P.E.R.C. NO. 77-65

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PISCATAWAY TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-76-355-22

PISCATAWAY TOWNSHIP PRINCIPALS ASSOCIATION,

Charging Party.

SYNOPSIS

On the basis of a stipulated record and briefs in an unfair practice proceeding, the Commission finds that the Board violated N.J.S.A. 34:13A-5.4 (a)(5) by unilaterally altering the status quo concerning terms and conditions of employment of certain of its employees, by reducing the work year of four elementary school vice principals from twelve months to ten months, effective July 1, 1976, and by reducing their salaries accordingly. The Commission further concludes that the Board's improper conduct, although not apparently motivated by any specific anti-union animus, necessarily had a restraining influence and attendant coercive effect upon the free exercise of the rights of the affected members of the unit represented by the Association guaranteed to them by the Act and was violative of N.J.S.A. 34:13A-5.4(a)(1).

The Commission notes that in this case the Board and the Association were parties to a current collective negotiations agreement that provided, in apposite part, that elementary school vice principals would work the same basic yearly schedule as central office personnel and that central office personnel would work twelve-month schedules. The Commission further stated that the agreement provided that "this agreement shall not be modified in whole or in part by the parties except by an agreement in writing duly executed by both parties." At no point in its submissions to the Commission had the Board asserted any claim of contractual privilege relating to its decision to reduce the work year of the elementary school vice principals. The Commission concludes that the statutory negotiations obligation set forth in N.J.S.A. 34:13A-5.3 that prohibits the modification of working conditions without prior negotiations contemplates those terms and conditions of employment not established by a current contract and is not intended to permit a party to a contract to ignore the obligations of a negotiated agreement merely by offering to negotiate, or by indicating a willingness to negotiate the effect of unilateral conduct which contravenes the status quo of the contract. The Commission finds that where there is an agreement in effect, normal principles of contract law would seem to prohibit changes in terms and conditions of employment without the mutual agreement of the parties to that negotiations agreement.

The Commission orders the Board to cease and desist from such conduct in the future, and affirmatively orders the Board to restore the twelve-month work year in accordance with the terms of the parties' collective negotiations agreement in the absence of a mutual agreement to modify the terms of that contract; to make the vice principals represented by the Association whole for the 1976-77 contract year by paying them what they would have earned had the Board not unilaterally reduced their work year, with the payments reduced by any amounts earned by those employees or paid to them by the Board during July and August of 1976; to restore to the vice principals the vacation days they would have had if the Board had not unilaterally reduced their work year; to post appropriate notices whereby its employees will be notified of the Board's corrective actions; and to notify the Chairman of the steps taken to comply with the order.

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Charging Party.

Appearances:

For the Respondent, Rubin and Lerner, Esqs.
(Mr. Frank J. Rubin, of Counsel)

For the Charging Party, Harper, McCoy and O'Brien, Esqs.
(Mr. John Harper, of Counsel)

DECISION AND ORDER

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on June 28, 1976 by the Piscataway Township Principals Association (the "Association") alleging that the Piscataway Township Board of Education (the "Board") had unilaterally reduced the length of the work year of four elementary school vice principals employed by the Board, and represented by the Association, from twelve (12) months to ten (10) months, with an attendant decrease in salary and fringe benefits, and in violation of the duty of the Board to negotiate in good faith, pursuant to N.J.S.A.

34:13A-5.4(a)(1) and (a)(5).[1/]

A request for interim relief, pursuant to N.J.A.C. 19:14-9.1, was filed by the Association against the Board when the Association submitted its Unfair Practice Charge on June 28, 1976. Said request for interim relief was denied by the Chairman of the Commission on June 28, 1976. Subsequent to the filing of this Charge, the Board filed a Petition for Scope of Negotiations Determination (Docket No. SN-77-3), that was docketed on August 3, 1976, seeking a determination as to the negotiability of the Board's decision to reduce the length of the work year of the affected vice-principals from twelve (12) months to ten (10) months.

The Charge was processed pursuant to the Commission's Rules and it appearing to the Commission's Acting Director of Unfair Practice Proceedings, acting as the named designee of the Commission, that the allegations of the Charge, if true, might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on August 26, 1976. Also on August 26, 1976, pursuant to an order of the Acting Director of Unfair Practice Proceedings, the

1/ N.J.S.A. 34:13A-5.4(a)(1) and (a)(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.

In its original Charge, the Association makes reference solely to an (a)(5) violation. However, in the complete Stipulation of Facts executed with regard to this matter, both parties stipulated in part that the Commission would consider whether the Board's conduct in the instant matter constituted a violation of (a)(1) as a derivative violation of the (a)(5) "refusal to negotiate in good faith" proscription.

instant Charge and the Board's Scope Petition were consolidated and assigned to a Commission Hearing Examiner for further proceedings in accordance with the Commission's Rules.

Pursuant to the Complaint and Notice of Hearing, a prehearing conference was conducted by Stephen B. Hunter, Hearing Examiner of the Commission, on August 28, 1976. At that conference the parties agreed that it was probable that a stipulation of facts could be developed which would obviate the necessity for an evidentiary hearing in this consolidated matter. The parties, with the assistance of Mr. Hunter, thereafter entered into a formal Stipulation of Facts that was executed by both parties by December 20, 1976, which included the agreement that the Unfair Practice Charge would be submitted directly to the Commission for a decision, based on the formal pleadings in this case, the executed Stipulation of Facts and all briefs that were submitted with regard to the legal issues involved. All briefs were received from the parties by March 30, 1977, and the matter is now properly before the Commission for a decision.

The parties stipulated to the following facts and to the following statement of the issues to be considered by the Commission in the instant Charge:[2/]

> 1. The Association and the Board are parties to a collective negotiations agreement effective July 1, 1975 to June 30, 1979. A copy of said agreement is attached hereto as Exhibit A and made a part hereof.

2/ These Stipulations of Fact have been reproduced in their entirety. The specific exhibits referred to in these Stipulations of Fact have not been appended to this Decision and Order because of their bulk. The parties have received copies of all of these exhibits which constitute part of the record in the instant case [see N.J.A.C. 19:14-7.2].

2. The Association is the exclusive and sole representative for collective negotiations concerning the terms and conditions of employment for certain employees of the Board, including those employees occupying the position of elementary vice principal.

3. On or about April 27, 1976, the Board voted to change the terms and conditions of employment of four (4) elementary vice principals by reducing the length of their work year from the previous twelve (12) months. The individual elementary vice principals involved are: Ernest Frino, Theodore Choplick, Patricia Parnow and Jeanne Castoral. The Board's reasons for the reduction of the length of the work year of these four (4) elementary vice principals were predicated on considerations of economy as evidenced by the attached exhibits B and C made a part hereof.

4. Previous individual contracts between the Board and each elementary vice principal named above were for single 12-month periods and expired on June 30, 1976.

5. Pursuant to Article VI, Paragraph E, of the aforesaid collective negotiations agreement, the above-named elementary vice principals were to work the same basic yearly schedule as central office administrative personnel. The basic yearly schedule of the central office administrative personnel is 12 months.

6. Article II, Paragraph D, of the aforementioned collective negotiations agreement states: "This agreement shall not be modified in whole or in part by the parties except by an agreement in writing duly executed by both parties."

7. On or about April 20, 1976, the Association requested that the Board negotiate the impact of its decision to reduce the length of the work year of the above-named elementary vice principals pursuant to Article II, Paragraph D, of the aforementioned collective negotiations agreement.

8. Subsequent to the Association's request in Paragraph 7 above, the Association met with a representative of the New Jersey Association of Elementary School Administrators and representatives of the Board on May 27, 1976 for the purpose of negotiating the impact of the Board's decision to reduce the length of the work year of the above-named elementary vice principals.

9. At the meeting of May 27, 1976 between representatives of the Board and the Association, proposals and counter-proposals were made but no agreement was reached.

10. On July 1, 1976, the Board reduced the length of the work year from 12 months to 10 months. The above-named elementary vice principals received no salary payments during the months of July and August, 1976 as a result of the reduction of the length of their work year. However, these individuals did receive, on or about July 15, 1976, the following accumulated vacation payments: Theodore Choplick - $1,744.80; Patricia Parnow - $1,699.60; Ernest Frino - $1,814.60; Jeanne Castoral - $1,362.55. These vacation

payments accumulated by virtue of employment rendered in the prior contract year ending June 30, 1976 and would have been paid at least upon retirement or upon leaving the district.

11. The Association filed the within Unfair Practice Charge with the Public Employment Relations Commission on June 28, 1976.

12. In addition to filing an Unfair Practice Charge on June 28, 1976, the Association also requested interim relief to stay the implementation of the Board's decision to reduce the length of the work year. Said request for interim relief was denied by the Chairman of the Public Employment Relations Commission on the basis that there was no irreparable injury.

13. The parties met twice during the month of July, 1976 and discussed the impact of the Board's decision to reduce the length of the work year of the above-named elementary vice principals. No agreement was reached.

14. The issues before the Public Employment Relations Commission in the above-captioned Unfair Practice Charge are:

(a) In view of the existing collective negotations agreement between the Association and the Board, is the unilateral decision, and the implementation thereof by the Board, to reduce the length of the work year of the above-named elementary vice principals an unfair practice in contravention of the New Jersey Employer-Employee Relations Act, and specifically, N.J.S.A. 34:13A-5.4(a)(1),(5)?

(b) In view of the existing collective negotiations agreement between the Association and the Board, has the Board refused to negotiate impact in good faith with the Association in contravention of the New Jersey Employer-Employee Relations Act and, specifically, N.J.S.A. 34:13A-5.4(a)(1),(5)?

15. Pursuant to the Order of Stephen B. Hunter, Hearing Examiner for the Public Employment Relations Commission, dated November 1, 1976, the petition for Scope of Negotiations determination, Docket No. SN-77-3, was severed from the above-captioned Unfair Practice Charge. The said Scope petition will be the subject of a Commission decision based upon the formal pleadings, briefs previously submitted and supplemental briefs submitted to the Commission on or before Wednesday, December 15, 1976.

16. The parties further stipulate that pursuant to N.J.A.C. 19:14-6.7 of the Commission's Rules, the parties agree to waive an evidentiary hearing in the above-captioned matter and further agree to waive an intermediate Hearing Examiner's Report. This matter will then be the subject of a Commission decision based on the formal pleadings, the executed Stipulation of Facts and all briefs submitted

by the parties concerning their respective legal contentions. All supplemental briefs are due one week after receipt of these Stipulation of Facts by Stephen B. Hunter, Hearing Examiner.

17. All essential facts relevant to the above-captioned Unfair Practice Charge have been set forth herein.

As set forth in the Stipulation of Facts, after due consideration and in order to effectuate the purposes of the Act as well as the desires of the parties, the Hearing Examiner assigned to the aforementioned consolidated proceedings issued an order on November 1, 1976, pursuant to N.J.A.C. 19:15-1.1(b), severing the consolidated proceedings.

On January 27, 1977 the Commission issued its Decision and Order in the related scope of negotiations proceeding. In re Piscataway Township Board of Education, P.E.R.C. No. 77-37, 3 NJPER 72 (1977). In that decision, the Commission, after careful review of the entire record, determined that the matter in dispute between the Board and the Association, relating to the reduction in the work year of elementary school vice principals, was a required subject for collective negotiations. The Commission in this case reversed its earlier determination concerning a similar matter in dispute in a decision entitled In re Fair Lawn Board of Education, P.E.R.C. No. 76-7, 1 NJPER 47 (1975). The Commission noted that its determination relating to the negotiability of the Board's decision to reduce the length of the work year of the elementary school vice principals was fully consistent with a number of previous Commission and judicial decisions. The Commission specifically asserted that an employee's work year was as much a term and condition of employment as was his

compensation and that a public employer was required to negotiate with the appropriate exclusive majority representative with regard to an alteration in an employee's work year just as it was required to negotiate with that representative with regard to proposed changes in an individual's compensation.

On February 12, 1977 the Board filed with the Commission a motion for reconsideration relating to the scope matter, pursuant to N.J.A.C. 19:15-4.1, along with a supporting memorandum and exhibits. Thereafter the Board and the Association submitted additional documentation in support of or in opposition to the Board's motion for reconsideration. The Commission on March 17, 1977 issued a Decision and Order on Motion that denied the Board's motion for reconsideration. In correspondence dated March 18, 1977 the Board filed a notice of appeal from the Commission's Decision and Order, dated January 27, 1977, that determined that the reduction in the work year of the elementary school vice principals was a required subject for collective negotiations [Docket No. A-2613-76].

The Association in the instant charge matter argues that the Commission's scope of negotiations determination that the reduction in the vice principals' work year related to a required subject for collective negotiations mandates the conclusion, that the Board violated the Act's prescriptions concerning the requirement of good faith negotiations by unilaterally reducing the vice principals' work year. The Association maintains that it is uncontroverted that the parties never negotiated the decisional aspects of the Board's decision to reduce the vice principals' work year, as opposed to the impact considerations. The Association asserts that in any event,

even assuming that the Commission had affirmed its previous determination in the Fair Lawn matter, supra, that a reduction in an employee's work year was not a required subject, the Board violated the Act by unilaterally reducing the salary and fringe benefits of the affected vice principals.

Certain of the Board's arguments that its decision to reduce the work year of the elementary vice principals was not a required subject for collective negotiations have been considered and analyzed by the Commission in great length in the two decisions relating to the scope proceeding previously referred to and will not be further considered at this time. As stated before, the Board is presently appealing the Commission's scope determination in this matter. The Board in a supplemental letter memorandum, dated March 23, 1977, with reference to the Unfair Practice Charge, asserted that the equities of the instant charge case required the prospective application of the Commission's revised standards relating to the negotiability of the decision to reduce an employee's work year in view of the Board's reasonable reliance on the pre-existing state of the law on that issue. In this particular supplemental submission the Board also raises for the first time the argument that Chapter 212, Laws of 1975 [N.J.S.A. 18A:7A-1 et seq.], enacted to help provide a "thorough and efficient" education to the children of the State, mandates the conclusion that the Board's decision to shift its allocation of educational resources, i.e to reduce the work year of certain administrators for economic reasons, was a managerial prerogative. The Board further concludes that the Association has not

demonstrated by a preponderance of the evidence that the Board has negotiated in bad faith with regard to the impact or effect of its decision to reduce the vice principals' work year, since it is undisputed that certain negotiations did take place between the parties and that proposals were exchanged and considered.

Before commenting on whether the Board's actions in reducing the work year of the elementary school vice principals -- which conduct also resulted in a reduction in these individual's yearly salaries -- constituted an unfair practice within the intendment of the Act, the Commission would like to comment on the Board's most recent argument in support of its contention that its decision to reduce the work year of certain administrators was not a required subject for collective negotiations. The Board relies upon the broad grant of authorities invested in local boards of education by the Public School Education Act of 1975 [N.J.S.A. 18A;17-1 et seq.] and by administrative regulations of the Commissioner of Education promulgated pursuant thereto to provide a thorough and efficient education as support for its assertion that its decision relating to the effective utilization of school personnel, i.e. the elementary school vice principals, was a managerial prerogative. The Commision in a recent decision, In re Local 195, I.F.P.T.E. and Local 518, S.E.I.U., P.E.R.C. No. 77-57, 3 NJPER (1977), however, commented that it had concluded that the changes in N.J.S.A. 34:13A-8.1, effectuated by Chapter 123, Public Laws of 1974, [3/] constituted a legislative determination

3/ Prior to the passage of Chapter 123, N.J.S.A. 34:13A-8.1 had stated, in apposite part, that no provision of the Act shall "annul or modify any statute or statues of this State." Section 6 of Chapter 123 deleted this language and substituted: "nor shall any provision hereof annul or modify any pension statute or statutes of this State." (emphasis added)

that general statutes giving authority to public employers to manage their governmental operations were not to be read as shields to the employers' obligation to negotiate regarding terms and conditions of employment, but that specific statutes mandating precise minima, maxima or absolutes relating to terms and conditions of employment could not be violated by collective negotiations agreements. The Commission further determined that parties to a negotiations relationship were required to negotiate regarding terms and conditions of employment even if statutory language existed on the subject matter, but only to the extent that the negotiations did not modify or contravene statutes that had specifically limited the authority of the public employer on the subject. In the instant matter, the Commission has not been referred to, nor have we found, any specific statutory prescription contained within the Public School Education Act of 1975 that would require a conclusion that the decision to unilaterally reduce the work year of school employees need not be negotiated with the appropriate majority representative of the affected employees. Thus, that argument is rejected.[4/]

The Commission, after careful consideration of the entire record, finds that the actions of the Board in unilaterally altering the status quo concerning terms and conditions of employment of certain of its employees, by reducing the work year of four elementary

4/ Even prior to the passage of Chapter 123, P.L. 1974 the Supreme Court had stated that general statutes authorizing boards of education to administer the school system did insulate them from the obligation to negotiate terms and conditions of employment. "The Board stresses its management duty under provisions such as N.J.S.A. 18A:11-1 and N.J.S.A. 18A:27-4 to conduct the public school system but it also has the duty under N.J.S.A. 34:13A-5.3 to negotiate in good faith with respect to employment terms and conditions," Bd. of Education of Englewood v. Englewood Teachers Ass'n., 64 N.J. 1 at 7 (1973).

school vice principals from twelve (12) months to ten (10) months, effective July 1, 1976, and by reducing their salaries accordingly, constituted an unfair practice within the meaning of N.J.S.A. 34:13A-5.4(a)(5). The Commission further concludes that the Board's improper conduct, although not apparently motivated by any specific anti-union animus, necessarily had a restraining influence and attendant coercive effect upon the free exercise of the rights of the affected members of the unit represented by the Association guaranteed to them by the Act and was violative of N.J.S.A. 34:13A-5.4(a)(1).[5/]

The Board has argued that since it relied upon clearly established Commission precedent enunciated in In re Fair Lawn Board of Education, supra, in determining to reduce the work year of the vice principals for economic reasons without negotiating this decision with the Association, the equities of the case, in accord with established judicial precedent required that the Commission's revised standards, requiring negotiations on a decision to reduce the work year of public employees, should be given prospective application only, insofar as a finding by the Commission of an unfair practice would apparently flow from the Commission's scope of negotiations determination in the related scope proceeding. The Board however fails to recognize that even if Fair Lawn had not been reversed, established

5/ The Commission has held that an unfair practice under subsections (a)(2) through (7) necessarily interferes with employees in the exercise of their rights and thus derivatively violates subsection (a)(1) as well. See In re Galloway Township Board of Education, P.E.R.C. No. 77-3, 2 NJPER 254 (1976), motion for reconsideration granted, P.E.R.C. No. 77-18, 2 NJPER 295 (1976), appeal pending [App. Div. Docket No. A-483-76].

Commission precedent would have compelled the conclusion that the Board had not satisifed its statutorily delineated obligations. It is stipulated that the vice principals did not receive any salary payments during the months of July and August, 1976, as a result of the reduction of the length of their work year, and instead "cashed in" their accumulated vacation time in order to receive some compensation for that two-month period of time. Therefore, even if the Commission were to agree that its scope decision should only be given prospective effect with regard to this unfair practice proceeding the result would be the same as the Board unilaterally altered terms and conditions of employment when it reduced the compensation of the four employees. Regardless of the analysis with respect to the mandatory negotiability of the decision to reduce the work year from twelve to ten months the Board was not free to unilaterally reduce the salary of these employees. In the Fair Lawn decision the Commission emphasized, and the Board in that case conceded, "that the impact of that decision, its effect on salaries, fringe benefits and other terms and conditions of the principal's employment is negotiable." P.E.R.C. No. 76-7 at 5, 1 NJPER 47 at 47.[6/]

The facts of the Fair Lawn decision are also relevant to the discussion, herein. In Fair Lawn the dispute over the negotiability

6/ Even if we had affirmed our conclusion in Fair Lawn that the decision to modify the work year was a permissive subject for negotiations and even if the decision on the work year were separated from the effect of that decision on salaries and other terms and conditions of employment, the Board would still not be saved. The fact remains that the Board apparently violated the contract and the Association could seek enforcement of that contract in the traditional judicial forum even though this Commission does not assert the authority to enforce contracts.

of the reduction in the work year occurred during the course of collective negotiations for a successor agreement, the old contract having expired on June 30, 1975 while the reduction in the work was not to commence until July 1, 1975. The Commission's decision was thus based on the obligation to negotiate terms and conditions of employment for a successor agreement. The Commission stated:

> The existing contract having come to an end, all its provisions, unless specifically agreed otherwise, terminate. All topics which are terms and conditions of employment, regardless of their inclusion in past contracts or policies, are subject to the duty to negotiate if raised by either party during the course of collective negotiations. Thus, if either the decision to reduce the length of the work year of the elementary school principals or its impact is a term and condition of employment, either or both would be within the scope of negotiations and mandatorily negotiable if raised by either party. (footnote omitted)

In the omitted footnote the Commission set forth the statutory duty to negotiate[7/] and noted further that despite the fact that the agreement has terminated an employer is normally required to maintain existing terms and conditions of employment during the course of collective negotiations for a successor agreement.

The facts of this case are significantly different. The Board and the Association are parties to a current collective negotiations agreement covering the entire period in question, stipulation 1, supra; and the employees in question, stipulation 2, supra. Article VI, Paragraph E of the agreement provides that these elementary vice principals shall work the same basic yearly schedule as central

7/ N.J.S.A. 34:13A-5.3 sets forth the duty to negotiate in the following mannter: "Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established. In addition, the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment."

When an agreement is reached on the terms and conditions of employment, it shall be embodied in writing and signed by the authorized representative of the public employer and the majority representative."

office personnel and the central office personnel work 12 months' schedules, stipulation 5. Article II, Paragraph D of the agreement further provides that nothing in the agreement shall be modified except by written agreement of the parties, stipulation 6.[8/] At no point in its brief or other argument to the Commission has the Board asserted any claim of contractual privilege, but rather has merely argued that its decision was a managerial prerogative made in reliance on Fair Lawn. That argument is not relevant given the above facts.

The stipulations refer to the fact that the Association demanded negotiations on the impact of the Board's decision to reduce the work year. The Board raises as a defense the claim that it has met its negotiations obligation in this regard. We do not believe that this has any bearing on this case. The first sentence of the negotiations obligation set forth in N.J.S.A. 34:13A-5.3, supra note 7, prohibits the modification of working conditions without prior negotiations. That statutory requirement contemplates those terms and conditions of employment not established by a current contract. It is not intended to permit either party to

8/ The entire agreement was made part of the stipulations. It also contains a salary article establishing a formula for the computation of the yearly salary of each member of the unit. Article XVIII. The agreement also provides in Article XVII, Miscellaneous Provisions that:

> "D. This agreement constitutes Board Policy for the term of said agreement and the Board shall carry out the commitments contained herein and give them full force and effect as Board Policy."
>
> "F. Any individual contract between the Board and an individual member, heretofore, or hereafter executed, shall be subject to and consistent with the terms and conditions of this agreement. If an individual contract contains any language inconsistent with this agreement, this agreement, during its duration, shall be controlling."

ignore the obligations of a collectively negotiated contract merely by offering to negotiate, or indicating a willingness to negotiate the effect of unilateral conduct which contravenes the status quo of the contract. In this case the contract established the status quo for these parties for the period July 1, 1975 to June 30, 1979. Where there is an agreement in effect, normal principles of contract law would seem to prohibit change without mutual agreement of the parties to that collective negotiations agreement. The negotiations obligation must be interpreted consistently with these principles and in a way which strengthens and fosters the stability created by collectively negotiated agreements, which is the goal of this Act. N.J.S.A. 34:13A-2.[9/] Even if we had concluded that the change in the work year had been considered a permissive subject of negotiations pursuant to Fair Lawn, the Board, in this case, was not free to change it absent

9/ Emergent circumstances may exist which require the alteration of terms and conditions of employment, whether established by contract or through prior practice, see Porcelli v. Titus, 108 N.J. Super. 301 (App. Div. 1969).

The stipulations include the fact that the Board maintains that its action was motivated by economic consideration. Two exhibits were included to substantiate this assertion. One is the page of the Board's minutes which announces the decision to reduce the work year of the four employees and some other employees in a different unit. The other is the transcript of some of the testimony in a court case seeking to compel arbitration of the reduction in the work year of those other employees. The transcript does give some support to the point that the Board's action was motivated in part by a desire to save money, however, it does not tend in any way to establish an emergent situation. In fact the Court apparently allowed the matter to proceed to arbitration.

mutual agreement of the parties.[10/]

In light of the above determination that, notwithstanding the existence of the Fair Lawn decision, the Board, in this case, was not free to change the status quo relating to the vice principals' work year, it is unnecessary to further analyze the Board's arguments concerning the retrospective or prospective application of the change in law enunciated in the related scope proceeding, which reversed the Fair Lawn decision holding. Therefore, based upon the above analysis, it is our conclusion that the Board has violated the cited subsections of the Act by unilaterally reducing the work year of the vice principals represented by the Association.[11/]

10/ This contract was entered into after January 20, 1975, the effective date of Chapter 123, P.L. 1974 and was therefore governed by these amendments. See Board of Education of Township of Ocean v. Township of Ocean Teachers Association, Docket No. A-3334-74 (unreported App. Div. 1976); see also Article IV of the parties' agreement which indicates it is governed by Chapter 123, P.L. 1974.

Permissive subjects of negotiations need not be discussed or negotiated but if they are andagreement is achieved and incorporated in a collective negotiations contract, that agreement can be enforced. Bridgewater-Raritan Reg. Board of Education v. Bridgewater-Raritan Ed. Ass'n., P.E.R.C. No. 77-21, 3 NJPER 23 (1976).

11/ We recognize that our conclusion is based in large measure upon our interpretation of the collective negotiations agreement between the parties. Generally, we have, and will continue to defer such purely contractual disputes to binding arbitration in accordance with the parties' mutually negotiated procedures. However, when such deferral, for whatever reason, is not appropriate and when it is alleged that a party has made a unilateral change in a term and condition of employment (as opposed to a permissive subject over which we are without jurisdiction), then we have no choice but to interpret that agreement, when relevant, in order to determine whether in fact there has been an unlawful unilateral change in terms and conditions of employment.

ORDER

A. The respondent, Piscataway Township Board of Education, shall:

1. Cease and desist from

Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act by unilaterally establishing or modifying terms and conditions of employment of employees represented by the Piscataway Township Principals Association.

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

a. With respect to the vice principals represented by the Piscataway Township Principals Association, restore the twelve (12) month work year in accordance with the terms of the parties' collective negotiations agreement, in the absence of a mutual agreement to modify the terms of that contract.

b. Make the vice principals represented by the Piscataway Township Principals Association whole for the 1976-1977 contract year by paying them what they would have earned had the Board not unilaterally reduced their work year; and by restoring to them the vacation days they would have had the Board of Education not unilaterally reduced their work year. Such payments are to be reduced by any amounts earned by those employees or paid to them by the Board of Education, during that two month period.[12/]

12/ In Galloway Township Board of Education v. Galloway Township Association of Educational Secretaries, Docket No. A-3015-75, decided March 29, 1977, pet for rehearing denied, Docket No. M-2202-76 (approved for publication 100 N.J.L.J. 392, May 5, 1977) (Continued)

c. Post at its central office building at the Board of Education in Piscataway, New Jersey, copies of the attached notice. Copies of said notice on forms to be provided by the Chairman 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 notice will not be altered, defaced or covered by any other material.

12/ (Continued The Appellate Division held that the Commission did not have the authority to order back pay for services not rendered, where the secretaries' hours had been reduced without prior negotiations with their representatives. The Commission believes this case is distinguishable from the Galloway case. As noted, the status quo being restored herein is that which was established by the terms of the agreement still in effect between the parties. The above remedy is dictated by the normal relief afforded in such stituations. In Galloway no agreement was currently in effect so it was impossible to predict what the hours of the secretaries would have been had the Board afforded them the opportunity to negotiate. Here no such uncertainty exists. Additionally, as indicated, the Commission has filed for a petition for rehearing before the Appellate Division on the issue of the authority to issue back pay in all circumstances, and that petition is still pending. While the matter is thus not clear, the Commission believes that this remedy is not inconsistent with the decision in Galloway, supra.

d. Notify the Chairman, 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

Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners, Forst, Hipp and Hartnett voted for this decision.
Commissioner Hurwitz abstained.
Commissioner Parcells was not present.

DATED: Trenton, New Jersey
May 12, 1977
ISSUED: May 13, 1977

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL NOT interfere with, restrain or coerce our employees in the exercise of the rights guaranteed to them by the New Jersey Employer-Employee Relations Act by unilaterally establishing or modifying terms and conditions of employment of employees represented by the Piscataway Township Principals Association.

WE WILL restore the twelve (12) month work year of the affected elementary school vice principals in accordance with the terms of the parties' collective negotiations agreement, in the absence of a mutual agreement to modify the terms of that contract.

WE WILL make the elementary school vice principals represented by the Piscataway Township Principals Association whole for the 1976-77 contract year by paying them what they would have earned had the Board not unilaterally reduced their work year, less the amounts earned by those employees or paid to them by the Board of Education, during July and August 1976; and by restoring to the vice principals the vacation days they would have had the Board of Education not unilaterally reduced their work year.

PISCATAWAY TOWNSHIP BOARD OF EDUCATION
(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 Jeffrey B. Tener, Chairman, Public Employment Relations Commission, P.O. Box 2209, Trenton, New Jersey 08625 Telephone (609) 292-6780