

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

GALLOWAY TOWNSHIP BOARD  
OF EDUCATION,  
Respondent,

Docket No. CO-76-59-36

-and-

GALLOWAY TOWNSHIP EDUCATION  
ASSOCIATION,  
Charging Party.

SYNOPSIS

In a decision on reconsideration the Commission reaffirms its earlier decision and order. The Commission had previously granted a motion for reconsideration where it appeared that the Board had never received a copy of the Association's exception to the Hearing Examiner's Recommended Report and Decision, which exception led to the modification of the recommended order to provide for compensatory relief. The Commission reaffirms its earlier determination that a reasonable compensatory award is required to effectuate the policies of the Act and make the teachers whole for the additional hours worked as a result of the Board's unilateral and unlawful extension of the teachers' day during the course of negotiations for a successor agreement. The subsequent settlement of the negotiations for the new agreement does not obviate the need for affirmative relief to effectuate the policies of the Act given all the facts of this case.

P.E.R.C. No. 77- 18

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Appearance on the Answer to Exception:

For the Respondent, Murray, Meagher and Granello, Esqs.  
(Mr. Robert J. Hrebek, on the Brief)

DECISION ON RECONSIDERATION

On July 19, 1976 the Public Employment Relations Commission issued its Decision and Order in the above-captioned unfair practice proceeding, In re Galloway Township Board of Education, P.E.R.C. No. 77-3, 2 NJPER 254 (1976). The Commission rendered its decision after reviewing the entire record in the case (see N.J.A.C. 19:14-7.2), including exceptions filed by both parties to the Hearing Examiner's Recommended Report and Decision [H.E. No. 76-7, 2 NJPER 115 (1976)]. The Hearing Examiner had determined that the Galloway Township Board of Education (the "Board") violated the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1, et seq. (the "Act") when it unilaterally, without prior negotiations with the Galloway Township Education Association (the "Association"), lengthened the work day of the teachers at one school in the district during the course of negotiations

for a successor agreement. He found that the Board's conduct violated N.J.S.A. 34:13A-5.4(a)(1) and (5) but did not violate N.J.S.A. 34:13A-5.4(a)(3).<sup>1/</sup> However, given the fact that the parties did subsequently reach accord on the successor agreement and other facts, the Hearing Examiner felt that a monetary remedy for the teachers who had worked the extra time was not warranted.

The exception filed by the Association to his Recommended Report and Decision concerned only the determination with regard to the appropriateness of a monetary remedy. The Commission's decision adopted all the findings of fact and conclusions of law of the Hearing Examiner except that it agreed with the Association that the record in the case did warrant a monetary award to compensate the teachers for the additional time which they were required to work and modified the Hearing Examiner's proposed Order to provide such a remedy.

On July 29, 1976 the Board filed a timely motion for reconsideration pursuant to N.J.A.C. 19:15-4.1. The Motion was supported by an affidavit from the Board's attorney that neither he nor any other representative of the Board had received a copy of the

<sup>1/</sup> N.J.S.A. 34:13A-5.4(a)(1) and (5) provide:

a. Employers, their representatives or agents are prohibited from:

(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act.

(5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative.

N.J.S.A. 34:13A-5.4(a)(3) states:

a. Employers, their representatives or agents are prohibited from:

(3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act.

exception filed by the Association and the Board therefore sought an opportunity to respond to that exception.<sup>2/</sup> Since the exception filed by the Association did go to that part of the Hearing Examiner's Recommended Report and Decision which the Commission modified in its decision, it seemed only fair to this Commission that the Board be given the requested opportunity to respond. Therefore, at its August meeting the Commission ordered that the Motion for Reconsideration be granted, In re Galloway Township Board of Education, P.E.R.C. No. 77-8, 2 NJPER \_\_\_\_ (1976).

Pursuant to the Commission's Order the Board filed an answer to the exception which had previously been filed by the Association. The Board makes two arguments: one addressed generally to the jurisdiction of the Commission to order remedial relief and the other specifically disputing the appropriateness of a monetary award in the circumstances of this case.

N.J.S.A. 34:13A-5.4(c) grants the Commission "exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice listed in subsections a and b". The Board argues that this legislative grant of authority is really intended to impose a strict limitation on the Commission's jurisdiction, restricting it from hearing or remedying an unfair practice once it has been committed. This position is totally inconsistent with the specific language of that subsection of the Act and with the

<sup>2/</sup> The Association did file two affidavits in opposition to the motion, averring that copies of the exceptions had been mailed to the attorney for the Board. A comparison of the affidavits of both parties indicates that it was entirely possible that the document was mailed but never received.

purposes of the statute.

The power granted to the Commission by subsection (c) of section 5.4 is directed at a party that "has engaged" or "is engaging" in an unfair practice and places a time limitation of six months after the occurrence of the unfair practice for the filing of a charge. This indicates an intention to consider violations which are occurring as well as those which have already occurred. More to the point, once the Commission determines that an unfair practice has been committed or is being committed the statute states that it shall issue an order which requires the offending party to "cease and desist from such unfair practice, and to take such reasonable affirmative action as will effectuate the policies of this act." N.J.S.A. 34:13A-5.4(c) (emphasis added). This language enables the Commission to do much more than just prevent on-going unfair practices. The power to remedy the harm suffered by the offended party is clearly "such reasonable affirmative action as will effectuate the policies" of the Act.<sup>3/</sup>

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<sup>3/</sup> Prior to the passage of P.L. 1974, c. 123, which in part amended the Act to specifically grant the Commission exclusive power over unfair practices, the Commission had attempted to exercise this jurisdiction as part of its implied authority. The Supreme Court held that absent a clear expression or unavoidable implication, a court could not find such a grant of authority in an administrative agency. Burlington County Evergreen Park Mental Hospital v. Cooper, 56 N.J. 579 (1970). In the Cooper case the Commission had among other relief ordered the employer to offer the offended employee her former position and to make her whole for any loss of earnings. Id at pg. 586. The Commission had ordered this remedial relief in order to "effectuate the policies of the Act" Id at pg. 586. In reversing the Commission's Order the Court said:

(continued)

With respect to the specific facts of this case the Commission determined that a monetary award to compensate the teachers for the additional time worked as a result of the Board's unlawful and unilateral extension of their hours was warranted to effectuate the policies of the Act. The Hearing Examiner found, on basically uncontroverted facts, that the teachers at the Arthur Rann School were required to report to school fifteen minutes earlier each day with no proportionate decrease in their hours at some other point in the day. Nor did they receive any additional compensation for the resultant increase in their working hours.

The Board conceded that it unilaterally increased the teachers' hours but defended this increase as being necessitated by an educational policy decision to increase the student instructional day. It alleged that the increase was not within the "impact" of that determination and that additionally the Association never demanded negotiations on this subject. The Hearing Examiner found against the Board on both points.

This conduct occurred during the course of negotiations for a successor agreement and prior to the exhaustion of the

3/ (continued)

"Whether PERC should be invested with authority to hear and decide unfair labor practice charges and to issue various types of affirmative remedial orders respecting them is an important policy question. In our judgment, a policy question of that significance lies in the legislative domain and should not be resolved here" (emphasis added). Id at pg. 598.

In passing Chapter 123, P.L. 1974 the Legislature answered that policy question by granting PERC the identical authority it had exercised prior to the Cooper decision and specifically authorized the Commission to take such affirmative action as will "effectuate the policies of this act", the same standard employed by the Commission when it ordered the remedial relief of reinstatement and compensation for any lost earnings in the Cooper case.

Commission's impasse resolution procedures. Therefore, in addition to the unilateral alteration of a term and condition of employment without negotiations, a possible violation in and of itself, the Board's conduct also introduced additional pressures into the negotiations for the successor agreement. This alteration of the status quo is not conducive to the promotion of permanent labor peace which is part of the public policy of the Act. N.J.S.A. 34:13A-2.

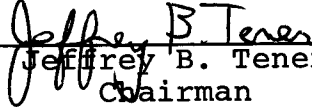
The Commission therefore concluded that a simple finding that the law had been violated would not compensate the employees for their loss,<sup>4/</sup> nor would it effectuate the policies of the Act. The fact that the parties did ultimately reach an agreement does not obviate the fact that the law was violated and that the teachers suffered a loss as a result. The Commission believes that such a result, given the facts of this case, would be inconsistent

<sup>4/</sup> The Commission's monetary award was that the Board pay the equivalent of 1/200 of the 1975-76 annual salary to each teacher whose hours were unilaterally altered. This figure constitutes approximately one day's pay as defined by N.J.S.A. 18A-30-6. The record of the hearing indicated that the additional fifteen minutes was not taken up completely in instructional time but also included a lengthening of certain non-instructional time. Given the professional nature of a teacher's employment plus the fact that the agreement was concluded well before the end of the school year the Commission did not believe that a mechanical computation of fifteen minutes times the number of days in the school year to find out how many additional hours were worked was appropriate. The award of approximately one day's pay was found to be a reasonable make-whole award for the teachers which would best effectuate the purposes of the Act.

with the policies of the Act.<sup>5/</sup>

For the foregoing reasons, the Commission's decision and order in P.E.R.C. No. 77-3 is re-affirmed in all respects.

BY ORDER OF THE COMMISSION

  
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Jeffrey B. Tener  
Chairman

Commissioners Hipp and Hurwitz did not participate in this matter  
Chairman Tener and Commissioners Forst, Hartnett and Parcels voted  
for this Decision.

DATED: Trenton, New Jersey  
September 21, 1976

ISSUED: September 22, 1976

<sup>5/</sup> The Board also attempted to justify the appropriateness of no monetary award by arguing that the issuance of a compensatory award might upset the Board and disrupt the labor peace following the conclusion of the new agreement. Such a suggestion is without merit and is inconsistent with the policies of the Act. The Board cannot defend its illegal conduct by suggesting that the remedy for its violation could lead to more conduct inconsistent with the policies, if not the mandates, of the Act.