P.E.R.C. NO. 76-18

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION, ENGLEWOOD PUBLIC SCHOOLS,
Respondent,

Docket No. CO-76-37-21

-and-

ENGLEWOOD ADMINISTRATORS' ASSOCIATION,
Charging Party.

SYNOPSIS

In the absence of exceptions to the Hearing Examiner's decision, the Commission adopts the Hearing Examiner's findings of fact, conclusions of law, and proposed order in an unfair practice proceeding. The Hearing Examiner found that throughout the period of negotiations for a successor agreement, the respondent school board "engaged in a pattern of conduct...which manifested a lack of good faith in its response to the negotiating process." Evidence of bad faith consisted of failures to meet with the majority representative, unreasonable delays in responding to contract proposals, refusing to discuss non-economic matters pending the outcome of the economic settlement in related negotiations with another unit, and the unilateral alteration of vacation and recess policies. The respondent is ordered to cease and desist from refusing to negotiate in good faith or from making unilateral changes in terms and conditions of employment. The respondent is affirmatively ordered to negotiate upon request; to revoke the unilateral changes previously made and to restore retroactively the pre-existing terms and conditions of employment; to post notices, supplied by the Commission, whereby its employees will be notified of the respondent's corrective actions; and to notify the Executive Director in writing of the steps taken to comply with the Commission's order.

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Charging Party.

DECISION AND ORDER

An Unfair Practice Charge was filed with the Public Employment Relations Commission on August 12, 1975 by the Englewood Administrators' Association alleging that the Board of Education, Englewood Public Schools 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., in that the Board has refused to negotiate in good faith as required by N.J.S.A. 34:13A-5.4(a)(5) [1/] of the New Jersey Employer-Employee Relations Act, as amended, by failing to respond to the proposals of the Association concerning terms and conditions of employment for the membership of the Association for the fiscal year beginning July 1, 1975. It appearing to the Commission's Executive Director that the allegations of the charge,

1/ That section provides, in pertinent part, that, "Employers, their representatives or agents are prohibited from:...(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..."

if true, might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on October 6, 1975.

Pursuant to the Complaint and Notice of Hearing, a plenary hearing was held before Robert T. Snyder, Hearing Examiner of the Public Employment Relations Commission, at which all parties were given the opportunity to present evidence, to examine and cross-examine witnesses, and to argue orally. The Association filed a brief with the Hearing Examiner December 1, 1975 and subsequently, on January 30, 1976, the Hearing Examiner issued his Recommended Report and Decision, which Report included findings of fact, conclusions of law, a recommended order, and a recommended notice to be posted by the Board. The original of the Report was filed with the Commission and copies were served upon all parties. A copy is attached hereto and made a part hereof.

Neither party has filed exceptions to the Hearing Examiner's Recommended Report and Decision. See N.J.A.C. 19:14-7.2.

Upon careful consideration of the entire record herein and in the absence of exceptions to the Hearing Examiner's Recommended Report and Decision including the proposed order and notice,[2/] the Commission adopts the findings of fact and

2/ N.J.A.C. 19:14-7.3(b) (Exceptions; cross-exceptions; briefs; answering briefs) provides in part that, "Any exception which is not specifically urged shall be deemed to have been waived."

conclusions of law rendered by the Hearing Examiner substantially for the reasons cited by him. We find, on the facts in this case, that the Board violated N.J.S.A. 34:13A-5.4(a)(5) by refusing to negotiate in good faith with the Association concerning terms and conditions of employment as fully set forth by the Hearing Examiner.

ORDER

Respondent, Board of Education, Englewood Public Schools shall:

1. Cease and desist from:

(a) Refusing to negotiate collectively in good faith with Englewood Administrators' Association as the majority representative of the employees in the unit described below, concerning terms and conditions of employees in that unit, as more fully set forth in "Appendix A":

> All personnel designated as administrators including principals, assistant principals, directors, coordinators, deans, supervisors, administrative specialists, administrative assistants and office managers, but excluding Superintendent of Schools, Assistant Superintendent and Secretary/Business Administrator.

(b) Making changes in terms and conditions of employment in the above described unit, during the course of collective negotiations for a successor agreement with the Association.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Upon request, negotiate with the Englewood Administrators'Association as the majority representative of the employees

in the aforesaid appropriate unit, concerning the terms and conditions of employment.

(b) Revoke, and refrain from implementing, Resolution of July 14, 1975, adopting policy with respect to carry-over of vacation time and recess days as applied to employees in the aforesaid appropriate unit, during negotiations for a successor agreement with the Association.

(c) Restore retroactively to the unit employees the terms of the agreement with the Association for the 1973-75 school years, including Article V: Vacation-Recess, set forth in "Appendix B", concerning the terms and conditions of employment therein embodied, during the course of collective negotiations for a successor agreement with the Association.

(d) Post at its central office building in Englewood, New Jersey, copies of the attached notice. Copies of said notice on forms to be provided by the Executive Director of the Public Employment Relations Commission, shall, after being duly signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof, and maintained by it for a period of at least sixty (60) consecutive days thereafter including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that such notices are not altered, defaced or covered by any other material.

(e) Notify the Executive Director, in writing, within

twenty (20) days of receipt of this Order what steps the Respondent has taken to comply herewith.

BY ORDER OF THE COMMISSION

Charles H. Parcells
Acting Chairman

DATED: Trenton, New Jersey
February 26, 1976

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

BOARD OF EDUCATION, ENGLEWOOD
PUBLIC SCHOOLS,

Respondent,

-and-

Docket No. CO-76-37-21

ENGLEWOOD ADMINISTRATORS' ASSOCATION,

Charging Party.

For the Respondent, John P. Miraglia
Labor Counsultant

For the Charging Party, Vincent Cantwell,
Secretary, Englewood Administrators' Association

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

Statement

Upon the basis of a charge filed on August 12, 1975, [1] by Englewood Administrator's Association, herein called the Association, and it appearing to the Executive Director, Jeffrey B. Tener, that the allegations in the said charge, if true may constitute unfair practices on the part of the Board of Education, Englewood Public Schools, herein called the Board or Respondent, the Public Employment Relations Commission herein called the Commission, by its named designee, the said Executive Director, issued a complaint and notice of hearing on October 6, 1975, against the Respondent. The complaint alleges that the failure of the Respondent to respond to the proposals of the Association concerning the terms and conditions of employment for the membership of the Association for the fiscal year begining July 1, 1975 to June 30, 1975 [2] does constitute a de facto refusal to negotiate in good faith, within the meaning

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1/ All dates hereinafter refer to 1975 unless otherwise indicated.

2/ This last date was a typographical error, clearly so understood by Respondent in its answer. The date intended was June 30, 1976.

of 34:13A-5.4 (a) (5) of the New Jersey Employer-Employee Relations Act, as amended, herein called the Act. In its answer, which I directed Respondent's representative to prepare in writing and personally serve upon the Association at the outset of the hearing, and which was thereupon received in evidence pursuant to stipulation of the parties, the Respondent denied the unfair practice allegations.

A hearing was duly held on October 30 and November 12, 1975, before me as Hearing Examiner, duly designated by the Executive Director as the Commission's named designee. All the parties appeared at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce relevant evidence.

During the hearing and again at its close the Respondent moved to dismiss the complaint on the grounds that the Association had not proven that the Respondent had refused to negotiate in violation of the Act. I reserved decision on these motions. For the reasons hereinafter appearing, and pursuant to the authority vested in me by Section 19:14-6.3(h) of the Commission's Rules and Regulations, I hereby deny the motions to dismiss in their entirety.

At the close of the hearing the Respondent presented closing argument. Subsequent to the hearing, on December 1, the Association filed a brief. Both the closing argument and brief have been fully considered.

Upon the entire record in this case and from my observation of the witnesses, I make the following:

Finding of Facts

I. Respondent Involved

The complaint alleges, the Respondent in its answer admits, the parties stipulated, and I find, that the Respondent is, and has been at all times material herein, a public employer within the meaning of Section 34:13A-3 (c) of the Act.

II. The Employee Organization Involved

The complaint alleges, the Respondent in its answer admits, the parties stipulated, and I find, that the Association is, and has been at all times material herein, an employee representative within the meaning of Section 34:13A-3(e) of the Act.

III. The Unfair Practices

As noted, the complaint alleges violation of Section 34:13A-5.4 (a), subsection 5 of the Act. That subsection, in pertinent part, prohibits employers from:

> "(5) Refusing to negotiate in good faith with a majority representative of employers in an appropriate unit concerning terms and conditions of employment of employees in that unit..."

Neither the unit involved in the proceeding nor the Association's status as majority representative are in dispute.

The Appropriate Unit

The Association alleges, the Respondent admits, and I find that the unit appropriate for the purposes of collective negotiations herein is all personnel designated as administrators, including principals, assistant principals, directors, coordinators, deans, supervisors, administrative specialists, administrative assistants and office managers, but excluding superintendent of schools, assistant superintendent of schools and secretary/business administrator, employed by the Board of Education, Englewood Public Schools in Englewood, New Jersey. 3/

This unit is the one in which the Respondent first recognized the Association in 1968 as exclusive and sole bargaining agent for collective negotiations concerning terms and conditions of employment. 3a/

The Associations Representative Status

As indicated, since 1968, the Respondent has recognized the Association as majority representative of the administrators. The Association's status as such is not disputed by the Respondent in this proceeding. Accordingly, I find and conclude that since 1968, the Association has been, and continues to be , the exclusive majority representative of the Respondent's employees in the unit found appropriate above, for collective negotiations concerning the terms and conditions of employment of the employees in such unit.

3/ The unit description is more fully set forth in the attached Article I: Recognition of the parties' agreement for the 1973-75 school years, marked "Appendix A".

3a/ This unit accords with units of all administrators found appropriate by the Commission's Executive Director in such decisions as Long Branch Board of Education and Long Branch Administrative Association, E. D. No. 47.

The Evidence

Vincent Cantwell, Secretary of the Association, on November 26, 1974, sent a letter to Mrs. Lorraine Cohen, President of Respondent requesting commencement of negotiations for a new agreement to replace the existing agreement for the 1973-75 school years which was due to expire June 30, 1975. Arrangements were then made by James Ferrell, Assistant to Superintendent of Schools Bernard J. Weiss, with Cantwell for a meeting to be held late in the afternoon on December 12, 1974.

It is undisputed that Cantwell and other members of the Association's negotiating committee appeared at the scheduled time and place, but that no one appeared for the Respondent, although the Association representatives waited an hour for Respondent negotiators to appear.

The next day, Cantwell was advised during a telephone call to Ferrell that because of a failure by Respondent to inform, timely, its negotiator, John P. Miraglia, labor counsultant, who had a schedule conflict, Miraglia had been unable to appear. Another meeting was scheduled for December 16, 1974 at 4:00 p.m. at the same location, the Board's central office building.

A preliminary meeting did take place at that time. In attendance for the Association were Cantwell and other members of the Association's committee. Miraglia represented the Respondent. Ground rules and procedures for conducting the negotiations were discussed. It is undisputed that an understanding was arrived at, that the Association would draw up a set of proposals which would then be submitted to Miraglia at a meeting to be scheduled with him.

During the next month, the Association committee developed its negotiation proposals, which were then typed and prepared for submission to Respondent's negotiator. Cantwell testified that on January 23, he called Miraglia at a New York City telephone number which Miraglia had given him for purposes of arranging submission, and, in Miraglia's absence, left a message with an answering service, leaving his name and number.

Cantwell testified he never received a return call, but that during a brief conversation held during the day of January 29, at the outer room of the Board's Central Office, Miraglia, who was about to make a telephone call, adknowledged that he had received Cantwell's call. Again, according to Cantwell, at an executive session of the Board held the same evening, Cantwell and Miraglia saw each other again but there was no conversation between them.

Cantwell testified he again telephoned Miraglia at the New York City number on February 4, again Miraglia was not in, and again Cantwell left a message for Miraglia to call him. According to the Association, as of March 10, neither Cantwell nor any other Association representative had received any reply to Cantwell's attempts to contact the Respondent's negotiator. On that date, Cantwell prepared a letter addressed to Dr. Jerome Ozer, the then President of the Board, noting that the Association's proposals for a new agreement were attached, and advising that they were being submitted directly to the President since Cantwell was unable to obtain a reply from Mr. Miraglia. The letter continues in part:

> "...On January 23, 1975 I called Mr. Miraglia's New York...number, was told he was not in but that he would return my call. I saw him on January 29, 1975, determined that he had received my call, but received no further information in reply. I saw him on January 29, 1975 but received no regognition and hence no reply. ...I called his number again on February 4, 1975 was told he was not in, but that he would reply... As of this writing I have received no reply to my calls..."

The letter concluded with a suggestion that Mr. Miraglia be instructed to undertake negotiations, lest the Board leave itself open to a charge of failure to negotiate in good faith.

That letter along with the Association's contract proposals were hand delivered by Cantwell to Dr. Ozer at the conclusion of a public meeting of the Board on the evening of March 17. Copies of the proposals were also given to the other members of the Board at the same time.

These initial Association negotiating proposals for the 1975-76 school year comprised three full pages of single spaced mimographed material. Changes were proposed in ten separate articles of the existing 1973-75 agreement. The proposals included the following changes, among others, apart from salary: Exclude from Article I: Recognition the names of unit employees filling the positions included in the negotiating unit, define the unit by general job title without specifying the particular school within the school system, place unit positions under one of the three salary classifications and add a fourth to cover the Supervisor of Maintenance; Under Article III: Grievance Procedure, add the Association as an "aggrieved person" who may process and appeal a grievance in the five step process, and change the

existing final step culiminating in advisory arbitration, to binding arbitration pursuant to rules and regulations of the Commission under the January 20, 1975 amendments to the Act, apparently in conformity with the demands made by the Englewood Teachers Association upon the Board for the 1975-76 school year; Add to Article V: Vacation-Recess a requirement that all accrued vacation must be taken during the term of the contract or, if not so used, such accrued vacation must be paid on a per diem basis prior to the contract's expiration and add to the present five, two additional days off, other than legal holidays, during school year recess periods; 3b/ Add in Article VI: Physical Examination $25.00 to the pre-existing $75.00 maximum guarantee paid by the Board for medical examinations for all administrators; In Article IX: Administrator's Association Rights and Responsibilities require the Board to present to the Association prior to their adoption all proposed policy statements whether developed as a result of discussions with the Association or not; In Article XI: Sick Leave increase paid sick leave from 12 days per calendar year to 18, add new provisions regarding extension of sick leave and practice regarding personal leave in accordance with Teachers Association proposals, and make mandatory and add $500.00 to the present option of the Board to pay $1,000 additional salary to unit personnel providing one years advance notice of retirement; As to Article XIII: Sabbatical Leaves, require payment of 100% of salary regardless of years of service and two such leaves to be granted at any one time, permit applications to be made on or before December 1, rather than November 15 and require notifications of grants of such leave to be made by February 1, increase from 20 days to 30 days the notices required to be given by the administrator who becomes incapacitated or ill, to forestall termination of such leave and require 30 days notice to be provided to the administrator to pre-maturely terminate such leave; In Article XIV: Professional Incentive Program, make mandatory the reimbursement to administrators of the cost of all course credits, without limit, and increase rate from 50% to 100% of the cost; In Article XVII: Miscellaneous add savings clause and include provision covering long standing practice of reimbursement for up to $150.00 of the cost of membership in professional organizations.

As to Article XVIII: Salary, the Association proposed continuation of the existing formula method as the basis for computing all administrative salaries except for Supervisor of Buildings whose previously negotiated agreement would apply and be incorporated as new salary Classification IV. That formula

3b/ The existing Article V: Vacation-Recess is attached hereto marked "Appendix B".

ties administrator salaries to teacher salaries. In the 1973-75 contract, containing three salary classifications, Class I, including High School Principal and Assistant Principals, used the highest teacher base salary as point of reference to which a fixed percentage was added or subtracted. Various criteria, including academic preparation, experience and size of student population, were then taken into account in adding to the base to fix final base salary. Additional academic preparation, experience and student population provided additional points, each representing a fixed monetary value. Class II employees (Principals and Directors) and Class III employees (Assistant Principals and Coordinators) used different steps in the teacher's salary guide to arrive at a base to which points were added based on the same criteria, each point being assigned a correspondingly lower monetary value, to compute final base salary. Under the 1973-75 contract, no administrator could receive less than 5.5% nor more than a 10% increase above the 1972-73 guide. Increases above the computed salary to the maximum of 10% could be granted if warranted, such amount to become part of the administrator's base salary.

The Association also sought a one year agreement; expansion of positions included, in Class I, increase in point value and points, and, for those on the top of the scale, longevity pay, and including an additional 25% for administrators, in Class I, use of a higher base and increase in point value for administrators in Classes II and III; and for all administrators, elimination of the minimum and maximum salary increase limitations on applications of the existing formula, and notice in writing signed by the Board President by September 1, 1975 to each administrator as to whether his/her performance during the previous year warranted additional compensation, and if so, how much.

Cantwell testified on cross-examination that no attempt was made to mail the Association proposals to Miraglia or to the Board between January 23 when they were ready for submission to Respondent, and March 17, when they were delivered to Dr. Ozer and the Board, because the Association was waiting for the meeting with Miraglia to transmit them directly as had been agreed upon during the December 16, 1974 meeting. Cantwell further testified on cross-examination that no attempt, other than telephone calls, was made to reach Miraglia because having received no reply to his calls of January 23

and February 4, nor to his verbal inquiry of January 29, he, Cantwell, decided to approach the matter of moving the negotiations from a different angle by going directly to the Board.

Following the submission of the Association's demands on March 17, two months elapsed before the Board responded and another meeting was held. Mr. Ferrell telephoned Cantwell to arrange a May 16 meeting for 4:00 p.m. at the Board's central office. Cantwell attended with other members of the Association's negotiating team and Miraglia appeared for the Respondent.

Miraglia did not have a copy of the Association's demands and was supplied one by the Association at the meeting. Approximately 45 minutes was spent in discussing various of the Association's proposals with the Association members going over the clauses in depth. The discussion basically consisted of Miraglia providing negative responses to a number of the items. Miraglia testified that he informed the Association's team that the Board did not want any substantive changes made in the existing agreement. The Board's negotiator did indicate agreement in principle as to the Association's demand that additional notice be provided administrators when the Respondent sought to terminate sabbatical leave, but left the development of the language agreeable to the Respondent to a future time. Miraglia also expressed the Board's desire for greater accountability by administrators as well as some procedure which would more effectively curb employee absences.

According to Miraglia's testimony on his own direct examination, in response to the Association's proposals, he said "... he informed them at that time that I didn't think the Board wanted me to make any change in the agreement, and the Board's position was, as far as the contract was concerned, since the money was tied to the teacher's agreement, we would have to wait and see what the outcome of that was and that negotiation was going down to the wire because it was in process of going into mediation and fact-finding." Miraglia informed the Association team that as to the salary items, without a settlement of the teachers contract [3c/] for the following year, the Respondent could not develop or submit a counter proposal in that area.

According to Cantwell, the only real negotiations, on which there was extended discussion in an open attempt to arrive at an understanding was with respect to the Association demand for 30 days notice to terminate sabbatical leave. In Cantwell's own words:

3c/ The teachers employed by the Respondent were represented for purposes of collective negotiations under the Act by the New Jersey Education Association. Their current agreement also expired before commencement of the next school year.

> "...this is the only matter that I recall wherein my own opinion was that there was any negotiations that really took place from November 25th of '74 up to and including the present day inasmuch as we did discuss that matter and there was discussion about why we would want to give a 30 day limit for notification of a person on sabbatical of having to return and we did discuss and, therefore, really negotiated at that point, just that one article over the intent of my specification of changing it to 30 days."

Cantwell testified that the meeting ended with Miraglia agreeing to get back to him within two weeks after conferring with the Superintendent of Schools relative to the salary guide, the method of computation of salaries and, in particular, the point system of incorporating criteria and assigning them monetary values in arriving at a base salary, and perhaps a recognition clause. Cantwell's contemporaneous notations made on his own copy of the Association's proposals during the course of the meeting, show that Miraglia agreed to confer with the Superintendent of Schools on a number of the demands, including a portion of the vacation recess proposal, raising the physical examination figure, and certain sabbatical leave proposals, and then to get back to the Association committee with the Board's position on them. Miraglia's version, added, on cross-examination, was that he told the committee they could have a meeting in a few weeks because he'd know better then what the Board's position was going to be with the school teachers, and hopefully in a couple of weeks he would have an answer and contact the committee.

No response was made by Miraglia or any other representative of the Respondent to the Association and no further negotiations took place following the May 16 meeting, until late the following October.

Cantwell and Leroy McCloud, Association President, both testified that they, as well as other Association negotiation team members, at various times during this period, made repeated verbal requests to the Superintendent of Schools, Dr. Ozer and other Board members to get negotiation meetings arranged, but to no avail. On one occasion, Dr. Ozer said to Cantwell in response to such a request that he did not see any problems with arriving at a contract, that it could be taken care of quickly but that salary matters were contingent on teachers settlement.

On July 1, Cantwell forwarded another letter to Dr. Ozer. In it, Cantwell commented, in part, as follows:

> "...we decry that it took until May 16, 1975 for a meeting to be held...and that that meeting concluded with the expressed intent of your negotiator to be back to us for another meeting within two weeks, and that to this date (July 1, 1975) we have neither heard from him, nor have any information about another meeting, nor your or his reaction tooour proposals."

Leroy McCloud, President of the Association, who had earlier approached Dr. Ozer on the street about the difficulty the Association was experiencing in contacting Miraglia prior to Ferrell arranging the May 16 meeting, telephoned Dr. Ozer on July 2 to arrange an audience for the Association with the Board at its next scheduled executive meeting on July 7. Among the items McCloud proposed be discussed was the non-action on administrator negotiations. Dr. Ozer deferred reply pending consultation with the other members of the Board, and then informed McCloud by telephone the next day that he could not agree to such a meeting absent Board consent. McCloud nonetheless advised that the administrators would be present.

On July 7, after waiting outside the Boards meeting room for some time, the full complement of administrators were granted approximately 10 to 20 minutes to address the Board. In addition to the Board members, the Superintendent and Board Secretary-Business Administrator were also present. McCloud stated that the Association had not been able to negotiate and complete negotiations on all items with the exception of salary, which he acknowledged was based on teacher rates, by formula. He also urged the Board to press Miraglia to conclude the teacher negotiations still unresolved, in order to avoid the possibility of a strike and to confer with the administrators as to their objections to various proposals for inclusion in a contract covering teacher aides employed by the Board. Dr. Ozer acknowledged receipt of Cantwell's July 1 letter. Dr. Ozer replied that none of those items would be discussed with the administrators that evening or at any other time since they were matters of negotiations left completely up to Miraglia, not the Board. When pressed as to why the Board's negotiator, Miraglia, hadn't worked with the administrators, Dr. Ozer's response was that they wouldn't discuss that. He gave the same reply to the administrator's request to direct Miraglia to negotiate. Dr. Ozer also stated that the teacher contract had to be completed first before the Board would get involved with settling the administrator's agreement.

No reply was ever received by the Association to Cantwell's letter of July 1 to Dr. Ozer.

Following this meeting, the entire Association membership met privately and voted to file charges of unfair practice against the Respondent for failure to negotiate in good faith. Those charges were filed on August 12, 1975.

A teacher strike took place for the first two weeks of the 1975-76 school year commencing September 8. The strike lasted nine days and the issues involved in the dispute including the wage issue were resolved around September 20. After the strike settlement, the Association still did not hear from Miraglia.

The Notice of Hearing which accompanied the complaint in this proceeding scheduled a pre-hearing conference of the parties for October 23. On October 22, McCloud informed the Superintendent of Schools that he and Cantwell would be absent attending the pre-hearing conference the following day. The Superintendent responded that he knew about the conference and would call "them", presumably, the Board, about it, without further identification. Later in the day, Cantwell received a call from Thomas Dunn, Esq., Attorney for the Respondent, who stated that he had just been informed of a pre-hearing conference the following day, he had no time to prepare an answer and because of other committments could not attend and was therefore requesting the Association's assent to a postponement. Cantwell did not consent but informed Dunn the Association would not oppose a postponement ordered by the Commission so long as the hearing set for October 30 was not delayed. After further communication between the Commission's General Counsel, David A. Wallace and Dunn and Cantwell, the conference was cancelled, and the hearing date of October 30 was reaffirmed in a October 22 letter from Wallace to the parties. 4/

4/ Mr. Dunn did not appear for the Respondent at the hearing, and no explanation was given for his absence. In his stead, Miraglia appeared on behalf of the Respondent. However, it was Miraglia's understanding that the pre-hearing conference and not the hearing would convene on October 30. Furthermore, Respondent had not prepared any answer to the complaint, and, as indicated, Mr. Miraglia was provided an opportunity at the outset of the hearing to prepare, serve and file an answer, by stipulation of the parties.

It was only after these events, that Cantwell received a call from Miraglia on October 23 requesting a negotiating meeting for the following Monday, October 27. A meeting was held, pursuant to this request, on October 27. The Association team, including Cantwell were present. Miraglia appeared for the Board, and for the first time, presented written response to the Association's proposals submitted the prior March. This response dealt solely with the salary item. Miraglia reaffirmed that the Board had no reason to change anything in the rest of the contract and wished to enter a one year agreement.

The Board's counter proposal comprised a compilation of proposed salary increases, in amount, and by percentage for 1975-76 for each administrator, above his 1973-75 salary based on the teacher's salary guide. The Board flatly rejected all other association demands and made no other proposals at this meeting. The Association rejected the Board's salary figures, stated it would develop a counter proposal and requested another meeting by November 4 or 5.

Two subsequent meetings were held prior to the close of hearing on November 12. On November 3, the Association submitted a revision to its initial three page mimeographed list of demands, With respect to Article III: Grievance Procedure, the Association proposed deleting reference to the provisions of Section 1087, effective January 20, 1975 in connection with the arbitration step of the procedure. Further, the Association dropped its proposal to change Article IX to the effect that the Superintendent of Schools discuss with the Association proposed policy statements of the Board developed without Association discussion or assistance prior to their adoption by the Board. The Association also withdrew a demand that the new paragraph regarding personal leave it sought for inclusion in Article XI: Sick Leave conform to the Englewood Teachers' Association demand. The Association also reduced its prior demands for 100% payment for sabbatical leave in Article XIII and 100% reimbursement of the cost of courses taken in accredited institutions of higher learning in Article XIV, to 75% in each case. Finally, the Association, withdrew almost all of its demands for salary improvement in Article XVIII, retaining, in modified form, only its demand, with respect to any merit increase above the agreed rate, that the President of the Board provide during the term of the contract, rather than no later than September 1, 1975, a signed statement whether each administrator warranted such compensation during the

previous year, and if so, pay the amount in lump sum or prorated over the remainder of the term of the contract.

On November 6, Miraglia finally made some counter proposals, explained prior outright rejection of other Association non-economic demands, and also submitted a revised salary schedule. As to the recognition clause, Miraglia explained the Board's view that Supervisor of Maintenance should not be included in the unit and Office Manager, a position theretofore included in the unit, should be removed because they were operational rather than academic. As to the Association's accrued vacation and recess days demand, Miraglia gave the Association committee a copy of a Board resolution adopted at a public meeting held July 14, upon the recommendation of the Superintendent of Schools, with respect to carry-over of vacation time. That resolution provides as follows:

> "a. To the extent possible, vacation time should be taken in the year in which it is earned. (Vacation is accrued from July 1 to June 30; the vacation should be taken during the 12 months period following June 30.
>
> b. Vacation time may be carried over for one year when the employee is so requested by the Superintendent in the best interest of the school system.
>
> c. Under unusual circumstances, and upon prior written approval by the Superintendent, the employee may carry-over his vacation or any portion thereof for one year.
>
> d. Any recess days granted to employees are not construed as vacation days and therefore may not be carried over. Such days must be taken during one of the established pupil recess periods between the opening day of school and the final day of pupil attendance."

Miraglia said he believed that the Board's resolution satisfied the Association's vacation demand. Miraglia did agree that the Board would increase the guarantee paid by the Board for Physical examination from $75 to $100. He reaffirmed the Board's rejection of the Association demand for six additional paid sick days to a maximum of 18 per calendar year. As to the Association's sabbatical leave demand, Miraglia said he would provide the Administrators with the newly negotiated teacher's sabbatical leave clause, which included a provision for payment of 75% of salary, apparently regardless of years served, one of the Association's modifed demands. Miraglia

further advised that the Board would not increase reimbursement of the cost of course credits under its professional incentive program but that the Board was still open on underwriting the cost of membership in professional organizations and an answer would be provided. 5/

The Board's revised salary proposal was also submitted at the November meeting. It comprised additional flat amounts based on the teachers salary guide for each named administrator in the unit. The proposed increases practically doubled its previous salary proposal over all, still leaving it substantially less than the administrator's revised proposal on salary. A difference between the parties as to the method of computing the base salary was resolved, and, as the hearing closed, the administrators were in the process of preparing a revision of their last salary proposal.

By mid November, no negotiations had commenced on the administrator's demand letter of September, requesting negotiations for the 1976-77 school year.

Asserted Defenses to the Alleged Refusal to Negotiate

John P. Miraglia was the sole Respondent witness in the proceeding. During the course of his testimony and in his oral summation he set forth a number of defenses to the complaint allegations and the testimony of Association witnesses in their support. These will be taken up in turn.

Miraglia testified that he had returned every telephone call made by Cantwell to his New York City number; that on a number of occasions he was advised by Cantwell's secretary that Cantwell was in conference and would return the call, but that he did not. Miraglia further testified that on January 29 in the Superintendent's outer office he saw Cantwell and asked if his proposal was ready and was told it was not; that during the Board meeting that evening, Cantwell sought out Miraglia, and they adjourned to another room to talk and Cantwell informed Miraglia that the Association's proposals were not quite ready.

5/ Miraglia testified that he was subsequently informed, prior to November 12, that the Board's Attorney advised it was illegal to pay such memberships of Administrators in outside organizations.

I do not credit Miraglia on either his claims that he returned Cantwell's calls, that Cantwell failed to reply to his return calls or that Cantwell admitted the contract proposals were not yet ready for submission on January 29. As to the calls, although Miraglia asserted at least six telephone communications with Cantwell, he was vague and could not supply any dates. Miraglia also proved to be evasive and contradictory as to whether he responded to Cantwell's February 4 call, finally admitting that he could not testify that he received a message of the call or responded to one. Miraglia also admitted, consistant with Cantwell's testimony as to the brief talk between them on January 29, that Cantwell asked if Miraglia had received word of his January 23 call and that he, Miraglia, had admitted that he had.

I found Cantwell to be a trustworthy witness, whose testimony on these matters in dispute where they conflict with Miraglia's, is more worthy of belief. Finally, the March 10 letter from Cantwell to Dr. Ozer, written at a time shortly after the events transpired and well before the Association filed its charge in this matter, corroborates Cantwell's recital of the futile efforts to reach Miraglia to arrange a meeting to transmit the Association's proposals, and commence negotiations.

While I have credited Cantwell on the early events in the chronological history of the Association's negotiation efforts and the Board's responses, the substance of the Association's charge may be evaluated without regard to the credibility of witnesses, as will be seen by the following discussion and conclusion.

Throughout the proceeding, Miraglia took the position that since Administrator salaries were tied by formula to teacher salaries, so long as the teacher's agreement was not settled no movement could be made on a new salary schedule for administrators and therefore, no valid purpose would be served by meetings with the administrators. The conditional nature of the Association's salary demands was repeatedly acknowledged by its witnesses. But that dependency was not complete. The point values to be assigned to various criteria in applying the existing formula, the basis from which salaries were to be computed and the distribution of job titles in the existing classification system were items which the Association sought to negotiate and which the Board would have ngeotiated even without settlement of the teacher's agreement. Such negotiations admittedly would not have resulted in firm agreement until the Board had agreement on the final teachers's salary

guide for the 1975-76 year. But the Board could have, without finally committing itself, responded to these legitimate salary proposals, and could have provided the Association with some indication of the principles governing its acceptance or rejections of the modifications sought. Certainly, the Board could not refuse to negotiate the demand for its President's notice to each member on denial or grant of merit pay on this ground.

Furthermore, Miraglia himself had placed in issue the legality of the salary formula itself. As early as the December 16 meeting, Miraglia had questioned whether or not the formula contained in the current agreement, was legal under the recently enacted statute requiring a salary schedule for administrators. 6/ This was one of the items Miraglia had agreed to explore further with the Board and report back to the Association after the meeting of May 16. Neither Miraglia nor any other Respondent representative thereafter ever responded to the Association on the alleged illegality of the salary formula. The Respondent's blanket refusal to confer at all in this area of the Association salary demands was unreasonable.

In fact, Miraglia also agreed to confer with the Board following the May 16 meeting as to the Association's demands relative to the point value system and related items and to contact Cantwell within two weeks to arrange another meeting. 7/ This contact was never made.

Apart from salary, many non-economic subjects had been placed on the negotiating table by the Association. Miraglia took the position that the matters other than salary could not be resolved prior to settlement with the teachers, because "in my professional opinion, I thought they were minor..." He also attributed this response to the Board itself. It should also be noted that Dr. Ozer advised the Association at the Board's executive session on July 7, that the teacher's contract had to be completed first before the Board would get involved with the Association as to issues other than salary.

6/ The reference was apparently to N.J.S.A. 18A:29-4.3 (L. 1973, c.364), effective January 7, 1974, requiring that the Boards of Education of every school district employing one or more teaching staff members having full-time supervisory or administrative responsibilities shall adopt salary schedules for each school year that begins after the effective date of this act for all such members. Such salary schedules were made subject for teaching staff members.

7/ I do not credit Miraglia's interpretation that the meeting would only be held if he knew the Board's position on the teacher's demands in that time.

Such attitudes evince an unwillingness to negotiate with respect to important subjects comprising terms and conditions of the administrator's employment. It manifests a deliberate rejection of Respondent's negotiations obligation under the Act and cannot be condoned. While final agreement was unlikely prior to settlement of a new teacher's contract, real headway could have been made, and many non-economic subject areas explored and possibly resolved permitting concentration on remaining salary items after settlement of the teacher's demands. This course was not followed, leaving practically all Association demands made March 17 still to be negotiated as of November 12 when the hearing closed.

Miraglia also asserted that after May 16 the Association never sought another meeting with him, and, in fact, both prior to, and after that date, attempted to by-pass him as the authorized Board negotiator. The evidence shows, however, that Miraglia, on behalf of the Board, and not the Association, failed to keep commitments to respond or to meet to negotiate. It was Miraglia who agreed to get back to the Association with respect to the salary formula and the salary issue in general within two weeks after the May 16 meeting. It was Miraglia who, in response to various non-economic Association demands, advised on May 16 he would confer with the Superintendent and report back to the Association. It should also be noted that neither Dr. Ozer to whom it was addressed, nor Miraglia, ever responded to Cantwell's July 1 letter which summarized the history of the Board's non-response and clearly placed the burden on the Respondent to reply, set up negotiations and to negotiate. In each instance in which the Association communicated directly with the Board, Miraglia had either failed to respond to telephone calls, or had failed to keep his own commitment to respond.

At various times during the hearing, Miraglia maintained that the Association had the option of declaring an impasse if they were unsatisfied with the course of negotiations. That process, of course, is reserved under the Act for those instances in which an honest disagreement exists after negotiations over matters concerning the terms and conditions of employment of employees in the unit, and at least one of

the parties requests the appointment of a mediator by the Commission. 8/ Clearly, the Respondent could have notified the Commission of an impasse but chose not to do so. Cantwell testified that the Association would not do so because "...There was no impasse. We had never negotiated to receive a counter-proposal from the Board to our proposal. So there was never anything on the table about which we could askaa mediator to intervene or interfere..." Finally, the modifications in Association proposals and eventual counter proposals and offers which the Board, through Miraglia finally made starting in late October and which continued as the hearing closed on November 12, provide proof that no impasse had been reached at any time during the period encompassed by the charge.

Miraglia also asserted that the "tough" negotiations with the teachers, which led to a nine day strike in September, prevented him from devoting time to the Association proposals. This is no defense to the charge. The Board is ultimately responsible for satisfying the negotiating duty. It cannot escape responsibility for fulfilling this duty because it retained a single negotiator to negotiate on its behalf in multiple units. Furthermore, many months elapsed during which the Respondent could have responded to the Association's non-economic demands. The Respondent simply chose not to respond to any Association demands until it had concluded the teacher negotiations. It must suffer the consequences for such indifference to its negotiating obligations. In any event, after the concludion of the teacher dispute, still no effort was made to meet with the Association, and only the pressure of the imminence of the Commission's scheduled pre-hearing conference and hearing in

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8/ Effective January 20, 1975, the Commission adopted Rules and Regulations to implement amendments to the Act which, inter alia, required it to adopt rules to regulate the time of commencement of negotiations and of institution of impasse procedures so that the parties will have full opportunity to reach agreement prior to required budget submission dates N.J.S.A. 34:13A-5.4(f). Section 19:12-3.1(b) of the Commission's Rules condition a notice of impasse to the Commission by a party or both parties to negotiations upon a failure "to achieve an agreement through direct negotiations..."

Section 10:12-1.1 and 1.2 of the Commission's Rules, included in Chapter 12, (all provisions of which were adopted by it pursuant to authority delegated at N.J.S.A. 34:13A-11, effective prior to August 31, 1969, in effect at the time of the submission of the Association's demands for a new agreement in 1974), required as a pre-condition to appointment by the Executive Director of a mediator that the parties "have failed to achieve an agreement after genuine and sincere efforts through direct negotiations."

latter part of October finally galvinized the Respondent to arrange for Miraglia's contact with Cantwell to meet to negotiate.

Miraglia also testified that the Board did not provide him with a copy of the Association's proposals prior to the May 16 meeting. That is just one item of evidence of the Respondent's consistent disregard of its negotiating obligation under the Act throughout the history of the Association's efforts to reach agreement on a 1975-76 agreement. It surely cannot be urged in defense of Miraglia's lack of preparation to respond intelligently to the Association's proposals on May 16.

As to the Respondent's contention that operational personnel should be excluded from the unit, I do not view this as an attack on the appropriateness of the unit. I have earlier indicated no dispute exists as to the overall administrator's unit. The Board's position that the titles of Office Manager and Supervisor of Maintenance should be excluded from the unit, standing alone, might well be found to be a strategic negotiating tactic to counter the Association's demands. However, these positions taken by Miraglia at the November 6 meeting after months of delay in reponding must be viewed in the context of the totality of Respondent's conduct. Viewed in that light, I find the Board's positions here part and parcel of its intransigence in other areas already enumerated, including its delay in responding and refusals to negotiate various salary and other items. Since 1968 the Respondent had voluntarily recognized and negotiated with the Association in a unit including the Office Manager, 9/ apparently, without question. Now, belatedly, many years later, and months after the Association's 1975-76 demands are presented, Respondent's negotiator claims the Office Manager and Supervisor of Maintenance are excludable 10/ upon grounds

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9/ Other existing unit titles, at least, imply non-academic functions, including "Coordinator, Community Relations" and "Coordinator, Maintenance and Custodians".

10/ It is unclear whether Supervisor of Maintenance is a title presently in the unit. The agreement refers to "Coordinator, Maintenance and Custodians" but Cantwell's testimony places "Supervisor of Grounds" in the unit. In any event, even if not presently in the unit, the Respondent's negotiating posture as to this job title is equally improper in the context disclosed in the record.

other than those which require exclusion under the Act. 11/ Nothing in the Act or in the decisions of the Commission support the Board's contention that one, among other categories of operational personnel, or, even, operational personnel in toto, may be appropriately excluded from a unit of administrators. What, in another context may be characterized as "hard bargaining", I find here, based upon my analysis of the overall conduct of the Respondent, to be another aspect of its refusal to negotiate. 12/

Finally, the Respondent contends that its adoption of the vacation-recess policy after its discussion among unit employees and Respondent officials who make up the Administrative Council satisfies its negotiating duty as to this required subject matter. Such a position is unacceptable and invalid as a matter of law. There is no dispute, and indeed, there could be none, that the accrued vacation and vacation-recess subject matters are "terms and conditions of employment" requiring collective negotiation with the exclusive representative of the administrators. 13/ The unilateral adoption by the Board of a resolution governing these subject matters violated that negotiating duty. 13a/

The Administrative Council is not claimed by the Respondent to be, and is not, an employee representative within the meaning of the Act. 14/

11/ At no time has the Respondent claimed that either the Office Manager or Supervisor of Maintenance are "managerial executives" or "confidential" positions defined under the Act and prohibited from any rights of collective negotiation. See N.J.S.A. 34:13A-3 (f) and (g) and 34:13A-5.3. Neither has the Respondent sought clarification from the Commission to exclude "Office Manager" or "Supervisor of Maintenance" from the existing unit, a procedure clearly available to it under the Act. See Section 19:11-1.5 of the Commission's Rules.

12/ See In the Matter of the State of New Jersey and Council of New Jersey State College Locals, NJSFT-AFT/AFL-CIO, E.D. No. 79, 1 N.J. PER 39 (8/14/75), aff'd P.E.R.C. No. 76-8 (1975), appeal pend. on other grounds, App. Div. Sup. Ct., Docket No. A-531-75.

13/ See City of Albany v. Robert D. Helsby, et al, and Albany Police Officers Union, Local 2841, AFSCME, _____ App. Div. 2nd ____ (3rd Dept., 6/30/75), 8 PERB 7034, 7035, aff'd (mod. on other grds.) 7 PERB 3132, 3136-7.

13a/ Piscataway Township Board of Education and Piscataway Township Education Association, P.E.R.C. No. 91 (7/21/75), appeal pend. App. Div. Docket No. A-8-75.

14/ The Administrative Council is a body made up of all principals, directors, board secretary, assistant superintendent and administrative assistants, chaired by the Superintendent, which meets weekly, with formal agenda prepared by the Superintendent. Discussions include policy and administrative direction of the school district, and provide a forum for input in these matters by the administrators. (Continued)

Accordingly, even if some discussion of accrued vacation and vacation recess took place at any of its meetings, they could not constitute negotiations under the Act. In any event, as Cantwell testified, whenever the subjects were raised at a Council meeting, it was the expressed intent of the administrators present that the subject be part of the negotiations between the parties. Thus, the unilateral adoption, of an accrued vacation and recess vacation resolution by the Board on July 14, violated its negotiating obligations under the Act to collectively negotiate these subject areas with the Association-areas which the Association since January had sought to negotiate by virtue of their inclusion as items in its negotiating proposal. 15/

14/ (Continued)
In The Matter of Rutgers, the State University and Rutgers Council of American Association of University Professors Chapters, Docket Nos. SN-12 and 13, P.E.R.C. No. 76-13 (1/23/76) the Commission distinguished the system of collegiality, as manifested here by the Administrative Council, from the process of collective negotiations, in the following terms, at pages 6 and 7 of its Decision and Order:

> "As viewed by the Commission, therefore, there is no reason why the systems of collegiality and collective negotiations may not function harmoniously. Neither system need impose upon the other, with one exception: terms and conditions of employment including grievances. The University is free to continue to delegate to collegial entitles whatever managerial functions it chooses, subject of course, to applicable law. The Act is among the law applicable to the University as a public employer, and therefore, collective negotiations under the Act would only mandate a change in the collegial system if that system were to operate so as to alter the University's obligation to deal exclusively with the AAUP with regard to the grievances and terms and conditions of employment of unit employees. Beyond that, both systems are free to operate without necessarily interfering with one another."

15/ Inasmuch as Respondent's adoption of the Resolution may reasonably be construed as its response to the Association's March 17 submission of its proposal relating to vacation carry-over and recess, the issue has been raised by the complaint allegation of a failure to respond to proposals and answer denying the allegation.

Furthermore, the Respondent introduced the subject of the Board Resolution into the case, examined Cantwell as its witness with respect to it during the presentation of its case, and in fact, has relied on it for its response to the Association's demands for modification of the vacation-recess article. The Association's position during the hearing was that the Resolution did not deal with the Association's proposal and was adopted without prior negotiation. Accordingly, the issue as to the validity of the unilateral adoption by the Board of its resolution on carry-over of vacation time, even if found not to have been specifically alleged in the charge and complaint, has been litigated without objection of the parties and is appropriately before me for determination. New Jersey Court Rules R. 4:9-2. Amendment to Conform to the Evidence. See, also, e.g. Rocky Mountain Natural Gas Co., 140 NLRB No. 113.

Concluding Findings

The record establishes and I find and conclude that the Respondent engaged in a pattern of conduct from the outset of the Association's request to negotiate until the close of the hearing which manifested a lack of good faith in its response to the negotiating process. "One of the requisites of good faith negotiating is to meet at reasonable times and places". 16/ The Respondent's explanations for its failure to meet timely once the Association proposals had been prepared for submission in late January have not been credited. Even after Respondent received the Association's submission on March 17, including a covering letter detailing the Association's unsuccessful efforts to meet with its negotiator, a further unreasonable delay ensued until May 16 when, for the first time, the Respondent addressed itself to the Association's demands. Its conduct at this meeting still did not satisfy the negotiating duty under the Act. Its delay in responding to demands for meetings was now compounded by a delay in meaningfully responding to the Association's negotiating proposals. The Board's negotiator came unprepared, and time was necessarily taken up with a preliminary review of the Associations many proposals taken at random. Miraglia, the Board negotiator failed to provide any real or detailed responses to the proposals. Significant negotiating proposals, not involving salary or fringe items, including modifications of existing recognition, grievance, vacation recess, rights and responsibilities, sabbatical leave and miscellaneous provisions of the parties' agreement were either rejected outright without explanation or were deferred pending consultation with the Respondent's Superintendent two months after the Board had the Association's proposals in its possession. Meaningful negotiation was limited basically to only one demand, among others, involving an aspect of sabbatical leave. Even as to salary, which the Association admitted could not be finally resolved until settlement of a new teacher's contract, issues relating to the basic formula used in computing the guide raised at the meeting by the Respondent were left hanging in limbo when a promise of another meeting to be held within two weeks was never fulfilled. Respondent continued to delay and prevaricate, even after the Association members expressed their

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16/ In the Matter of Harrison Central School District, 7 PERB 4564, 4568 (1974) aff'd 7 PERB 3068 (1974).

The Act specifically requires "...the majority representative and designated representatives of the public employer /to/ meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment." N.J.S.A. 34:13A-5.3

concern with the lack of negotiations in an audience with the Board held on July 7. At that time, the Respondent confirmed its deliberate refusal to negotiate with respect to any subject matters until its negotiations with the teacher's representative had been completed. Respondent failed to answer the Association's July 1 letter requesting it to negotiate by meeting or reacting to proposals. No further meeting was held until literally the eve of hearing in this proceeding, even though agreement had been reached with the teachers a month earlier, when the realization of the demands placed upon it to respond to the Association's charge, and the Commission's complaint were made manifest. Respondent failed to file answer to the complaint. The Respondent's representative appeared at the hearing unprepared to participate in a hearing. And at no time did any Respondent officials appear to either refute sworn testimony attributing violative conduct to them,or to present testimony or argument in support of the defense. At a meeting held October 27, Miraglia, for the Board, for the first time submitted a proposal in writing dealing only with salary which, as computed,failed to follow the existing formula. The Respondent continued its adament rejection of all other Association proposals characterized by its negotiator as "minor". Not until November 6 did any meaningful negotiations on the part of the Respondent take place. In the interim between these meetings, the Association had modified a number of its initial demands, including a major withdrawal in the area of salary adjustments, without any prior movement, except in the matter of a salary guide, by Respondent. Respondent offered a revised salary schedule. However, with respect to accrued vacation and vacation recess, subject areas admittedly concerning the terms and conditions of employment of the administrators [17/] Miraglia, for the Board, responded to the Association's demands in these areas with the Board's resolution previously adopted on July 14, unilaterally, and without prior negotiation or discussion with the Association. By this conduct, Respondent continued its series of acts evidencing a rejection of the collective negotiating principle and a

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17/ See City of Albany, cited, supra at page 20.

negotiating posture designed to frustrate the reaching of an agreement. 18/ On this occasion as well, the Respondent, by its negotiator, demanded the exclusion from the unit of job titles, one of which clearly had been in the voluntarily recognized negotiating unit for the last seven years. As the Respondent failed to assert a valid ground for the exclusion and had not sought to resolve the question by recourse to the available clarification procedure under the Act, its assertion was not bona fide and evidenced, in view of its prior and other contemporaneous conduct, a further lack of good faith.

Respondent cannot avoid or evade responsibility for the role played in the history of these negotiations by its sole negotiator, Miraglia. Under the well recognized principle of respondeat superior his conduct in the exercise of his negotiating functions are imputable to the Board, and the Board must suffer the consequences for the inaction and negotiating posture of its agent. It may well be that the parts played by the Board and its negotiator have been pursuant to a scheme of the Respondent's devising. It is unnecessary to so decide. It is sufficient to find that their overall conduct was complementary. Consistent with the subjective analysis required to be made in this type of case, 19/ I find and conclude that based upon an analysis of overall conduct, Respondent failed and refused to approach the negotiating table, and, when it finally did so, it did not negotiate with a sincere desire to reach an agreement. I conclude from the evidence considered as a whole, the Respondent never intended that the negotiation process with the Association culminate in the execution of an renewed agreement concerning the terms and conditions of employment. Accordingly, I conclude and find that the Respondent thereby violated, and is violating 34:13A-5.4 (a) (5) of the Act.

18/ In Piscataway Township Board of Education and Piscataway Township Education Association, P.E.R.C. No. 91 (7/21/75), appeal pend. App. Div. Docket No. A-8-75 the Commission held that just such a unilateral alteration of terms and conditions of employment during the course of collective negotiations for a successor agreement constituted a violation of the statutory duty to negotiate in good faith within the meaning of N.J.S.A. 34:13A-5.4 (a) (5). Here, just as in Piscataway, the charging employee organization, had sought changes in the contract Articles in question.

19/ In the Matter of State of New Jersey and Council of New Jersey State College Locals, NJSFT-AFT/AFL-CIO, cited, supra at page 20.

IV The Remedy

Having found that the Respondent has engaged in, and is engaging in, unfair practices within the meaning of 34:13A-5.4 (a) (5) of the Act, I find that it is necessary that the Respondent be ordered to cease and desist from the unfair practices found and to take certain affirmative action designed to effectuate the policies of the Act. Respondent having refused to negotiate with the Association as the exclusive negotiating representative of its employees in the unit found appropriate, for affirmative relief, I will order the Respondent, upon request, to negotiate in good faith with the Association, and, if an understanding is reached, to embody it in a signed written agreement with the Association. Since, in addition, Respondent has also unilaterally altered, terms and conditions of its administrator employees, by adopting a resolution concerning vacation carry-over and, recess policy, for affirmative relief I will also order the Respondent to revoke and refrain from implementing the resolution pending negotiations in good faith, upon request, with the Association concerning the subjects of vacation carry-over and recess covering the 1975-76 school year and, meanwhile, honor the agreement between the parties for the 1973-75 school years including, inter alia, Article V thereof and restore retroactively to the unit employees the vacation and recess terms and conditions of employment embodied therein. I will also order that the Respondent post an appropriate notice to the employees in the form hereto annexed.

All of the foregoing, I find to be necessary to neutralize the effects of the Respondent's unfair practices and to effectuate the policies of the Act.

Upon the basis of the foregoing findings of fact and the entire record in this case, I make the following:

Conclusions of Law

1. The Respondent, Board of Education, Englewood Public Schools, is a public employer within the meaning of the N.J.S.A. 34:13A-3(c) of the Act.

2. Englewood Administrator's Association is a representative of employees within the meaning of N.J.S.A. 34:13A-3 (e) of the Act.

3. The Respondent's employees described in the section entitled "The Appropriate Unit," above, employed by the Respondent in Englewood, New Jersey constitute a unit appropriate for the purposes of collective negotiations within the meaning of N.J.S.A. 34:13A-13-5.3 of the Act.

4. At all times since 1968, the Association has been and continues to be, the exclusive negotiating representative of the employees in the appropriate unit described in conclusion 3, above, within the meaning of N.J.S.A. 34:13A-5.3 of the Act.

5. At all times since November 27, 1974, the Respondent has refused, and continues to refuse, to negotiate in good faith with the Association as majority representative of the employees in the appropriate unit described in Conclusion 3, above, and has thereby engaged in, and is engaging in, unfair practices within the meaning of N.J.S.A. 34:13A-5.4 (a) (5) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to N.J.S.A. 34:13A-5.4 (c) of the Act and Section 19:14-7.1 of the Commission's Rules and Regulations, I hereby issue the following recommended:

O R D E R

Respondent, Board of Education, Englewood Public Schools shall:

1. Cease and desist from;

(a) Refusing to negotiate collectively in good faith with Englewood Administrators' Association as the majority representative of the employees in the unit described below, concerning terms and conditions of employees in that unit, as more fully set forth in "Appendix A":

> All personnel designated as administrators including principals, assistant principals, directors, coordinators, deans, supervisors, administrative specialists, administrative assistants and office managers, but excluding Superintendent of Schools, Assistant Superintendent and Secretary/Business Administrator.

(b) Making changes in terms and conditions of employment in the above described unit, during the course of collective negotiations for a successor agreement with the Association.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Upon request, negotiate with the Englewood Administrators Association as the majority representative of the employees in the aforesaid appropriate unit, concerning the terms and conditions of employment.

(b) Revoke, and refrain from implementing, Resolution of July 14, 1975, adopting policy with respect to carry-over of vacation time and recess days as applied to employees in the aforesaid appropriate unit, during negotiations for a successor agreement with the Association.

(c) Restore retroactively to the unit employees the terms of the agreement with the Association for the 1973-75 school years, including Article V: Vacation-Recess, set forth in "Appendix B", concerning the terms and conditions of employment therein embodied, during the course of eollective negotiations for a successor agreement with the Association.

(d) Post at its central office building in Englewood, New Jersey, copies of the attached notice marked "Appendix C". Copies of said notice on forms to be provided by the Executive Director of the Public Employment Relations Commission, shall, after being duly signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof, and maintained by it for a period of at least sixty (60) consecutive days thereafter including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that such notices are not altered, defaced or covered by any other material.

(e) Notify the Executive Director, in writing, within twenty (20) days of receipt of this Order what steps the Respondent has taken to comply herewith.

Robert T. Snyder

Robert T. Snyder
Hearing Examiner

DATED: Trenton, New Jersey
January 30, 1976

APPENDIX "A"

ARTICLE I

RECOGNITION

The Board hereby recognizes the Englewood Public School Administrators' Association as the exclusive and sole bargaining agent for collective negotiations concerning the terms and conditions of employment for all personnel designated as administrators including:

Principal - DMHS	Charles Hall
Principal - Middle	William Johnson
" - Cleveland	Laurence Grose
" - Engle	Leroy McCloud
" - Lincoln	Harold Jones
" - Quarles	William Tropicchio
" - Roosevelt	Vincent Cantwell
Director, Elementary Education	Lillie Graham
" , Extended School Services	John DeSano
" , Pupil Services	
Assistant Principal - DMHS	Casper Hill
" " "	Ramon Martin
Dean of Students - DMHS	Frank Sabach
Assistant Principal - Middle	Roland Betts
" " "	
Coordinator, Student Activities	James Sherman
" , Maintainance & Custodians	Robert Downey
" , Adult Education	Charles Conti
Administrative Specialist	A. Raymond Heim
Coordinator, Alternative Programs	
Administrative Assistant	
Coordinator, Community Relations	Bruce Brackett
Chief Accountant/Office Manager	Gerd Schubert

but excluding:

Superintendent of Schools

Assistant Superintendent

Secretary/Business Administrator

APPENDIX "B"

ARTICLE V

VACATION - RECESS

A. All administrators shall have twenty (20) vacation days.

B. During recess periods, all administrators shall have five (5) days off. The administor must submit a request to the Superintendent for the number of days required during each recess period. The request shall include information regarding appropriate office coverage.

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

we hereby notify our employees that:

WE WILL NOT refuse to negotiate collectively in good faith with Englewood Administrators' Association, as the majority representative of the employees in the unit described below, concerning terms and conditions of employees in that unit.

> All personnel designated as administrators, including principals, assistant principals, directors, coordinators, deans, supervisors, administrative specialists, administrative assistants, and office managers, but excluding superintendent of schools, assistant superintendent of schools and secretary/business administrator, employed by the Board of Education, Englewood Public Schools in Englewood, New Jersey.

WE WILL NOT make changes in terms and conditions of employment in the above-described unit, during the course of collective negotiations for a successor agreement with the Association.

WE WILL, upon request negotiate with the Association as the majority representative of the employees in the aforesaid appropriate unit, concerning the terms and conditions of employment.

WE WILL revoke and refrain from implementing our Resolution of July 14, 1975, adopting policy with respect to carry-over of vacation time and recess days as applied to employees in the aforesaid appropriate unit, during the course of collective negotiations for a successor agreement with the Association.

WE WILL restore retroactively to the unit employees the terms of the agreement with the Association for the 1973-75 school years, including Article V Vacation-Recess, concerning the terms and conditions of employment therein embodied, during the course of collective negotiations for a successor agreement with the Association.

BOARD OF EDUCATION, ENGLEWOOD PUBLIC SCHOOLS

(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 Executive Director of the Public Employment Relations Commission, Labor & Industry Building, P.O. Box 2209, Trenton, New Jersey 08625. Telephone (609) 292-6780