P.E.R.C. No. 91-38

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RAMAPO-INDIAN HILLS EDUCATION ASSOCIATION, INC.,

Respondent,

-and-

Docket No. CE-H-89-27

RAMAPO-INDIAN HILLS REGIONAL HIGH SCHOOL DISTRICT BOARD OF EDUCATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge filed by the Ramapo-Indian Hills Regional High School District Board of Education against the Ramapo-Indian Hills Education Association, Inc. The charge alleges that the Association violated the New Jersey Employer-Employee Relations Act when it tried to pressure the Board to accede to the Association's negotiations proposals by instructing the Association's members not to attend year-end functions. The charge also alleges that this course of action violated a no-strike clause and coerced Association members. Under all the circumstances, the Commission determines that this dispute is moot.

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-and- Docket No. CE-H-89-27

RAMAPO-INDIAN HILLS REGIONAL HIGH SCHOOL DISTRICT BOARD OF EDUCATION,

Charging Party.

Appearances:

For the Respondent, Bucceri & Pincus, attorneys (Gregory T. Syrek, of counsel)

For the Charging Party, Green & Dzwilewski, attorneys (Allan P. Dzwilewski, of counsel)

DECISION AND ORDER

On June 27, 1989, the Ramapo-Indian Hills Regional High School District Board of Education filed an unfair practice charge against the Ramapo-Indian Hills Education Association, Inc. The charge alleges that the Association violated subsections 5.4(b)(1), (3) and (5)[1/] of the New Jersey

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1/ These subsections prohibit employee organizations, 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) refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, and (5) violating any of the rules and regulations established by the commission."

Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it tried to pressure the Board to accede to the Association's negotiations proposals by instructing the Association's members not to attend year-end functions. The charge also alleges that this course of action violated a no-strike clause and coerced Association members.

On December 8, 1989, a Complaint and Notice of Hearing issued. The Association's Answer asserted, in part, that a new contract rendered this dispute moot and that the Commission lacks jurisdiction over contract claims.

On March 2 and 14, 1990, Hearing Examiner Alan R. Howe conducted a hearing. After the Board withdrew all allegations of coercion, the parties introduced exhibits and stipulated the facts. In its post-hearing brief, the Board confirmed that it had withdrawn its claim of a violation of subsection 5.4(b)(1).

On May 18, 1990, the Hearing Examiner issued a report concluding that the Association had violated subsections 5.4(b)(1) and (3). H.E. No. 90-51, 16 NJPER 345 (¶21142 1990).

On May 31, 1990, the Association filed exceptions. It asserts that the allegation of a subsection 5.4(b)(1) violation has been withdrawn; the charge is moot; the Commission lacks jurisdiction over the contract claim; it negotiated in good faith; and the Hearing Examiner's findings of "disruption" are not supported by the record.

On June 14, 1990, the Board filed a reply urging adoption of the Hearing Examiner's conclusions.

We have reviewed the record. The Hearing Examiner's findings of fact (H.E. at 3-11) are accurate. We incorporate them with these additions.

We add to finding no. 5 that the actions considered included, among other things, attending Board meetings, wearing protest buttons, communicating with residents and parents about negotiations, and striking.

We add to finding no. 7 that the membership recognized that senior class advisors were contractually obligated to participate in the graduation ceremony.

We add to finding no. 8 that the record does not specify the scheduling arrangements for the three functions. We do not know which employees, if any, were contractually obligated to attend the three functions, but did not; which employees, if any, were assigned to attend, but did not; and which employees, if any, had volunteered to attend, but did not. Nor do we know whether or how much these functions were disrupted.

We first consider the recommendation that we find that the Association violated subsection 5.4(b)(1). At the hearing, the Board withdrew all allegations of coercion; in its post-hearing brief, it confirmed that it had withdrawn its claim of a violation of subsection 5.4(b)(1). This claim is therefore not before us.[2/]

2/ Even if it were, the record does not demonstrate any tendency to interfere with any employee rights. Such a tendency must be shown to establish a violation of this subsection or subsection 5.4(a)(1), regardless of whether a violation is said to be derivative or independent.

We next consider the recommendation that we find that the Association violated subsection 5.4(b)(3) when its membership voted to stop volunteering and its members therefore did not attend three school functions on June 12 and 13, 1989. Under all the circumstances, we hold this question is moot.

We have often held that the successful completion of contract negotiations may make moot disputes over alleged misconduct during negotiations. We have so held irrespective of whether the charging party is a majority representative or a public employer. Continued litigation over past allegations of misconduct which have no present effects unwisely focuses the parties' attention on a divisive past rather than a cooperative future. See, e.g., Bayonne Bd. of Ed., P.E.R.C. No. 89-118, 15 NJPER 287 (¶20127 1989), aff'd App. Div. Dkt. No. A-4871-88T, (3/5/90); Belleville Bd. of Ed., P.E.R.C. No. 88-66, 14 NJPER 128 (¶19049 1988), aff'd App. Div. Dkt. No. A-3021-87T7 (11/23/88); Matawan-Aberdeen Reg. Sch. Dist. Bd. of Ed., P.E.R.C. No. 88-52, 14 NJPER 57 (¶19019 1987), aff'd App. Div. Dkt. Nos. A-46-87T1, A-2433-87T1, A-2536-87T1 (1/24/90); Rutgers, the State Univ., P.E.R.C. No. 88-1, 13 NJPER 631 (¶18235 1987), aff'd App. Div. Dkt. No. A-174-87T7 (11/23/88); State of New Jersey, P.E.R.C. No. 88-2, 13 NJPER 634 (¶18236 1987); State Bd. of Higher Ed., P.E.R.C. No. 84-69, 10 NJPER 27 (¶15016 1983); Oradell Bor., P.E.R.C. No. 84-26, 9 NJPER 595 (¶14251 1983); Rockaway Tp., P.E.R.C. No. 82-72, 8 NJPER 117 (¶13050 1982); Union Cty. Reg. H.S. Bd. of Ed., P.E.R.C. No. 79-90, 5 NJPER 229 (¶10126 1979); see also Asbury Park Bd. of Ed. v. Asbury Park Ed. Ass'n, 155

N.J. 76 (App. Div. 1977). Under all the circumstances, this case does not warrant an exception to our reluctance to resurrect pre-contract negotiations disputes.

For 20 years, year-end activities have been staffed by a mixture of teachers who were contractually obligated to attend and teachers who volunteered. In the beginning of June 1989, these activities were so staffed: a music concert, an honor society induction, a sports awards program, and two senior proms. On June 12, the Association's membership voted to stop volunteering for year-end activities. The membership recognized that some employees were contractually obligated to attend activities; no evidence suggests that any employees violated these obligations. Association members who had been expected to volunteer did not participate in three activities on June 12 and 13, 1989 -- a sports dinner, a senior awards night, and an athletic awards night; no evidence reveals the nature of the scheduling arrangements or the extent of any disruption. The administration promptly issued directives ensuring that the remaining year-end activities would be adequately staffed. These directives were obeyed and the remaining events occurred without any hitches: a senior awards ceremony and the graduation rehearsals, ceremonies and galas. The parties then entered a new contract effective July 1, 1989 through June 30, 1992; no evidence suggests that the successful completion of negotiations was affected by any alleged misconduct.

On this record, we cannot say that the withholding of volunteer services at three June events justifies continued litigation or a remedial order against similar conduct after the present contract expires in 1992. The Association respected individual contractual commitments and obeyed directives ensuring adequate coverage of graduation events. We will not presume now that the Association will disobey similar directives two years from now. The employer is not without recourse should a similar scenario develop. It can, for example, discipline employees where appropriate or go to court seeking to enjoin illegal work stoppages, Asbury Park; Tp. of Teaneck v. Local 42, FMBA, 158 N.J. Super. 131 (App. Div. 1978).

We finally consider the recommendation that we dismiss the allegation that the Association violated subsection 5.4(b)(5). We accept that recommendation.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Wenzler, Johnson, Smith and Goetting voted in favor of this decision. None opposed. Commissioners Reid and Bertolino abstained from consideration.

DATED: October 26, 1990
Trenton, New Jersey
ISSUED: October 26, 1990

H.E. NO. 90-51

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

In the Matter of

RAMAPO-INDIAN HILLS EDUCATION
ASSOCIATION, INC.,

Respondent,

-and- Docket No. CE-H-89-27

RAMAPO-INDIAN HILLS REGIONAL HIGH
SCHOOL DISTRICT BOARD OF EDUCATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Association violated Section 5.4(b)(3) of the Act, and derivatively 5.4(b)(1), when its members engaged in "job actions" on June 12 and June 13, 1989, which resulted in the "boycott" of three extracurricular pre-graduation activities. The Hearing Examiner found that these "job actions" were illegal and did not constitute protected activities under the Act: Sayreville Bd. of Ed., P.E.R.C. No. 86-120, 12 NJPER 375 (¶17145 1986). The Hearing Examiner further found that the dispute was not "moot" in that there was a likelihood of recurrence given the egregious nature of the "job actions" engaged in by the Association. Also, the Hearing Examiner rejected the Association's argument that because there were only three instances of "job actions" on two dates during the course of ten months of collective negotiations for a successor agreement, these were de minimis and did not constitute a violation of the Act.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

H.E. NO. 90-51

STATE OF NEW JERSEY
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PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RAMAPO-INDIAN HILLS EDUCATION
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SCHOOL DISTRICT BOARD OF EDUCATION,

Charging Party.

Appearances:

For the Respondent, Bucceri & Pincus, Attorneys.
(Gregory T. Syrek, of counsel)

For the Charging Party, Green & Dzwilewski, Attorneys.
(Allan P. Dzwilewski, of counsel)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on June 27, 1989 by the Ramapo-Indian Hills Regional High School District Board of Education ("Board") alleging that the Ramapo-Indian Hills Education Association, Inc. ("Association") has 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. ("Act"), in that the Board and the Association were parties to a collective negotiations agreement, terminating June 30, 1989; that direct negotiations between the parties for a successor agreement commenced in December 1988 and continued through March 1989, at which time the Association

declared impasse; that Lawrence Hammer was appointed mediator and thereafter conducted mediation sessions which failed to produce an agreement; that fact-finding between the parties is currently pending; that on June 9, 1989, the Association met and determined to boycott a number of year-end functions, notwithstanding prior indication of participation therein; that the Association directed its members not to attend certain events and functions commencing June 12, 1989, and said members did not attend; that the Association gave no notice of this course of action prior to June 12th, which is alleged to have had as it purpose the exertion of pressure on the Board to attain the Association's negotiations goal; all of which is alleged to be in violation of N.J.S.A. 34:13A-5.4(b)(1), (3) and (5) of the Act.[1/]

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 December 8, 1989. Pursuant to the Complaint and Notice of Hearing, following several adjournments, hearings were held on March 2 and March 14, 1990, in Newark, New Jersey, at which time the parties

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1/ These subsections prohibit employee organizations, 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) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit. (5) Violating any of the rules and regulations established by the commission."

were given an opportunity to present relevant evidence and argue orally. The parties entered into a complete stipulation of facts upon the record, which also included documentary exhibits [1 Tr 11-23; 2 Tr 4-8]. Oral argument was waived and the parties filed post-hearing briefs by May 8, 1990.

An Unfair Practice Charge 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.

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

FINDINGS OF FACT

1. The Ramapo-Indian Hills Regional High School District Board of Education is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. The Ramapo-Indian Hills Education Association, Inc. is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

3. When the instant Unfair Practice Charge was filed on June 27, 1989, the Board and the Association were parties to a collective negotiations agreement, effective during the term July 1, 1986 to June 30, 1989. Direct negotiations between the parties for a successor agreement had commenced in December 1988 and continued into March 1989 [CP-1; 1 Tr 12].

4. On March 20, 1989, the Association declared Impasse and filed an appropriate notice with the Commission (Docket No. I-89-188). Lawrence I. Hammer was duly appointed as Mediator by the Commission and he conducted mediation sessions with the parties on May 11, May 23 and June 8, 1989. When these sessions failed to produce a settlement the Association instituted Fact-Finding. Hammer was then appointed by the Commission as Fact-Finder on July 19, 1989, and a hearing was held on August 29, 1989 (Docket No. Finding of Fact-/33). Hammer issued his Fact-Finding Report and Recommendation, dated September 21, 1989, which was subsequently accepted and ratified by the parties. A successor agreement is now in effect during the term July 1, 1989 through June 30, 1992. No changes or agreements relative to the instant proceeding were included in the 1989-92 successor agreement. [1 Tr 12-14].

5. On February 2, 1989, the Association's Action Committee met and received an update on the progress of negotiations and outstanding problems. The Committee also reviewed a list of eleven (11) "Possible Job Actions." [J-1; 1 Tr 14].

6. On June 9, 1989, the Association's Executive and Action Committees met and agreed to implement items Nos. 6 and 9 from the list of the "Possible Job Actions. Item No. 6 states: "Cease all voluntary actions at school such as covering classes" and item No. 9 states: "Refuse to participate in graduation." [J-1, p. 3]. Further, these Committees requested that all Association

members attend the next Board meeting on June 12, 1989.[2/] [J-2; 1 Tr 14].

7. On June 12, 1989, the Association held a General Membership meeting where, following a report on the status of the negotiations, the membership unanimously approved the two "Job Actions" adopted by the Negotiations, Executive and Action Committees on June 9, 1989 and, in addition, agreed to attend the June 12th Board meeting. [J-3; 1 Tr 15].

8. As a result of the action taken by the Association at its General Membership meeting on June 12th, members of the Association, who otherwise planned and/or were scheduled to attend various end-of-year functions and activities, failed to attend the following: (a) Ramapo High School-Spring Sports Dinner on June 13, 1989; (b) Indian Hills High School-Senior Awards Night on June 12, 1989; and (c) Indian Hills High School-Athletic Awards Night on June 13, 1989. Both in 1989 and previously for 20 years or more, these end-of-year functions and activities were generally scheduled and held outside of the regular school day. [1 Tr 15, 16].

9. Neither the Association, its officers, its members or any of its committees gave any prior notice to the Board, its members or officers, that the Association's members would cease participation in all voluntary school activities and refuse to participate in graduation [see minutes of the Action Committee

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2/ After the June 8th mediation session, the Association's Negotiations Team voted to proceed to Fact-Finding (J-3).

meeting of February 2, 1989 (J-1), minutes of the Executive and Action Committee meeting of June 9, 1989 (J-2) and minutes of the General Membership meeting of June 12, 1989 (J-3)]. [1 Tr 16].

10. A large number of the members of the Association attended the Board meeting of June 12, 1989. Although the Association's President, Cherylin J. Roeser, made a statement to the Board, it did not include any reference to the Association's decision to boycott various end-of-year functions and activities. [1 Tr 16, 17].

11. In a memorandum dated June 15, 1989, to Association President Roeser, the Acting Superintendent, David L. Rinderknecht, summarized the Association's actions since June 12, 1989, and demanded that the Association "cease and desist from these concerted actions..." [J-4; 1 Tr 17].

12. On June 16, 1989, Rinderknecht sent a memorandum to "All Professional Staff" represented by the Association, advising them that the Association has been informed that it and its members are in violation of Article XXVI of the collective agreement, which requires that the Association refrain from boycotts and other concerted actions against the District and, further, that directives will be issued to specific professional staff members requiring them to participate as originally planned in all upcoming District events and functions. Rinderknecht's memorandum concluded: "This participation is based upon contractual obligation, past practice and/or the directives that will be issued from the principals..." [J-5; 1 Tr 17, 18].

13. On June 16, 1989, Principals Ronald J. Frederick and Thomas F. Kernan each issued a memorandum, which directed specific staff members to participate in the various school events and functions as originally anticipated and planned (J-6 & J-7).[3/] At this time, the pending events at Ramapo High School were the Senior Awards Assembly on June 19th and the Graduation on June 25th with the necessary preparations and functions related to graduation. At the Indian Hills High School, the pending events were the Graduation preparation, rehearsals, the ceremony and the Graduation Gala. These activities were scheduled to take place during the period June 19th through June 23, 1989. Unless excused, all staff members participated in the foregoing events as originally planned subsequent to the receipt of the Principals' June 16, 1989 memoranda (J-6 & 7, supra).[4/] [1 Tr 18, 19].

14. All end-of-year activities and events, including those identified previously, were planned, scheduled and prepared well in advance and placed on the Activities Calendar of each High School. Many of these activities and events require an expenditure of funds by the Board for facilities, awards, decorations and so forth. With the exception of the Graduation Gala, which was in its third year,

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3/ These memoranda focused specifically on the Graduation Exercises and the Graduation Gala.

4/ The staff members assigned and attending Graduation, and its related preparations and functions, also included a number of staff members who had participated in the years prior to 1989 but who had not planned to participate in 1989. [See J-12, ¶3; 2 Tr 4].

all of the other end-of-year activities and events have taken place over a span of twenty or more years. [1 Tr 19].

15. Based upon Extra-Service Contracts and/or Job Descriptions, staff members are required and/or expected to participate in the various end-of-year activities and events referred to above. For example, the Senior and Junior Class Advisors are required to participate in the Graduation and to be involved in the planning, rehearsal, etc. which precede the ceremony. The Band Directors have similar obligations regarding Graduation based upon their respective functions. Finally, the Head Coaches and Assistant Coaches are responsible to attend "...post-season award dinners and ceremonies..." [J-8, CP-3B, CP-3C & CP-3D; 1 Tr 20].

16. Additionally, staff members have historically been involved in the planning, rehearsal and/or attendance at the various functions and events described above. For example, Graduation ceremonies require the staff to assist in its various aspects. As early as May of each year volunteers are sought to assist in coordinating the ceremony, i.e., the memorandum of May 11, 1989, to "All Staff," which solicited volunteers to help in such aspects of the ceremony as academic robes, processional line-up, ushering in the stands and on the fields and, finally, diploma distribution. [J-9; 1 Tr 20, 21].

17. For twenty years or more prior to June 1989, the Board has relied upon this combined system of contractual obligations and

volunteers in order to have appropriate and sufficient teaching staff to plan, coordinate and attend all end-of-year school activities and functions. These have included, in addition to those previously described, the following activities, which were scheduled in June 1989 at Ramapo High School: (1) Music Concert (June 1st); (2) National Honor Society Induction (June 6th); and (3) The Senior Prom. Similarly, the following activities were scheduled in June 1989 at Indian Hills High School: (1) Sports Awards Program (June 6th); and (2) the Senior Prom (June 8th). These events were held and completed without incident, having occurred prior to the events giving rise to the instant Unfair Practice Charge. [1 Tr 21, 22].

18. In response to the memoranda of Principals Kernan and Frederick on June 16, 1989 (J-6 and J-7, supra), the Association sent each of them a letter dated June 20, 1989, in which several requests for information were made, including: a complete list of staff members who had been ordered to appear, and at which events; a complete accounting of the exact job responsibilities assigned to each individual; and, finally, an explanation of why those individuals so designated and ordered to appear were chosen over others [J-10 & J-11; 1 Tr 22].

19. On the same date, June 20th, Principals Kernan and Frederick responded separately to the Association and staff members, providing all of the requested information. [J-12 & J-13; 1 Tr 22].

20. On July 8, 1986, then Superintendent, Syd Salt, sent a memorandum to Thomas F. Kernan, who was also a Principal at that

time, in which Salt directed Kernan to coordinate a project regarding "Schedule B" job descriptions. "Schedule B" referred to that portion of the collective agreement between the Board and the Association, which listed the various school advisors and coaching positions, including their stipends. [CP-3A and CP-3E].

21. Thereafter, Kernan coordinated the "Schedule B" project, which developed and completed the necessary job description by October 7, 1986. The drafting of the necessary job descriptions was completed with the input of the Athletic Director at each of the two High Schools as well as from the Association. Among the job descriptions completed, and dated October 7, 1986, were those of the Senior Class Advisor (CP-3B); the Junior Class Advisor (CP-3C) and the Head Coach & Assistant Coaches (CP-3D). After copies of these job descriptions were distributed to the several Advisors and Coaches, the completed project was given to the Board at its November 1986 meeting. These job descriptions have been in effect continuously since that date. [See CP-3A through CP-3F and Finding of Fact No. 15, supra].

22. The minutes of a "Closed Executive Session" of the Board on June 12, 1989, disclose, in part, that the teachers "staged a job action by not attending activities" and possibly "will not take part in graduation ceremonies..." It was suggested that "the Board inform the public that "the teachers are under contract until June 30th and these activities are part of their obligations..." [CP-2]. The minutes of a "Closed Executive Session" of the Board on

June 16, 1989 disclose, in part, that the teachers "did a job action by not attending the Senior Awards Assembly" and that the Association's President was served with an order "to cease and desist the boycott" as a violation of the contract, etc. [CP-2].

ANALYSIS

The Respondent Association Violated Sections 5.4(b)(1) And (3) Of The Act By Its Conduct In Negotiations For A Successor Agreement, Namely, Engaging In An Illegal "Job Action" On June 12 And 13, 1989.

Although the record is stipulated, the salient facts are deserving of mention at the outset:

1. Negotiations for a successor agreement to CP-1 commenced in December 1988 and continued into the fall of 1989 when, following the acceptance of a Fact-Finding Report and Recommendation, dated September 21, 1989, a successor agreement was ratified by the parties and is currently in effect during the term July 1, 1989 through June 30, 1992. During this extended period of negotiations, the Association declared Impasse on March 20, 1989; the parties attended mediation sessions on May 11, 23 and June 8, 1989; and, thereafter, the Mediator was appointed as Fact-Finder on July 19, 1989, and he held a hearing on August 29th, and issued his Fact-Finding Report, supra. [See Findings of Fact Nos. 3 & 4].

2. On February 2, 1989, the Association's Action Committee met and discussed, inter alia, eleven (11) "Possible Job Actions," Nos. 6 through 11 being "...those that would bring about a work stoppage or slow down." [J-1, p. 3]. [See Finding of Fact No. 5].

3. On June 9th, the Association's Executive and Action Committees met and heard a report from the Negotiations Team on the status of negotiations with the Mediator on June 8th. It was then decided to recommend to the membership of the Association that Nos. 6 and 9 of the eleven items from the list of "Possible Job Actions" be implemented, namely, ceasing all voluntary activity at the schools and refusing to participate in the Graduation. [J-2]. A meeting of the Association's General Membership was held on June 12th and, after receiving a "handout" on the status of negotiations and being advised that the Negotiations Team had voted to proceed to Fact-Finding, the membership unanimously approved a motion that "The General Membership Support The Job Actions" proposed by the Negotiations, Executive and Action Committees, which also included attending the Board meeting on June 12th. [J-3]. [See Findings of Fact Nos. 6 & 7].

4. As a result of the General Membership meeting on June 12th, members who were scheduled to attend three end-of-year functions at the High Schools failed to do so on June 12th and June 13, 1989. These actions of non-attendance occurred without prior notice to the Board or its representatives. [See Findings of Fact Nos. 8 & 9).

5. Thereafter, following directives from the Acting Superintendent and the two Principals, the members of the

Association attended all subsequent events through June 23, 1989, unless they were excused. [See Findings of Fact Nos. 11-13].[5/]

6. For twenty or more years, the Board has relied upon the contractual obligations of its staff, including volunteers, in order to plan, coordinate and attend all of the end-of-year school activities and functioned (see Findings of Fact Nos. 14-17, supra).

* * * *

But for the aggravated nature of the Association's conduct in embarking upon a premeditated course of action, beginning in February 1989, which resulted in the non-attendance of its members at three end-of-year activities on June 12 and June 13, 1989 without prior notice, the Hearing Examiner would have been inclined to dismiss the Board's Unfair Practice Charge. The basis for so doing would have been mootness and/or the totality of the Association's overall conduct in negotiations from December 1988 through the fall of 1989. However, the Hearing Examiner cannot ignore the Association's protracted planning and the purposeful adoption of a strategy to disrupt some if not all of the Board's historic end-of-year activities and functions.

The Action Committee on February 2nd had noted specifically at the conclusion of its list of "Possible Job Actions" that "Actions 6 through 11 are considered those that would bring about a

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5/ Five activities at the High Schools had been attended by members of the Association between June 1 and June 8, 1989 without incident (see Finding of Fact No. 17).

work stoppage or slow down..." (J-1, p. 3) (Emphasis supplied). Thus, the Association's Action Committee was clearly aware that it was bent on a course of action calculated to result in a "work stoppage or slow down." On June 9th, the Association's Executive and Action Committees formally decided upon Nos. 6 and 9 from the "List," these being the cessation of all voluntary activity at the schools and refusal to participate in the Graduation. When the membership unanimously approved this course of action on June 12, 1989, the die was cast. The "job actions" began on the same day without notice to the Board.

The Association earns no credit with this Hearing Examiner because only three of the end-of-year functions were affected, namely, Senior Awards Night, the Spring Sports Dinner and the Athletic Awards Night on June 12 and June 13, 1989, at the two high schools. It appears that the only reason that the Association and its members did not follow through and boycott the Graduation ceremony on June 25th was the fact that the Acting Superintendent figuratively "read the Riot Act"[6/] in a "cease and desist" memorandum to the Association's President on June 15th. This was followed by an equally forceful memorandum on June 16th to "All Professional Staff," which stressed the clear violation of Article XXVI and the past practice of "participation." [See Findings of

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6/ An English statute of 1715 providing for punishment when 12 or more persons refuse to disperse "upon proclamation"; collog. - to give a command to cease an activity: Webster's New 20th Century Unabridged Dictionary, 2 Ed. (1983).

Fact Nos. 11 & 12, supra]. Also, each Principal sent a like memorandum to all staff members on June 16th. These communications had the effect of bringing a halt to the Association's "job actions."

This Hearing Examiner has twice found that the engaging in "job actions" by public employees or their representatives is not an activity protected by the Act, citing in each instance Bd. of Ed. of the Boro of Union Beach v. NJEA, 53 N.J. 29 (1968).

First, in Freehold Reg. H.S. Dist. Bd. of Ed., H.E. No. 82-48, 9 NJPER 709 (¶14310 1982), adopted P.E.R.C. No. 83-10, 8 NJPER 438 (¶13206 1982), the Board's cafeteria workers were engaged in a lawful strike, and on one particular day 90 teachers failed to report to work at five high schools. They were immediately notified that, unless they produced valid excuses for absence, they would be "docked." In an unfair practice proceeding instituted by the Association in that case, this Hearing Examiner recommended dismissal of the complaint, primarily upon the authority of Union Beach. The Supreme Court had held in 1968 that public employees in New Jersey have no right to strike or to engage in concerted job actions. Although the Commission, in affirming the Hearing Examiner in Freehold, found it unnecessary to "reach" Union Beach, it did find that the Board's requirement of verification was justified.

Secondly, in Sayreville Bd. of Ed., H.E. No. 86-26, 12 NJPER 86 (¶17030 1985), adopted P.E.R.C. No. 86-120, 12 NJPER 375 (¶17145 1986), certain teachers were "docked" for participation in a

job action. A majority of the teachers had failed to report on time at their respective schools, following attendance at an Association meeting at which a strike authorization was voted. A demonstration was then held in front of one of the schools in support of negotiations for a successor collective agreement. In Sayreville this Hearing Examiner again relied upon Union Beach and this time the Commission specifically cited Union Beach in its affirmance.7/

Of especial note is a recent case dealing specifically with the boycott of graduation exercises. In Bergen Community College, H.E. No. 87-67, 13 NJPER 451, 459 (¶18171 1987), adopted P.E.R.C. No. 87-153, 13 NJPER 575 (¶18210 1987), the Hearing Examiner relied upon Sayreville and Union Beach in concluding that the College did not violate the Act when it "docked" those faculty members who failed to attend the annual graduation exercises. There had, as here, existed a longstanding non-contractual practice of voluntary attendance, which had never been the subject of a grievance. The Hearing Examiner in Bergen cited Somerset County Vo-Tech Bd. of Ed., P.E.R.C. No. 78-54, 4 NJPER 153 (¶4071 1978) and Montville Tp. Bd. of Ed., P.E.R.C. No. 86-51, 11 NJPER 702 (¶16241 1985) in support of his conclusion that the faculty was obligated by a binding practice to attend graduation and that its failure to have done so was an unprotected activity. Thus, the College could lawfully "dock"

7/ The Commission has since followed Sayreville in Weehawken Bd. of Ed., P.E.R.C. No. 87-142, 13 NJPER 484 (¶18180 1987) where the Commission sustained the Board's transfer of certain employees who had engaged in a "strike."

faculty salaries. Significantly, the union in Bergen had utilized non-attendance to bring pressure to bear upon the College in order to attain an objective in the pending negotiations for a successor collective negotiations agreement.

Article XXVI of the 1986-1989 agreement, which was in effect until June 30th, provides that: "The Association agrees to refrain from strikes, work stoppages, boycotts, sanctions and other concerted action against the Board or the District for the term of this agreement." [CP-1, p. 42]. It is significant that the Acting Superintendent, Principal Kernan and the Board separately referred to Article XXVI as having been violated by the Association in its "job actions" on June 12 and June 13, 1989 [J-4, J-5, J-6 and CP-2].

Section 5.4(b)(3) prohibits a public employee representative such as the Association from "Refusing to negotiate in good faith with a public employer..." The Hearing Examiner concludes that the Association in this case did refuse to negotiate in "good faith" by manifesting "bad faith" in the ongoing negotiations between the parties for a successor agreement. Support for this conclusion may be inferred from the illegal "job actions" engaged by the Association's members in the three instances on June 12 and June 13, 1989. The Association and its members were only persuaded to refrain from further illegal "job action" activity by the directives from the Acting Superintendent and the two Principals on June 15 and June 16, 1989, supra. The strongest language appeared in the memorandum from the Acting Superintendent

to the Association's President on June 15, 1989, where he demanded that the Association "cease and desist from these concerted actions against the District and its students..." (J-4).

What purpose did the Association have in engaging in the three "job actions" other than to place undue pressure upon the Board in negotiations? The answer to this question is readily found in the minutes of: (1) the Action Committee of February 2nd, (2) the Executive and Action Committees of June 9th and (3) the General Membership on June 12th (J-1 through J-3, supra). As previously noted, page three of the minutes of February 2nd, stated that "Actions 6 through 11 are considered to be those that would bring about a work stoppage or slow down..." Thus, the objective of the members of the Action Committee was clearly stated. The same tenor, but to a lesser extent, is found in the minutes of the June 9th and June 12th meetings, supra. This chain of events is hardly consistent with "good faith" conduct in negotiations.

Persuasive evidence of the "bad faith" evinced by the Association in implementing the three "job actions" is implicit in its having acted without prior notice or warning to the Board. Obviously, this conduct was intended to aggravate the disruption in the holding of these events.[8/]

An additional aspect of the Association's "bad faith" is apparent from a reading of the Commission's decision in Barrington

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8/ The record does not disclose whether or not these three functions were held or were cancelled in their entirety.

Bd. of Ed., P.E.R.C. No. 81-122, 7 NJPER 240 (¶12108 1981). In that case there existed a 15-year practice of teachers voluntarily staffing an outdoor educational trip without compensation. This extended practice thus constituted the status quo. When three teachers refused to participate in the 16th year unless they were compensated, they were compelled to attend. The Association alleged a refusal to negotiate in "good faith." The complaint was dismissed because the Board's having required attendance "...cannot be interpreted as a unilateral change but rather, a direction to preserve the status quo of voluntary, non-compensated participation..." (7 NJPER at 241). Hence, President Roeser erred when she stated in her two letters June 20, 1989 that "...attendance at such events is voluntary, has always been voluntary, and involves no contractual attendance obligation..."[9/] since Bergen Community College and Barrington plainly hold to the contrary.

The Hearing Examiner rejects any suggestion by the Association that it did not manifest "bad faith" because its "job actions" did not have a significant impact upon negotiations. Here the Association claims the mantle of "good faith" because following its illegal "job actions," it participated in Fact-Finding, which ultimately resulted in a successor collective agreement. [See Association's Main Brief, pp. 17, 18].

9/ First paragraph of J-10 & J-11.

Additionally, the contention that the "job actions" were merely isolated events in the negotiations process and were, therefore, de minimis non curat lex is likewise devoid of merit. During at least two days in June 1989, the "totality" of the Association's conduct was inconsistent with its obligation to negotiate in good faith for a successor agreement: see State of New Jersey, E.D. No. 79, 1 NJPER 39 (1975), aff'd 141 N.J. Super. 470 (App. Div. 1976) and P.B.A. Local No. 273 (Flemington), H.E. No. 88-32, 14 NJPER 93, 96 (¶19034 1988), adopted P.E.R.C. No. 88-82, 14 NJPER 240 (¶19087 1988).[10/]

Thus, the Hearing Examiner has no alternative but to conclude that the Association by its officers and members manifested "bad faith" in the course of the ongoing negotiations for a successor agreement. An appropriate remedy will be recommended hereinafter.

* * * *

It might initially appear that the Hearing Examiner would encounter some difficulty in finding that the Association violated Section 5.4(b)(1) of the Act by its "job actions" above, since there was no interference, restraint or coercion of "employees," by the

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10/ These cases are discussed further hereinafter.

Association.[11/] However, the Hearing Examiner concludes that the Association derivatively violated Section (b)(1) under the same rationale as that used when a public employer is found to have violated any one of the subsections of Section 5.4(a) the Act, i.e., §§5.4(a)(2) through (7).[12/] Thus, based upon Galloway, the Hearing Examiner concludes that the Association derivatively violated Section 5.4(b)(1) of the Act.[13/]

With respect to the Board's contention that the Association violated Section 5.4(b)(5) of the Act, the Hearing Examiner concludes to the contrary that the Association did not violate any of the "rules and regulations" of the Commission. The Board suggests that the Commission's rules regarding "Impasse" have been

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11/ The absence of any effect upon employees derives from the fact that the "members" of the Association voted unanimously to engage in a "job action" at the meeting of the General Membership on June 12, 1989. Thus, precedent in support of a violation of this subsection must be gleaned from another source.

12/ This was the holding of the Commission in an early case, upon which this Hearing Examiner now relies by analogy in finding that the Association violated §5.4(b)(3) of the Act: Galloway Tp. Bd. of Ed., P.E.R.C. No. 77-3, 2 NJPER 254, 255 (1976).

13/ When the Board on the first day of hearing amended, in part, ¶6 of its Unfair Practice Charge by deleting its references to coercion of its members and others of the staff not covered by the collective agreement, it did not, however, withdraw the Section 5.4(a)(1) allegation in its entirety (1 Tr 9-11). Counsel for the Board made clear that it was withdrawing only the allegations that the Association had "...engaged in a course of intimidation of members of the Association for the purposes of undercutting the members' rights pursuant to the Act..." (1 Tr 10). Hence, the finding by the Hearing Examiner that there exists a derivative violation of Section 5.4(b)(1) stands.

violated by the Association. In fact, there has been no such violation since, after the Association declared Impasse, it attended the three scheduled mediation sessions, the last having occurred on June 8, 1989. Further, there is nothing in the stipulated record which suggests that the Association did other than participate in the Fact-Finding phase after having voted to do so on June 9th. Following the issuance of Hammer's report on September 21st, both parties accepted it and ratified their successor agreement. Therefore, the Hearing Examiner will recommend dismissal of the Board's Section 5.4(b)(5) allegation.

* * * *

In having found and concluded that the Association violated Sections 5.4(b)(1) and (3) of the Act, the Hearing Examiner has considered the threefold defense advanced by the Association in its Briefs. These defenses will now be analyzed seriatim.

I.

It is first contended that the subject matter of the Charge is "moot" since a successor collective negotiations agreement has been ratified by the parties and is in full force and effect. Although not cited by the Association, the Hearing Examiner notes that the first cases involving the issue of mootness under our Act were those involving the Galloway Township Board of Education[14/]

14/ Galloway Tp. Bd. of Ed. v. Galloway Tp. Ass'n of Ed. Secys., 78 N.J. 1 (1978)[Galloway I] and Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25 (1978)[Galloway II].

and three prior Commission decisions. The Supreme Court in Galloway I and II rejected the argument that the disputes were moot on the ground that, "...there was a sufficient potential for recurrence of the Board's conduct in...future negotiations..." (78 N.J. at 46, 47; 78 N.J. at 24).

The Commission first had occasion to reject an employer's contention of mootness in Lower Tp. Bd. of Ed., P.E.R.C. No. 78-32, 4 NJPER 24 (¶4013 1977), which was decided prior to the Supreme Court's decisions in Galloway I and II. There, given a number of open issues following the expiration of an agreement, the Commission concluded the questions before it were "...not deprived of practical significance..." nor were they "...purely academic and abstract in nature..." (4 NJPER at 27).

In a second pre-Galloway decision, the Commission in Tp. of Denville, P.E.R.C. No. 78-51, 4 NJPER 114 (¶4054 1978) found that execution and compliance with a successor agreement did "...not erase the continuing chilling effect..." resulting from the employer's having earlier posted a letter to unit employees cancelling health benefits under the prior contract (4 NJPER at 115). The Commission concluded that if it shirked its duty to "prevent and remedy unfair practices..." the same conduct might be repeated during the next round of negotiations.

The Commission in Manalapan-Englishtown Reg. Bd. of Ed., P.E.R.C. No. 78-91, 4 NJPER 262 (¶4134 1978) again followed its prior rationale in holding that an employer's dismissal of tenure

charges, which had resulted from a teacher's authorship of protected letters, did not render the matter moot. A cease and desist order was deemed necessary to prevent "...other adverse action..." against the teacher or other employees in the future. [4 NJPER at 264].

In a 1981 decision, Matawan-Aberdeen Reg. Bd. of Ed., P.E.R.C. No. 82-56, 8 NJPER 31 (¶13013 1981), the Commission citing Galloway II for the first time, rejected the employer's contention that the case was moot. The Board had unilaterally created a job title and set the salary. It then placed the title outside of the collective negotiations unit. After a lapse of time, the Board rescinded its action and placed the title into the unit. In each instance the Board bypassed the Association. Notwithstanding that the job title was currently within the collective unit where it belonged, the Commission concluded that the "...only appropriate remedy...is an order for the Board to cease and desist from the action found violative of the Act..." (8 NJPER at 32).

The Association has referred to several decisions of the Commission since 1981, which have uniformly granted dismissal on the ground of mootness. See: Tp. of Rockaway, P.E.R.C. No. 82-72, 8 NJPER 117 (¶13050 1982); Hunterdon Cty., D.U.P. No. 85-7, 10 NJPER 544 (¶15253 1984); Rutgers, The State University, P.E.R.C. No. 88-1, 13 NJPER 631 (¶18235 1987); State of N.J. (AFT), P.E.R.C. No. 88-2, 13 NJPER 634 (¶18236 1987); Camden Cty. College, P.E.R.C. No. 88-28, 13 NJPER 755 (¶18285 1987); Matawan-Aberdeen Reg. Bd. of Ed., P.E.R.C. No. 88-52, 14 NJPER 57 (¶19019 1987); Belleville Bd. of

Ed., P.E.R.C. No. 88-66, 14 NJPER 128 (¶19049 1988), aff'd Docket No. A-3021-87T7 (1988); and Bayonne Bd. of Ed., P.E.R.C. No. 89-118, 15 NJPER 287 (¶20127 1989), aff'd. Docket No. A-4871-88T1 (App. Div. 1990).

In the majority of the Commission's recent decisions involving "mootness," it has relied upon that language in the Galloway II opinion, which recognized that the Commission was invested with discretion in exercising its remedial authority under Section 5.4(c) of the Act. Specifically, the Supreme Court said that it discerned:

> ...a clear legislative intent that PERC's authority to adjudicate unfair practices should apply even where the offending conduct has ceased. We accordingly hold, as we effectively did in P.B.A. v. Montclair [70 N.J. 130, 135]...that PERC possesses the authority...to adjudicate and remedy past violations of the Act if, in its expert discretion, it determines that course of action to be appropriate under the circumstances of the particular case...(78 N.J. at 39) (Emphasis supplied).
>
> [See Tp. of Rockaway, 8 NJPER at 118].

In thus declining to adjudicate a dispute on the ground of "mootness," the Commission in 1987 said in Matawan, "...Continued litigation over this past dispute would only foment instability and hostility between the parties when labor stability and peace are most needed..." (14 NJPER at 59). Similarly, in State of N.J., the reason given for the exercise by the Commission of its discretion to dismiss on the ground of "mootness" was that "...the compelling fact is that the parties have now settled their differences and we believe it would be contrary to our mandate to permit this academic dispute to be litigated..." (13 NJPER at 635).

Although the Hearing Examiner is well aware that he cannot ignore binding Commission precedent, he can, on the other hand, rely upon prior Commission precedent, such as the 1981 Matawan decision and prior cases, when the facts in a particular case dictate that the doctrine of "mootness" should not be applied. The Hearing Examiner has concluded that the instant case is not moot since the conduct of the Association on June 12 and June 13, 1989, was egregious and inexcusable. This case not only warrants the finding of a violation of Sections 5.4(b)(1) and (3) of the Act but also a "cease and desist" order against future repetition of like illegal conduct. Therefore, the "mootness" defense advanced by the Association is rejected.[15/]

II.

The second defense relied upon by the Association is that this case involves a "mere" breach of contract, namely, Article XXVI, wherein the Association agreed to refrain from "...strikes, work stoppages, boycotts, sanctions and other concerted action against the Board...for the term of this agreement" (CP-1, p. 42). In support of its position, the Association cites State of N.J. Dept., of Human Services, P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191

15/ In Finding of Fact No. 4, supra, it was found that when the successor agreement became effective "...No changes or agreements relative to the instant proceeding were included." This stipulated fact affords the Hearing Examiner an additional reason for rejecting the Association's "mootness" defense (see Association's Main Brief, pp. 7, 8 and Board's Reply Brief, p. 1).

1984) and several subsequent cases involving the refusal to issue a complaint by the Director of Unfair Practices (Association's Main Brief, pp. 11-13).[16/] It is the conclusion of the Hearing Examiner that Human Services does not apply to the case at bar.

In that case the Commission delineated the following test for determining whether or not an alleged refusal to negotiate in good faith arises from an unrelated breach of contract or is arguably a violation of the Act:

> To determine whether a charge is predominantly related to...[the Act's] obligation to negotiate in good faith or is an unrelated breach of contract claim which does not implicate any obligations and policies arising under our Act, it is necessary to look closely at the nature of the charge and all the attendant circumstances...While there can be no precise demarcation between a mere breach of contract claim and a refusal to negotiate in good faith claim...we give the following examples of situations in which we would entertain unfair practice proceedings...A specific claim that an employer has repudiated an established term and condition of employment may be litigated in an unfair practice proceeding...[10 NJPER at 422]. [Emphasis supplied].

Although the Commission in Human Services was confronted with an alleged violation of Section 5.4(a)(5) of the Act, its rationale applies equally to a public employee representative under Section 5.4(b)(3). Therefore, the Hearing Examiner may permissibly conclude that when the Association engaged in "job actions" on June 12 and June 13, 1989, it "repudiated" its express commitment in Article XXVI of the 1986-89 agreement to "...refrain from strikes,

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16/ The Board has joined issue on this defense in its Main Brief (see pp. 8-12).

work stoppages, boycotts, etc...." Having so repudiated this Article of the agreement, the Board has properly alleged an unfair practice under the Act and not a "mere breach of contract claim," which would otherwise have been deferrable to the parties' negotiated grievance procedure.17/

III.

The final defense advanced by the Association is that the "job actions" of June 12 and June 13, 1989, were nothing more than several isolated incidents in the course of the collective negotiations process between December 1988 and the fall of 1989 when a successor agreement was consummated. The Association suggests, therefore, that the Hearing Examiner should view the above "job actions" as "...at best a de minimis situation..." (see Association's Main Brief, p. 18 and Reply Brief, p. 7). The Association argues that this conclusion follows from its overall good faith in negotiations based on the "...totality of circumstances..." (see Association's Main Brief, p. 17). Here the Association cites PBA Local No. 273 (Flemington), supra, and Hazlet Tp. Bd. of Ed., H.E. No. 80-5, 5 NJPER 375 (¶10191 1979), adopted P.E.R.C. No. 80-57, 5 NJPER 498 (¶10254 1979).

17/ The Association's citation of Boro of Wildwood Crest, D.U.P. No. 88-13, 14 NJPER 366 (¶19141 1988) and N.J. Transit Rail Operations, D.U.P. No. 88-11, 14 NJPER 163 (¶19066 1988) are inapposite as are a multitude of like cases decided by the Commission since Human Services.

The Hearing Examiner previously has referred to PBA Local No. 273, where the facts were most egregious and a violation of the union's obligations to have negotiated in good faith was found. There, the PBA's negotiating representatives first scheduled meetings and then failed to appear over the course of six months of negotiations. Also, the composition of the PBA's negotiations committee was changed several times by substitutions. Therefore, this Hearing Examiner concluded that PBA Local No. 273 had clearly manifested bad faith by the "totality" of its conduct: State of N.J., 1 NJPER 39, supra). In that case the Commission stated that an objective analysis of the overall conduct of a party charged "...is to determine the intent of the the respondent, i.e., whether the respondent brought to the negotiating table an open mind and a sincere desire to reach an agreement, as opposed to a pre-determined intent to go through the motions, seeking to avoid, rather than reach, an agreement..." (1 NJPER at 40).

The Hearing Examiner further concludes that the Association's inexcusable conduct herein indicated a "pre-determined intent to go through the motions" of good faith collective negotiations in or around the time of the "job actions." This conclusion is reached, notwithstanding that the Association's Negotiating Team had voted immediately after the last mediation session on June 8, 1989, to proceed to Fact-Finding.

The case of Hazlet Tp., supra, is distinguishable since there the Association abruptly left only one negotiations session

with the Board, allegedly due to a picket line at the site.[18/] Thereafter, at the Association's request negotiations were resumed, and about six weeks later a successor agreement was consummated without a repetition of the Association's objectionable conduct. In the instant case there was a boycott of three separate activities on two days. Although these "job actions" were not repeated again before the consummation of the successor agreement, the impact of the Association's "job actions" was significantly more severe than in Hazlet. While the doctrine of de minimis was properly invoked in Hazlet, the case at bar does not warrant like consideration.

The Hearing Examiner, therefore, concludes that the Association violated Section 5.4(b)(3), and derivatively 5.4(b)(1), of the Act when it engaged in three "job actions" on June 12 and June 13, 1989. Accordingly, an appropriate remedy will be recommended.

* * * *

Based upon the entire stipulated record in this case, the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

1. The Respondent Association violated N.J.S.A. 34:13A-5.4(b)(3), and derivatively 34:13A-5.4(b)(1), when its members engaged in illegal "job actions" on June 12 and June 13,

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18/ See also, Tp. of Hillsdale, P.E.R.C. No. 77-47, 3 NJPER 98 (1977) [cancellation of one negotiations session by union did not violate the Act].

1989, which disrupted the holding of three scheduled activities at the Ramapo and Indian Hills High Schools, contrary to the provisions of Article XXVI of the 1986-89 collective negotiations agreement, which was then in effect, the purpose of which was calculated to bring undue pressure upon the Charging Party during negotiations for a successor agreement.

2. The Respondent Association did not violate N.J.S.A. 34:13A-5.4(b)(5) since it did not violate any "rules and regulations" of the Commission.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER:

A. That the Respondent Association cease and desist from:

1. Refusing to negotiate in good faith with representatives of the Board during the course of negotiations for a successor agreement [such as the agreement currently in effect July 1, 1989 through June 30, 1992], particularly by ceasing forthwith to engage in "job actions" such as those engaged in by the Respondent Association on June 12 and June 13, 1989 without notice to the Board, the purpose of which was to bring undue pressure upon the Board during negotiations for a successor agreement.

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

1. Upon demand, when timely made, negotiate in good faith with representatives of the Board with respect to the terms and conditions of employment for a successor agreement to the current agreement, effective July 1, 1989 through June 30, 1992.

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 shall, after being signed by the Respondent's authorized representative, be posted immediately and maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken 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 with this order.

C. That the allegations that the Respondent Association violated N.J.S.A. 34:13A-5.4(b)(5) be dismissed in their entirety.

Alan R. Howe
Hearing Examiner

Dated: May 18, 1990
Trenton, New Jersey

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 refuse to negotiate in good faith with representatives of the Board during the course of negotiations for a successor agreement [such as the agreement currently in effect July 1, 1989 through June 30, 1992], particularly by ceasing forthwith to engage in "job actions" such as those engaged in on June 12 and June 13, 1989 without notice to the Board, the purpose of which was to bring undue pressure upon the Board during negotiations for a successor agreement.

Docket No. CE-H-89-27 RAMAPO-INDIAN HILLS EDUCATION ASSOCIATION, INC.
(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, 495 West State St., CN 429, Trenton, NJ 08625 (609) 984-7372.