P.E.R.C. NO. 76-31

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

GALLOWAY TOWNSHIP BOARD OF
EDUCATION,
Respondent,

-and-

Docket No. CO-76-58-20

GALLOWAY TOWNSHIP ASSOCIATION
OF EDUCATIONAL SECRETARIES,
Charging Party.

SYNOPSIS

On the basis of a stipulated record and briefs in an unfair practice proceeding, the Commission finds that a board of education violated the Act by announcing, prior to and during collective negotiations, changes in secretarial employees' working hours. The board also violated the Act by implementing such changes before the Commission's impasse procedures had been exhausted. The Commission orders the board to cease and desist from such conduct, and affirmatively orders the board to negotiate in good faith; to restore the pre-existing working hours during the course of negotiations; to pay the secretarial employees the difference between the amounts they would have received if their hours had not been changed and the amounts they actually received after the change in hours; to post notices whereby its employees will be notified of the board's corrective actions; and to notify the Executive Director of the steps taken to comply with the order.

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Charging Party.

Appearances:
For the Respondent, Murray, Meagher & Granello, Esqs. (Mr. James P. Granéllo, of Counsel; Mr. Robert J. Hrebek, on the Brief).

For the Charging Party, Starkey, Turnbach, White & Kelly, Esqs. (Mr. Edward J. Turnbach, of Counsel and on the Brief).

DECISION AND ORDER

On August 29, 1975 the Galloway Township Association of Educational Secretaries (the "Association") filed an unfair practice charge (the "Charge") with the Public Employment Relations Commission (the "Commission") alleging that the Galloway Township Board of Education (the "Board") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act"), and in particular alleged unfair practices within the meaning of N.J.S.A. 34:13A-5.4(a)(1), (3), (4) and (5).[1] Essentially, the Charge alleged that the Board violated

1/ These subsections prohibit employers, their representatives and (continued)

the Act when it unilaterally reduced and/or changed the working hours of six of the seven secretaries in the negotiating unit that the Association had recently been certified to represent.[2/] It appearing to the Commission's Executive Director that the allegations of the Charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on October 6, 1975. On October 15, 1975 the Board served and filed its answer to the Complaint.

The parties have waived an evidentiary hearing and an intermediate Hearing Examiner's Recommended Report and Decision, and have submitted this matter to the Commission for decision on stipulated facts and briefs, all of which were filed by February 4, 1976. The parties stipulate "all the essential facts" to be as follows:

> 1. A representation election involving all secretarial and clerical employees employed by the Galloway Township Board of Education (the "Board") was conducted on May 27, 1975 at which time a majority of the valid votes counted were cast for the Galloway Township Educational Secretaries (the "Association").
>
> 2. A Certification of Representative was issued on June 4, 1975 certifying the Galloway Township Educational Secretaries as the majority representative of the secretarial and clerical employees employed by the Board.
>
> 3. Following the issuance of the Certification of Representative on June 4, 1975, the Board, on July 8, 1975, announced its intention to reduce the working hours of four secretaries represented by the Association from 7 hours a day (with a half hour lunch break) to 4 hours a day (with no lunch break). These four

1/ (continued) agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act... (3) Discriminating in regard to hire or tenure or 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... (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act... (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning the terms and conditions of employment of employees in that unit..."

2/ The Charge also requested an interim order restoring the secretaries to their prior working conditions during the pendency of the instant proceeding. However the Association chose not to formally pursue its request for interim relief. See N.J.A.C. 19:14-9.1 et seq.

secretaries would no longer work from 9:00 A.M. to 4:00 P.M. but would work from 9:00 A.M. to 1:00 P.M. Following this announcement in response to a question posed to the Board, the Board announced that this reduction in hours was done because of a budget cut.

4. There were no negotiating sessions scheduled between the Board and the Association prior to the announcement on July 8, 1975 that there would be a reduction in working hours. This matter involving the "reduction in hours" had not been discussed by any Board member or member of the Central Administrative Staff with any representative of the Association prior to the July 8, 1975 announcement.

5. The parties met on July 22, 1975 for the purpose of collective negotiations for the first time since the Certification had been issued. At this time the parties discussed the question of the announced reduction in working hours for certain members of the secretarial staff. No agreement was reached on this occasion concerning this issue. At this session the Association submitted its proposals for the first time to the Board including the Association's proposals on working hours.

6. On August 12, 1975 the Board of Education announced its intention to change the working hours of 2 additional secretaries employed at the Arthur Rann School to coincide with the altered school hours there. One secretary would no longer work from 7:45 A.M. to 3:15 P.M. but would work instead from 7:15 A.M. to 2:45 P.M. The other secretary would no longer work from 9:45 A.M. to 5:50 P.M but would work instead from 9:45 A.M. to 5:55 P.M.[3] This matter involving changes in the working hours of these two secretaries had not been discussed by any Board member or member of the Central Administrative Staff with any representative of the Association prior to the August 12, 1975 announcement.

7. The parties met on August 14, 1975 for the purpose of collective negotiations. At this time the parties discussed the question of the reduction and/or changes in working hours of certain of the secretarial employees. No agreement was reached on this occasion concerning this matter. At this session the Board submitted its contract proposals to the Association including the Board's proposal on working hours.

8. The next negotiating session was scheduled for August 25, 1975. This session was cancelled at the request of the Association.

3/ In its brief the Board states that this stipulation incorrectly shows an increase in workday, whereas in truth this secretary's workday was simply advanced by five minutes (former workday was 9:45 A.M. to 5:45 P.M.; new workday is 9:50 A.M. to 5:50 P.M.). The Association has not objected to the Board's statement and, in any event, our disposition of the instant proceeding does not turn on this distinction.

The next agreed upon date for the continuation of negotiations was October 27, 1975.

9. An Unfair Practice Charge was filed with P.E.R.C. by the Association and was docketed as CO-76-58 on August 29, 1975.

10. The resolutions of the Board concerning the reduction and/or changes in working hours previously announced on July 8, 1975 and August 12, 1975 were implemented by the Board as of the start of the school year (Tuesday, September 2, 1975) but subsequent to the two negotiating sessions referred to earlier. No agreements had been reached between the Board and the Association concerning these reductions and/or changes in secretarial working hours prior to implementation.

11. There is an absence of any prior negotiated contract between the parties herein. Prior to the 1975-76 school year individual employment contracts were issued by the Board to each individual secretary employed within the school district. Prior policy of the Board has been that the Board would set the hours and working conditions of the secretarial staff working in the school district. The hours established for the four secretaries whose hours were reduced to four hours a day had been 9:00 A.M. to 4:00 P.M. for at least the past six school years.

12. The parties, in addition, stipulate that any documentation submitted by the parties concerning the related representation proceeding that led to the Certification of the Association (Docket No. RO-1008) may be considered by the Commission in the rendering of its decision in the instant matter.

13. The parties further stipulate that pursuant to Section 19:14-6.7 of the Commission's Rules the parties agree to waive an evidentiary hearing in the above-entitled matter and further agree to waive an intermediate Hearing Examiner's Report. This matter will be the subject of a Commission decision based on the formal pleadings, the Stipulation of Facts and briefs to be submitted by the parties concerning their respective legal contentions.

Pursuant to the Act and the Commission's Rules, and based upon the parties' stipulations as aforesaid, the Commission makes the following determinations upon a review of the entire record herein, namely, the Complaint, the Board's answer, the Stipulations, and the briefs.

The Board has raised a threshold argument concerning scope of negotiations. While the Board does not dispute the mandatory negotiability

of the general subject-matter of hours of work, it argues that its actions concerning the two secretaries employed at the Arthur Rann School were an exercise of its inherent managerial authority and thus not mandatorily negotiable. The Board contends that it altered the school day at the Arthur Rann School and that it was within its managerial authority to adjust the secretaries' workday to coincide with the altered school day. The Board puts it as follows: "Having made the educational policy decision to change the school day, it is submitted that the Board was well within its rights to announce, and even to implement, a similar shift with regards to its employees."[4/]

Previous judicial and Commission decisions have treated the question of a public employer's duty to negotiate with respect to the subject of hours of employment.[5/] In The Board of Education of the City of Englewood v. Englewood Teachers Association, 64 N.J. 1 (1973), the board of education unilaterally increased the hours of employment of four special education teachers to conform with the longer hours of the other teachers. The teachers association claimed that the unilateral action of the board of education violated a "savings clause" in the parties' collective agreement. When the teachers association sought to submit the contract dispute to arbitration, the board

4/ While the stipulated record makes no reference to the Board's allegations concerning its change of the school day, we will accept the Board's contention arguendo as it in any event does not alter our conclusions.

5/ The Act delimits the collective negotiations obligation as follows, N.J.S.A. 34:13A-5.3, in pertinent part:

> "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."

of education commenced an action to restrain arbitration on the grounds that its actions were non-arbitrable as being within its exclusive prerogatives and not with respect to terms and conditions of employment within the meaning of the Act. In permitting the dispute to proceed to arbitration, the Supreme Court held that "working hours...are terms and conditions of employment within the contemplation of the Employer-Employee Relations Act." Id. at 6, 7.

In Board of Education of the Town of West Orange v. West Orange Education Association, 128 N.J. Super. 281 (Ch. Div. 1974), the board of education restructured the format of the school day by deleting the homeroom period from the school schedule. In implementing the new format, the board of education unilaterally required, inter alia, that department chairmen start work five minutes earlier. The teachers association claimed that the latter constituted a unilateral change in terms and conditions of employment in violation of the parties' collective agreement. In denying the board of education's application for a restraint of arbitration, the court observed that "it is not the board's managerial decision to delete the homeroom period from the school schedule" that the teachers association sought to arbitrate, id. at 284, but rather "length of the working day", id. at 285.

In In re Hillside Board of Education, P.E.R.C. No. 76-11, 1 NJPER 55 (1975), we held that a dispute concerning an alteration of hours of employment, even if total hours worked remain constant, relates to terms and conditions of employment within the meaning of the Act. In Hillside, we observed in a footnote that a decision, based upon managerial and educational considerations, to extend the hours that the guidance office will be open, is to be distinguished from a decision to alter the hours of particular individuals. Id., 1 NJPER at 57, note 8.

On the basis of the foregoing, it is clear that the disputed actions of the Board in the instant matter relate to terms and conditions of employment and are required subjects for collective negotiations within the meaning of the Act. With respect to the Board's contentions concerning its educational policy decision to change the school day at the Arthur Rann School, suffice it to say that the Association does not purport to dispute the propriety of the alteration in the _school_ day -- only the alteration in the _secretaries_' hours of employment. Furthermore, while the stipulations reveal that the Board's motive was to equalize secretarial hours with an altered school day, they do not reveal, nor does the Board argue, that the Board was required by educational or other considerations to effect such an equalization. We are thus presented with no evidence that the Board's managerial decision to alter the school day was or would have been rendered impossible of implementation in the absence of a conforming alteration in secretarial hours.

We turn now to the substantive claims of unfair practices, concerning both the Board's announcements concerning changes in working hours, and the Board's implementation of such changes.[6/] The Association contends that the public announcements made by the Board on July 8, 1975 and August 12, 1975 -- prior to and during collective negotiations -- concerning its intention to alter the working hours of several of its secretarial employees, was in

6/ The Board argues that because the Charge was filed prior to implementation, we may not properly pass upon implementation as the Charge was never amended to include relevant allegations. Although the Board correctly notes that the Association could have amended its charge, we will not stand on procedural formalities when the parties have stipulated to post-charge events and have expressly agreed that their stipulations will be considered by the Commission in deciding the case. See Stipulation number 13, _supra_.

violation of N.J.S.A. 34:13A-5.4(a)(1) and (a)(5), in that it constituted both a refusal to negotiate in good faith and an attempt to interfere with and coerce employees with regard to the exercise of rights guaranteed to them by the Act.

The Association stresses that the time frame during which the Board's announcements were made -- prior to any discussions on the matter between the parties and very shortly after the Association was certified -- substantiates its contentions. Additionally, the Association argues that merely because the Board did not effectuate its announced changes immediately did not absolve the Board of its wrongful conduct. The Association suggests that the meetings held on July 2, 1975 and August 14, 1975, after the Board's announcements had been made, were meetings after the fact, i.e., they were merely meetings held after determinations had been made to change terms and conditions, rather than negotiations in order to determine the changes yet to be made.

The Board disputes the Association's contention that the timing and manner of the Board's conduct established a violation of subsection (a)(1). The Board indicated that its announcements were prompted by budgetary considerations and its responsibility as a public body to make known its response to a pending fiscal problem. With regard to subsection (a)(5), the Board notes that it met on two occasions with the Association and discussed the issue of working hours; that it tolerated a cancellation by the Association of the third session and agreed to a rescheduling of that meeting; and that it had submitted counter-proposals to the Association, including its proposals regarding secretarial working hours. The Board suggests that

an "analysis of the overall conduct and/or attitude of the party charged"[7] would reveal no predisposition to avoid agreement, but instead would disclose a sincere desire to reach agreement. The Board offers the analysis that the "thrust of the charge is a questioning of the propriety of the public posturing the Board engaged in prior to or during negotiations".

Based upon the stipulated record, we are persuaded that violations of subsections (a)(1) and (a)(5) have occurred with respect to the Board's announcements in the instant factual context. We find that the manner and timing of the announcements could only have had a chilling effect on the employees' exercise of its negotiations rights in violation of subsections (a)(1) and (a)(5).

The timing and wording of the Board's announced intention to alter working hours, indicates that the Board had already decided upon a course of conduct, and had not merely put forth a negotiations position subject to the give and take of collective bargaining.

The announcements made by the Board, while not demonstrably motivated by identifiable anti-union animus, necessarily had a restraining influence and concomitant coercive effect upon the free exercise of the rights guaranteed by the Act to the employees involved in this proceeding. The public announcement and resolution by the Board of its intention to effectuate certain changes concerning the working hours of secretarial employees clearly portended changes in the status quo with reference to terms and conditions of employment, specifically regarding when the employees would work, how long they would work, and thus how much they would be paid. The situation which thus existed, wherein employees were faced with the prospect

7/ Citing In re State of New Jersey, E.D. No. 79, 1 NJPER 39, affirmed, P.E.R.C. No. 76-8 (1975), appeal pending (App. Div. Docket No. A-531-75).

of having terms and conditions of their employment unilaterally imposed upon them, could only have had a chilling effect on the entire negotiations process.

When the Board subsequently effectuated the announced changes concerning the hours of employment of certain of its secretarial employees, it could only have intensified the chilling effect of its prior announcements upon the negotiations process. Terms and conditions of employment were imposed upon certain of the Board's employees, despite their requests, and their right, to negotiate such matters. Such unilateral action by the Board was clearly an interference with the exercise of rights guaranteed to employees by the Act.

The Association argues that the unilateral implementation on September 2, 1975 of the previously announced changes in working hours, coming after only two negotiating sessions had occurred between the parties, was also a violation of subsections (a)(1) and (5). We agree.

The Board asserts that it effectuated the announced changes in the working conditions of the secretarial staff only after negotiations had taken place on the issues and an impasse had been reached concerning the changes. The Board submits that the sequence of events and the Board's overall conduct do not bespeak a refusal to negotiate in good faith or an intransigence in reaching an agreement. Rather the Board suggests that it was fiscal constraints, the Association's own inability to meet, and the parties coming to impasse on certain issues which forced the Board to implement its announced resolutions before reaching complete agreement with the Association.

In In re Piscataway Township Board of Education, P.E.R.C. No. 91, 1 NJPER 49 (1975), appeal pending (App. Div. Docket No. A-8-75), we adopted the view generally accepted in both the public and private sectors that an employer is normally precluded from altering the status quo regarding terms and conditions of employment while engaged in collective negotiations and that such an alteration would constitute an unlawful refusal to negotiate. See also In re Township of Little Egg Harbor, P.E.R.C. No. 76-15, 2 NJPER 5 (1976). In the context of negotiations for a collective negotiations agreement, a public employer is generally precluded from taking unilateral action with regard to a required subject for negotiations at least until the Commission's impasse resolution procedures set forth in N.J.A.C. 19:12-1.1 et seq. have been exhausted. Piscataway, supra, 1 NJPER at 50, note 7.

The Board asserts that the Piscataway doctrine is not applicable to the instant case and bases its assertion on the following arguments. The Board first argues that the Commission may properly consider only events occurring prior to the filing of the Charge. Second, the Board states that prior to 1975, there was no collectively negotiated contract covering the secretarial unit and therefore there were no previously negotiated terms and conditions of employment to be maintained pending the negotiation of the contract. Third, the Board asserts that the status quo prior to 1975 (as stipulated) was that the Board set the terms and conditions of employment; thus, the Board argues, in announcing or effecting an hours change, the Board was merely exercising that authority which it held under the "prior conditions" of no contract.

For the following reasons we find that the Piscataway doctrine is clearly applicable in the instant matter, notwithstanding the Board's contrary arguments. We have already addressed the Board's first argument concerning post-Charge events and we have determined that, under the circumstances of this case, we may properly take cognizance of such events. See note 6, supra. Concerning the Board's second argument, we note that there is no language in Piscataway which restricts its application to those situations where a successor agreement is being negotiated. To the contrary, we stated that terms and conditions must be maintained as they existed at the commencement of the obligation to negotiate. Piscataway, supra, 1 NJPER at 50. This is so whether these terms and conditions derive from a previously negotiated contract or from employer-generated rules and regulations which prevailed prior to the advent of a collective negotiations relationship.

In its third argument the Board claims that prior to 1975, the status quo concerning the setting and changing of working conditions of its employees was within its sole discretion. While this may once have been true, upon our certification of the Association as the exclusive negotiating representative of the secretarial employees of the Board, the Board was no longer able to unilaterally implement new or changed terms and conditions of employment and was charged with a duty to negotiate in good faith concerning those matters.[8/]

8/ We note in this regard that our certification in the underlying representation proceeding, which the parties have stipulated may be considered in the instant proceeding (Stipulation number 12), contains the following concluding sentence: "Pursuant to the Act, the said representative shall be responsible for representing the interests of all unit employees without discrimination and without regard to employee organization (continued)

The stipulated record reveals that the parties did engage in discussions concerning the issue of hours of employment on two occasions, July 22, 1975 and August 14, 1975. From the record, it is clear that the Board did not exhaust our impasse resolution procedures as set forth in N.J.A.C. 19:12-1.1, *et seq.*, before it unilaterally implemented the previously announced changes in secretarial working hours. Further, there is nothing in the record to suggest any exception to the general rule enunciated in *Piscataway*.

In conclusion, based upon the entire record, we find that the alterations in working hours of the secretarial employees of the Board related to required subjects for collective negotiations, that the Board's announcements concerning such alterations, and its effectuation thereof, constituted unfair practices within the meaning of N.J.S.A. 34:13A-5.4(a)(5) in that they constituted refusals to negotiate in good faith concerning terms and conditions of employment; and that the Board's conduct as aforesaid although not apparently motivated by any specific anti-union animus, necessarily had a restraining influence upon the free exercise of rights guaranteed by the Act to the employees involved herein and accordingly also constituted unfair practices within the meaning of N.J.S.A. 34:13A-5.4(a)(1).

After careful consideration of the entire record, it is concluded that the Board's conduct as aforesaid did not constitute unfair practices within the meaning of N.J.S.A. 34:13A-5.4(a)(3) and (a)(4), and those portions of the Complaint alleging violations thereof are hereby dismissed.

8/ (continued) membership; the said representative and the above named 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 it shall be embodied in writing and signed by the parties; and written policies setting forth grievance procedures shall be negotiated and shall be included in any agreement."

ORDER

Respondent, Galloway Township Board of Education, shall:

1. Cease and desist from:

(a) Interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed to them by the Act.

(b) Refusing to negotiate collectively in good faith with the Galloway Township Association of Educational Secretaries as the majority representative of secretarial employees, concerning terms and conditions of employment of such employees.

(c) Unilaterally altering, or threatening to unilaterally alter, terms and conditions of employment of its secretarial employees during the course of collective negotiations with the Galloway Township Association of Educational Secretaries.

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

(a) Upon request, negotiate collectively in good faith with the Galloway Township Association of Educational Secretaries concerning the terms and conditions of employment of its secretarial employees.

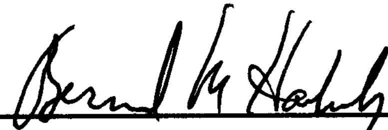
(b) During the course of collective negotiations with the Galloway Township Association of Educational Secretaries, restore the hours of employment of its secretarial employees as they existed prior to its unilateral implementation of changes therein on September 2, 1975.

(c) Pay its secretarial employees whose hours of employment were unilaterally reduced as of September 2, 1975, the monetary difference between the amounts they would have received had their hours not been unilaterally reduced, and the amounts they were in fact paid since September 2, 1975.

(d) Post at its central office building in Galloway Township, 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



Bernard M. Hartnett, Jr.
Acting Chairman

DATED: Trenton, New Jersey
April 27, 1976

ISSUED: April 28, 1976

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, 1968

we hereby notify our employees that:

WE WILL NOT interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed to them by the Act.

WE WILL NOT refuse to negotiate collectively in good faith with the Galloway Township Association of Educational Secretaries as the majority representative of secretarial employees, concerning terms and conditions of employment of such employees.

WE WILL NOT unilaterally alter, or threaten to unilaterally alter, terms and conditions of employment of our secretarial employees during the course of collective negotiations with the Galloway Township Association of Educational Secretaries.

WE WILL, upon request, negotiate collectively in good faith with the Galloway Township Association of Educational Secretaries concerning the terms and conditions of employment of our secretarial employees.

WE WILL, during the course of collective negotiations with the Galloway Township Association of Educational Secretaries, restore the hours of employment of our secretarial employees as they existed prior to our unilateral implementation of changes therein on September 2, 1975.

WE WILL pay our secretarial employees whose hours of employment were unilaterally reduced as of September 2, 1975, the monetary difference between the amounts they would have received had their hours not been unilaterally reduced, and the amounts they were in fact paid since September 2, 1975.

GALLOWAY 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 the Executive Director of the Public Employment Relations Commission, Labor & Industry Bldg., P.O. Box 2209, Trenton, N. J. 08625. Telephone (609)292-6780