (CP-3). Scerbo stated that she was not seeking to use the 12 pre-MA credits twice, but rather sought to continue to utilize them since they did not form a part of her MA degree. Based on the foregoing, Scerbo's claim is as follows:

| <u>Year</u> | <u>Salary Received</u> | <u>Salary Claimed</u>       | <u>Amount Due</u>         |
|-------------|------------------------|-----------------------------|---------------------------|
| 1980-81     | MA, Step 12 (21,929)   | MA + 15<br>Step 13 (23,277) | 1,348                     |
| 1981-82     | MA, Step 14 (23,793)   | MA + 15<br>Step 14 (25,256) | <u>1,463<sup>8/</sup></u> |
|             |                        | TOTAL                       | \$2,811                   |

B. George Peterson: Peterson was hired in September 1968 at BA, Step 2. He attained "BA + 15" in 1970 and in January 1980 received his MA degree without utilizing any of the 15 credits he obtained to reach the "BA + 15" level. In February 1980 Peterson was placed at MA, Step 13, despite the fact that he had 15 more credits in addition to his MA. Because he thought the Board's October 1978 policy was binding upon him he did not make a request for placement at

8/ The amount due for 1981-82 is as of June 30, 1982. Since the instant proceeding will in all likelihood be pending before the Commission at that time the Hearing Examiner sees no harm in utilizing this figure for purposes of his decision in the case of Scerbo and others similarly situated, infra.

"MA + 15." After learning from the Association of his right to apply for "MA + 15" he did so on September 17, 1981 (CP-4). This request was denied by the Superintendent on September 28, 1981 (CP-5). Based on the foregoing Peterson's claim is as follows:

| <u>Year</u>    | <u>Salary Received</u>     | <u>Salary Claimed</u>         | <u>Amount Due</u> |
|----------------|----------------------------|-------------------------------|-------------------|
| 2/1/80-6/30/80 | 1/2MA,<br>Step 13 (10,499) | 1/2MA+15,<br>Step 13 (11,163) | 664               |
| 1980-81        | MA, Step 14<br>(22,678)    | MA+15,<br>Step 14 (24, 112)   | 1,434             |
| 1981-82        | MA, Step 15<br>(24,606)    | MA+15,<br>Step 15 (26,162)    | <u>1,556</u>      |
|                |                            | TOTAL                         | \$3,654           |

C. Judy Vihonski: Vihonski was hired in September 1970 at BA, Step 1. She attained "MA + 30" in February 1978 using all post-MA credits. At that time she possessed 3 pre-MA credits, which were never used for her MA or her post-MA placement. By June 1981 Vihonski had obtained 12 more credits and applied for "MA + 45" placement, in which she sought to utilize her 12 new credits and her 3 pre-MA credits. This request was denied on August 20, 1981 (CP-7). Based on the foregoing Vihonski's claim is as follows:

| <u>Year</u> | <u>Salary Received</u>    | <u>Salary Claimed</u>     | <u>Amount Due</u> |
|-------------|---------------------------|---------------------------|-------------------|
| 1981-82     | MA+30<br>Step 12 (23,808) | MA+45<br>Step 12 (24,696) | \$888             |

D. Elaine Vassar: Vassar was hired in February 1966 at BA, Step 4. She received her Master's degree in September 1976 and at that time had 6 pre-MA credits, which were not counted toward the MA degree. During the 1980-81 school year Vassar completed 9 additional credits and applied for placement at the "MA + 15" level as of September 1981. This request was denied on September 28, 1981 (CP-8). Based on the foregoing Vassar's claim is as follows:

| <u>Year</u> | <u>Salary Received</u> | <u>Salary Claimed</u>     | <u>Amount Due</u> |
|-------------|------------------------|---------------------------|-------------------|
| 1981-82     | MA<br>maximum (25,822) | MA+15<br>Maximum (27,478) | \$1,656           |

E. Peter Sinski: Sinski was hired in September 1970 at BA, Step 1. He

acquired his MA in June 1980, at which time he had 30 pre-MA credits that had not been counted toward his MA degree. Believing that he could not apply for "MA + 30" status as of September 1980 because of the Board's October 1978 policy, he did not do so until September 16, 1981 based on information that he had received from the Association (CP-9). This application was denied on September 28, 1981 (CP-10). Based on the foregoing Sinski's claim is as follows:

| <u>Year</u> | <u>Salary Received</u> | <u>Salary Claimed</u>     | <u>Amount Due</u> |
|-------------|------------------------|---------------------------|-------------------|
| 1980-81     | MA<br>Step 11 (20,433) | MA+30<br>Step 11 (21,943) | 1,510             |
| 1981-82     | MA<br>Step 12 (22,170) | MA+30<br>Step 12 (23,808) | <u>1,638</u>      |
| TOTAL       |                        |                           | \$3,148           |

F. Christene Chakmakian: Chakmakian was hired in September 1973 at BA, Step 1. She was placed at "MA" in September 1977 and at that time had 6 pre-MA credits, which had not been applied toward her Master's degree. By January 1980 Chakmakian had earned an additional 9 post-MA credits but did not apply for "MA + 15" status because of the October 1978 Board policy. In September 1981 Chakmakian was placed at "MA + 15" without using her 6 pre-MA credits.<sup>9/</sup> Notwithstanding that Chakmakian has filed no application for movement above with "MA + 15" she makes a claim as follows:

| <u>Year</u>    | <u>Salary Received</u>   | <u>Salary Claimed</u>       | <u>Amount Due</u> |
|----------------|--------------------------|-----------------------------|-------------------|
| 2/1/80-6/30/80 | 1/2 MA<br>Step 7 (8,420) | 1/2 MA+15<br>Step 7 (8,844) | 424               |
| 1980-81        | MA<br>Step 8 (18,187)    | MA+15<br>Step 8 (19,103)    | <u>916</u>        |
| TOTAL          |                          |                             | \$1,340           |

<sup>9/</sup> There was no explanation offered as to how Chakmakian could have attained "MA + 15" without having used 6 pre-MA credits since there was no evidence that other post-MA credits had been earned.

G. C. Tucker Platt: Platt was hired in September 1961 at BA, Step 1. He attained his Master's degree in September 1976, at which time he had 20 pre-MA credits that had not been applied toward his Master's degree. Platt asked for placement at "MA + 15" at that time, which request was denied. Upon receiving information from the Association in 1981 Platt requested "MA + 15" placement on October 5, 1981 (CP-11), which was denied on the same date (CP-12). Based on the foregoing Platt's claim is as follows:

| <u>Year</u> | <u>Salary Received</u>    | <u>Salary Claimed</u>        | <u>Amount Due</u> |
|-------------|---------------------------|------------------------------|-------------------|
| 1978-79     | MA<br>super max. (20,960) | MA+15<br>super max. (22,337) | 1,377             |
| 1979-80     | MA<br>super max. (22,036) | MA+15<br>super max. (23,449) | 1,413             |
| 1980-81     | MA<br>max. (23,799)       | MA+15<br>max. (25,325)       | 1,526             |
| 1981-82     | MA<br>max. (25,822)       | MA+15<br>max. (27,478)       | <u>1,656</u>      |
|             |                           | TOTAL                        | \$5,972           |

H. Laura Paterson: Paterson was hired in September 1967 at BA, Step 1. She applied for "MA + 30" status on June 1, 1981 (CP-13). This request was initially denied on August 20, 1981 because she had relied upon pre-MA credits (CP-14). Paterson resubmitted her application after taking a 3-credit course in June 1981 and her application was approved, effective September 1981. Paterson has sustained no monetary loss but seeks the right to apply her 2 pre-MA credits to future salary guide advancement.<sup>10/</sup>

I. Catherine Dystra: Dykstra was hired in September 1969 at BA, Step 1. She attained her Master's degree in February 1978, at which time she had 12 pre-MA credits, which had not been applied toward her MA degree. Upon completing 3 additional credits in the Fall of 1978 Dykstra applied for "MA + 15" status,

<sup>10/</sup> All of the claimant-teachers herein involved seek in this proceeding an order that they be allowed to utilize all pre-advanced degree credits utilized in this proceeding "toward future salary credits." The Hearing Examiner will deal with this aspect of the claims hereinafter.

effective February 1979. This request was denied on March 2, 1979 (CP-15). Thereafter Dykstra was placed at "MA + 15" in September 1979 without using her 12 pre-MA credits. As noted above, Dykstra was denied relief in the proceedings before the Commissioner of Education because her claimed right to "MA + 15" status did not arise until after the change in Board policy in October 1978, supra. For reasons not clear to the Hearing Examiner Dykstra claims as follows:

| <u>Year</u>    | <u>Salary Received</u>  | <u>Salary Claimed</u>      | <u>Amount Due</u> |
|----------------|-------------------------|----------------------------|-------------------|
| 2/1/79-6/30/79 | 1/2MA<br>Step 9 (8,681) | 1/2MA+15<br>Step 9 (9,173) | \$492             |

J. Richard Simler: Simler was hired in September 1965 at "BA + 15," Step 5. Simler attained "MA" status in 1971, at which time he had 17 pre-MA credits and, therefore, sought "MA + 15" status as of September 1971. The Superintendent agreed to allow him 6 pre-MA credits toward his "MA + 15" status. Simler achieved "MA + 15" status in September 1972. He reached "MA + 30" status in February 1976. By utilizing the remaining 11 pre-MA credits from 1971 Simler would have attained "MA + 45" status in February 1976. However, Simler has not yet been placed at "MA + 45" on the salary guide. Based on the foregoing Simler's claim is as follows:

| <u>Year</u> | <u>Salary Received</u>       | <u>Salary Claimed</u>        | <u>Amount Due</u> |
|-------------|------------------------------|------------------------------|-------------------|
| 1978-79     | super max.<br>MA+30 (23,367) | super max.<br>MA+45 (24,346) | 979               |
| 1979-80     | super max.<br>MA+30 (24,497) | super max.<br>MA+45 (25,494) | 997               |
| 1980-81     | max.<br>MA+30 (26,456)       | max.<br>MA+45 (27,534)       | 1,078             |
| 1981-82     | max.<br>MA+30 (28,705)       | max.<br>MA+45 (29,874)       | <u>1,169</u>      |
|             |                              | TOTAL                        | \$4,223           |

K. Mary Siebold: Siebold was hired in September 1968 at BA, Step 2. She attained "BA + 15" status in September 1972 using 12 post-BA credits and 3 pre-BA credits with the knowledge and approval of the Superintendent. Siebold

reached "MA" in September 1975 and in May 1978 requested "MA + 15" status, relying upon 9 post-MA credits and 6 of her 12 pre-MA credits. Siebold's request was denied on June 1, 1978 (CP-16), and the Commissioner of Education proceeding, supra, ensued. During that proceeding Siebold amended her petition and sought "MA + 30" status using the remaining 6 of her pre-MA credits, supra. In the Commissioner of Education proceeding Siebold was given retroactive credit for "MA + 15" status from September 1, 1978 through June 30, 1981 and was placed at "MA + 30" as of September 1981. If full credit for pre-MA courses had been timely given to Siebold she would have reached "MA + 30" status in September 1979. Based on the foregoing Siebold's claim is as follows:

| <u>Year</u> | <u>Salary Received</u>    | <u>Salary Claimed</u>     | <u>Amount Due</u> |
|-------------|---------------------------|---------------------------|-------------------|
| 1979-80     | MA+15<br>Step 13 (22,326) | MA+30<br>Step 13 (22,619) | 293               |
| 1980-81     | MA+15<br>Step 14 (24,112) | MA+30<br>Step 14 (24,429) | <u>317</u>        |
|             |                           | TOTAL                     | \$610             |

THE ISSUES

1. Is the Respondent Board bound, under the doctrine of collateral estoppel, by the finding and conclusion of the Commissioner of Education, affirmed on appeal, that its policy, prior to October 1978, was silent regarding placement on the teachers' salary guide for courses taken prior to completion of the Bachelor's or Master's degree?

2. Did the Respondent Board violate Subsections(a)(1) and (5) of the Act when, without notice to or negotiations with the Association, it unilaterally adopted in October 1978 a policy, which required that graduates courses must be taken after the completion of the Bachelor's and Master's degree, respectively, in order for said courses to be applied to the "BA + 15" or "MA + 15, 30 or 45" on the teachers' salary guide? If so, what shall the remedy be?

DISCUSSION AND ANALYSIS

The Respondent Board Is Bound, Under The Doctrine Of Collateral Estoppel, By the Finding and Conclusion Of The Commissioner Of Education That Its Policy, Prior To October 1978, Was Silent Regarding Placement On The Teachers' Salary Guide For Courses Taken Prior To Completion Of The Bachelor's Or Master's Degree

The Hearing Examiner finds and concludes that the Respondent Board is bound under the doctrine of collateral estoppel by the finding and conclusion on the Commissioner of Education that its policy, prior to October 1978, was silent regarding placement on the teachers' salary guide for courses taken prior to completion of the Bachelor's or Master's degree.

Although frequently seen as related to res judicata, collateral estoppel differs in that it does not require an identity of the cause of action. Collateral estoppel bars relitigation of any factual issue, which was fully and fairly litigated in a prior action: United Rental Equipment Co. v. Aetna Life & Cas. Co., 74 N.J. 92, 101 (1977) and State v. Gonzalez, 75 N.J. 181, 186 (1977).

Put another way, collateral estoppel means that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot be raised by the same party in a future law suit. See Board of Directors, Ajax etc. v. First Nat'l. Bank of Princeton, 33 N.J. 456, 463 (1960) and Matter of Arlinghaus' Estate, 158 N.J. Super. 139 (App. Div. 1978).

In the Commissioner of Education proceeding, supra, the ALJ found that prior to October 1978 the Board's "...policy was silent as to the order in which the graduate credits and the master's degree had to be earned until revised..." (Slip, p.4). The Commissioner of Education affirmed the ALJ in this regard (Slip, p.8). Thereafter, the State Board of Education affirmed the Commissioner of Education on October 1, 1980 and the Appellate Division affirmed the prior proceedings, stating at one point "...Between 1972 and October, 1978, the Oakland

salary adjustment policy was silent as to the order in which the Master's Degree and graduate credits had to be earned..." (Slip, p.2).

Even aside from the foregoing, the Commission must give due regard to the decision of a sister agency since: "...principles of comity and deference to sibling agencies are part of the fundamental responsibility of administrative tribunals charged with overseeing complex and manifold activities that are also the appropriate statutory concern of other governmental bodies..." Hinfey v. Matawan Regional Board of Education, 77 N.J. 514, 531 (1978). The New Jersey Supreme Court in Hinfey, in elaborating on the "comity doctrine," expressly noted that collateral estoppel was included therein. See also Hackensack v. Winner, 82 N.J. 1 (1980).

Accordingly, the Hearing Examiner has no difficulty in concluding that the Respondent Board is bound by the finding and conclusion of the Commissioner of Education that the Board's policy, prior to October 1978, was silent regarding placement on the teachers' salary guide for courses taken prior to completion of the Bachelor's or Master's degree under the doctrine of collateral estoppel.

The Respondent Violated Subsections(a)(1) And (5) Of The Act When, Without Notice To Or Negotiations With The Association, It Unilaterally Adopted A Policy In October 1978, Which Required That Graduate Courses Must Be Taken After The Completion Of The Bachelor's or Master's Degree For Movement Beyond "BA" Or "MA" On The Salary Guide

The Hearing Examiner finds and concludes that the Respondent Board violated Subsections(a)(1) and (5) of the Act when it unilaterally adopted its October 1978 policy, supra, without notice to or negotiations with the Association. The reasons for this finding and conclusion follow.

First, it is undisputed that the October 1978 policy, supra, was not negotiated before or after implementation. As noted above, there was no policy in effect prior to October 1978. The Commissioner of Education did not adjudicate



whether the October 1978 policy was adopted validly under our Act (Slip, p.7). Thus, the issue is whether, in the instant proceeding, the October 1978 policy was a mandatory subject of negotiations or an illegal subject.

The Respondent cites Ridgefield Park Education Association v. Ridgefield Park Board of Education, 78 N.J. 144 (1978) in support of its contention that the October 1978 policy on salary guide placement involves the exercise of a managerial prerogative (Respondent's brief, pp.11, 12). The Respondent also cites State v. State Supervisory Employees Association, 78 N.J. 54 (1978), which defines negotiable terms and conditions of employment, inter alia, as those "...on which negotiated agreement would not significantly interfere with the exercise of inherent management prerogatives pertaining to the determination of governmental policy..." (78 N.J. at 67; Respondent's brief, p.13).

The Hearing Examiner is persuaded that the proper starting point in this case is the New Jersey Supreme Court's decision in Bd. of Ed. of Englewood v. Englewood Teachers Association, 64 N.J. 1 (1973), which involved, in part, the arbitrability of the grievance of a teacher who sought placement at "MA + 30" on the salary guide. In holding the grievance to be arbitrable the Supreme Court said of the arbitration process that "...The interpretations would directly and most intimately affect the employment terms and conditions of the five individuals involved without affecting any major educational policies. ... (the issues)... would appear to be eminently suitable for arbitral determination in accordance with the terms of the agreement..." (64 N.J. at 8).

The Hearing Examiner now turns to the Commission's decision in North Arlington Bd. of Ed., P.E.R.C. No. 79-12, 4 NJPER 448 (1978) where the Commission, in reversing the instant Hearing Examiner, relied on Englewood, supra, and held that movement on a salary guide relates to compensation, which is a mandatorily negotiable term and condition of employment that cannot be changed unilaterally. There the Board unilaterally adopted a policy, which required that the Superinten-

dent give prior approval for courses taken for advancement on the salary guide above the Bachelor's or Master's level. The Commission said:

"...Movement on the salary guide relates to compensation, a clear term and condition of employment which is mandatorily negotiable. In a prior decision, (Salem Community College, P.E.R.C. No. 78-22, 3 NJPER 375) we held that increments are part of salary and, as such, related to terms and conditions of employment. In support of that decision, we cited...Englewood...That case is particularly pertinent because one of the grievances which the court found arbitrable under the parties' collective negotiations agreement involved the question of whether a particular course which a teacher had completed fulfilled the requirement for placement on the salary guide at the 'MA + 30' level.

"Although the instant case involves movement along the salary guide based on educational attainment rather than receipt of normal increments, we are satisfied that the issue nevertheless concerns compensation and cannot be changed unilaterally. [citing Education Assn. Of Passaic v. Passaic Bd. of Ed., App. Div. Docket No. A-3082-75 (1977)]. Accordingly, the Board violated the Act by unilaterally changing this term and condition of employment...[citing Galloway Twp. Bd. of Ed. v. Galloway Twp. Ed. Assn., 78 N.J. 25 (1978)]..." (4 NJPER at 449),

Although the Respondent correctly points out that the Commission in North Arlington did not cite Ridgefield Park, supra, the Commission did cite Galloway, which was decided on August 1, 1978, the day before Ridgefield Park. Thus, the Commission was clearly aware of the Ridgefield Park holding but elected not to cite it for the obvious reason that it was not pertinent to the disposition of the case, especially in the light of Englewood, which was cited and relied upon.

In summary, on the basis of Englewood and North Arlington, supra, the Respondent Board acted illegally in October 1978 when it unilaterally adopted a new policy for movement on the salary guide, supra, without negotiation with the Association. The Hearing Examiner thus concludes that the Board violated Subsection(a)(5), and derivatively Subsection(a)(1), of the Act. There now remains the question of remedy.

#### REMEDY

As is indicated in Finding of Fact No. 8 (pp. 5-11, supra), a number of teachers have made application to utilize pre-advanced degree course credits for movement on the salary guide after attaining either the "BA" or "MA" degree.

These applications have been routinely denied by the Superintendent, based upon the October 1978 policy.

The tally of money damages sought by the various teachers, supra, has also been set forth in Finding of Fact No. 8. The Hearing Examiner herewith grants the damages claimed by the following teachers: Scerbo; Peterson; Vihonski; Vasar; Sinski; Platt; Simler; and Siebold.<sup>11/</sup> The Hearing Examiner denies the claim of Chakmakian on the ground that she filed no application for the use of pre-MA credits on and after September 1981 and, also, the claim of Dykstra is denied on the ground that her movement to "MA + 15" status in September 1979 did not involve the claim to use pre-MA credits.

The Hearing Examiner will also award interest under the authority of Salem County Bd. for Vocational Ed. v. McGonigle, App. Div. Docket No. A-3417-78 (1980) and County of Cape May, P.E.R.C. No. 82-2, 7 NJPER 432 (1981) at the rate of 12% per annum, based on the current rate for interest on judgments in the State of New Jersey [Rule 4:42-11(a)].

Finally, the Hearing Examiner denies that teachers' claims to use the pre-advanced degree credit utilized herein for "future salary guide advancement" since this would plainly involve using the same courses twice for movement on the salary guide.

\* \* \* \*

Upon the foregoing, and upon the entire record in this case, the Hearing Examiner makes the following:

#### CONCLUSION OF LAW

The Respondent Board violated N.J.S.A. 34:13A-5.4(a)(5), and derivatively 5.4(a)(1), when it unilaterally adopted a policy in October 1978, without notice to or negotiations with the Association, which required that graduate courses

<sup>11/</sup> The damages awarded herein are not speculative and are intended to effectuate the purposes of the Act: Galloway Twp. Bd. of Ed. v. Galloway Twp. Assn. of Educ. Secretaries, 78 N.J. 1, 16 (1978).

must be taken after the completion of the Bachelor's and Master's degree, respectively, in order for said courses to be applied to the "BA + 15" or "MA + 15, 30 or 45" on the teachers' salary guide.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER:

A. That the Respondent Board 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 unilaterally adopting a policy in October 1978 without notice to or negotiations with the Oakland Teachers' Association, which required that graduate courses must be taken after the completion of the Bachelor's and Master's degree, respectively, in order for said courses to be applied to the "BA + 15" or "MA + 15, 30 or 45" on the teachers' salary guide.

2. Refusing to negotiate in good faith with the Oakland Teachers' Association concerning terms and conditions of employment of teachers in the unit, particularly, by unilaterally adopting a policy in October 1978 without notice to or negotiations with the Association, which required that graduate courses must be taken after the completion of the Bachelor's and Master's degree, respectively, in order for said courses to be applied to the "BA + 15" or "MA + 15, 30 or 45" on the teachers' salary guide.

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

1. Forthwith make payment of the following sums of money to the eight (8) teachers named below together with interest at the rate of 12% per annum, said interest attaching to the monies due on June 30th of any given school year as follows:

|              |                |
|--------------|----------------|
| Mary Scerbo: |                |
| 1980-81 -    | \$1,348        |
| 1981-82 -    | <u>\$1,463</u> |
|              | \$2,811        |

|                  |                |
|------------------|----------------|
| C. Tucker Platt: |                |
| 1978-79 -        | \$1,377        |
| 1979-80 -        | \$1,413        |
| 1980-81 -        | \$1,526        |
| 1981-82 -        | <u>\$1,656</u> |
|                  | \$5,972        |

George Peterson  
 1979-80 - \$664  
 1980-81 - \$1,434  
 1981-82 - \$1,556  
                   \$3,654

Judy Vihonski:  
 1981-82 - \$888

Elaine Vasar:  
 1981-82 - \$1,656

Peter Sinski:  
 1980-81 - \$1,510  
 1981-82 - \$1,638  
                   \$3,148

Richard Simler:  
 1978-79 - \$979  
 1979-80 - \$997  
 1980-81 - \$1,078  
 1981-82 - \$1,169  
                   \$4,223

Mary Siebold:  
 1979-80 - \$293  
 1980-81 - \$317  
                   \$610

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 thereafter. Reasonable steps shall be taken by the Respondent Board to insure 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 Board has taken to comply herewith.




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Alan R. Howe  
 Hearing Examiner

Dated: March 1, 1982  
 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 our employees in the exercise of the rights guaranteed to them by the Act, particularly, by unilaterally adopting a policy in October 1978 without notice to or negotiations with the Oakland Teachers' Association, which required that graduate courses must be taken after the completion of the Bachelor's and Master's degree, respectively, in order for said courses to be applied to the "BA + 15" or "MA + 15, 30 or 45" on the teachers' salary guide.

WE WILL NOT refuse to negotiate in good faith with the Oakland Teachers' Association concerning terms and conditions of employment of teachers in the unit, particularly, by unilaterally adopting a policy in October 1978 without notice to or negotiations with the Association, which required that graduate courses must be taken after the completion of the Bachelor's and Master's degree, respectively, in order for said courses to be applied to the "BA + 15" or "MA + 15, 30 or 45" on the teachers' salary guide.

WE WILL forthwith make payment of the following sums of money to the eight (8) teachers named below together with interest at the rate of 12% per annum, said interest attaching to the monies due on June 30th of any given school year as follows:

Mary Scerbo:

|         |   |                |
|---------|---|----------------|
| 1980-81 | - | \$1,348        |
| 1981-82 | - | <u>\$1,463</u> |
|         |   | \$2,811        |

George Peterson:

|         |   |                |
|---------|---|----------------|
| 1979-80 | - | \$664          |
| 1980-81 | - | \$1,434        |
| 1981-82 | - | <u>\$1,556</u> |
|         |   | \$3,654        |

C. Tucker Platt:

|         |   |                |
|---------|---|----------------|
| 1978-79 | - | \$1,377        |
| 1979-80 | - | \$1,413        |
| 1980-81 | - | \$1,526        |
| 1981-82 | - | <u>\$1,656</u> |
|         |   | \$5,972        |

BOARD OF EDUCATION OF THE BOROUGH OAKLAND  
(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  
Chairman, Public Employment Relations Commission,  
P.O. Box 2209, Trenton, New Jersey 08625 Telephone (609) 292-6780

CONTINUATION OF APPENDIX "A"

Judy Vihonski:

1981-82 - \$888

Elaine Vasar:

1981-82 - \$1,656

Peter Sinski:

1980-81 - \$1,510

1981-82 - \$1,638  
\$3,148

Richard Simler:

1978-79 - \$979

1979-80 - \$997

1980-81 - \$1,078

1981-82 - \$1,169  
\$4,223

Mary Siebold:

1979-80 - \$293

1980-81 - \$317  
\$610