P.E.R.C. NO. 77-54

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PISCATAWAY TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-76-105-43

PISCATAWAY TOWNSHIP EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

In a decision in an unfair practice proceeding, the Commission finds the exceptions filed by the Association relating to the findings of fact and conclusions of law of the Hearing Examiner to be without merit. The Commission, in agreement with the Hearing Examiner, finds that the Board had the right to compel attendance at particular workshops conducted under the auspices of the National Conference of Christians and Jews under the terms of the existing collective negotiations agreement between the parties. The Commission notes that the plain language of the contractual provision in dispute, relating to the length of a teacher's work day, indicates that the right of teachers to leave ten minutes after the students exists only in the absence of a required professional meeting or workshop. Consequently, on a day when such a professional meeting or workshop is required, it is part of the school day negotiated by the parties and is not an extension of teachers' working hours. The Commission further determines that having found that the Board, by contract, had the right to require attendance at workshops, it follows a fortiori that there was no effect on teachers' hours to be negotiated. The Commission therefore concludes that the complaint must be dismissed in its entirety.

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PISCATAWAY TOWNSHIP EDUCATION ASSOCIATION,

Charging Party.

Appearances:

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

For the Charging Party, Mandel, Wysoker, Sherman, Glassner, Weingartner and Feingold, Esqs.
(Jack Wysoker on the Brief, Richard Greenstein at oral argument)

DECISION AND ORDER

On October 14, 1975, an Unfair Parctice Charge was filed with the Public Employment Relations Commission (the "Commission") by the Piscataway Township Education Association (the "Association") against the Piscataway Township Board of Education (the "Board") alleging that the Board had engaged in an unfair practice within the meaning of the New Jersey Employer-Employee Relations Act (the "Act"), specifically N.J.S.A. 34:13A-5.4(a)(1), (5) and (7).[1/]

1/ N.J.S.A. 34:13A-5.4(a)(1), (5) and (7) prohibit employers, their representatives or agents 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; (7) Violating any of the rules and regulations established by the commission."

The allegation in the Charge is that the Board had compelled all teachers at the Grandview School to attend workshop sessions held after regular school hours on five separate days, thereby unilaterally modifying rules governing working conditions. It appearing that the allegations, if true, might constitute an unfair practice within the meaning of the Act, a Complaint and Notice of Hearing was issued on November 18, 1975. A hearing was held before Hearing Examiner Edmund G. Gerber on December 22, 1975, January 16, 1976 and February 26, 1976. Both parties had the opportunity to examine witnesses, present evidence and argue orally. Briefs were submitted by both sides by April 23, 1976, and the Hearing Examiner issued his Recommended Report and Decision on November 17, 1976.[2/]

Having been granted an extension of time to file exceptions to the Hearing Examiner's Recommended Report and Decision, the Association filed exceptions with the Commission on December 21, 1976.[3/] The Charging Party requested oral argument before the Commission and the request was granted.[4/] The argument was conducted on March 16, 1977. A copy of the Hearing Examiner's Recommended Report and Decision is annexed hereto and made a part hereof.

Those facts which are undisputed may be summarized briefly. On September 19, 1975, the Principal of the Grandview School issued a memorandum directing all teachers to attend a series of five weekly workshops conducted by the National Conference of Christians and Jews dealing with questions that might arise from the scheduled changes

2/ H.E. No. 77-7, 2 NJPER 347 (1976).
3/ N.J.A.C. 19:14-7.3.
4/ N.J.A.C. 19:14-8.2.

in the racial composition of the Grandview school. The workshops were to be held after the regular school hours. Article VII of the contract between the parties for 1975-1978 provides in relevant part that "...No teacher unless on special assignment shall be required to report for duty earlier than ten minutes prior to the pupils' entrance to the classroom. All teachers shall be permitted to leave the building ten minutes after the close of the school day except when on special assignments or when required to attend a professional meeting." The Board contends that as required attendance at professional meetings was covered and permitted in the contract, there has been no modification of terms and conditions of employment.

In rendering his report, the Hearing Examiner in effect was required to interpret the contract. The parties in their agreement excluded unfair practice questions from arbitration. Therefore, the Charging Party filed the instant Charge. While the procedure is somewhat unusual, the Commission adopts the Hearing Examiner's analysis of the propriety of interpreting the parties' contract in this case.[5/]

The Hearing Examiner found that the Board in the past had compelled attendance by teachers at a series of meetings after school without compensation prior to the workshops herein at issue, and that the Association had not objected. On that basis, together with the plain meaning of the contract language, he found that the contract gave the Board the right to order the workshops without compensation.

5/ H.E. No. 77-7, Footnote 4.

He further found that the Board's defense was not one of waiver as alleged by the Association, but rather a reliance on a specific contract provision, and that in any event a "clear and unequivocal" standard for a finding of a waiver herein would be inappropriate. The Hearing Examiner rejected the Association's contention that there were factors which set these workshops apart from others. He also found, assuming that an extension of the teachers' hours would have been proved requiring negotiations as to the effect on terms and conditions of employment, that the Association had failed to prove that a net increase in teachers' hours had occurred, since the Board cancelled other meetings when it scheduled the ones at issue herein.

Three exceptions to the Recommended Report and Decision were presented by the Association. Objected to are findings that under the contract the Board had the right to compel attendance, that no negotiations were required as to the effect of the decision, and that the Association had failed to prove an extension of the teachers' hours.

After considering the entire record, the Commission adopts the findings of the Hearing Examiner insofar as they relate to the Board's right to compel attendance substantially for the reasons set forth in the Recommended Report and Decision. The plain language of Article VII on its face indicates that the right to leave ten minutes after the students exists only in the absence of a required professional meeting. Consequently, on a day when such a professional meeting is required, it is part of the school day negotiated by the

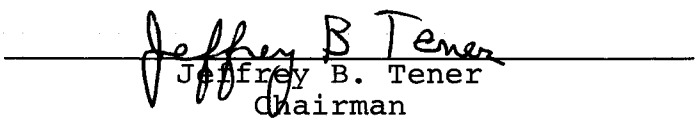
parties and is not an extension of teachers' working hours. Nothing in the testimony adduced at the hearing presents any reason for giving any other reading to Article VII.

Having found that the Board, by contract, had the right to require attendance at the workshops it follows a fortiori that there was no effect on teachers' hours to be negotiated. Under the interpretation of Article VII adopted by the Commission, professional meetings, as required by the Board, were a part of the teachers' normal hours as negotiated by the parties. Therefore, the Commission deems it unnecessary to reach the question of whether the Association had proved an effect on working hours. For these reasons, the Commission does not pass upon that portion of the Hearing Examiner's Recommended Report dealing with the effect on terms and conditions of employment. Additionally, his findings regarding the proof as to whether the teachers actually worked a greater number of hours are not adopted, as they are unnecessary to a determination of this matter.

ORDER

For the reasons set forth above, IT IS HEREBY ORDERED that the Complaint in this matter is dismissed in its entirety.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Forst, Hartnett and Parcells voted for this decision.
Commissioner Hipp was not present at the time of the vote.
Commissioner Hurwitz abstained.
DATED: Trenton, New Jersey
April 19, 1977
ISSUED: April 20, 1977

H.E. NO. 77-7

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

In the Matter of

PISCATAWAY TOWNSHIP BOARD OF EDUCATION,
Respondent,

-and-

Docket No. CO-76-105-43

PISCATAWAY TOWNSHIP EDUCATION ASSOCIATION,
Charging Party.

SYNOPSIS

The Piscataway Township Teachers Association brought this action alleging that the Piscataway Township Board of Education unilaterally altered terms and conditions of employment by compelling the attendance of certain teachers at an after school workshop, thereby increasing working hours. The Hearing Examiner found, in his Recommended Report and Decision, that the Board had the right to compel attendance at the workshop under the terms of the existing collective negotiations agreement and further found that the Association had failed to prove that the working hours of the teachers were increased. Accordingly, the Hearing Examiner recommended that the complaint be dismissed.

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

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PISCATAWAY TOWNSHIP BOARD OF EDUCATION,

Respondent,

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Docket No. CO-76-105-43

PISCATAWAY TOWNSHIP EDUCATION ASSOCIATION,

Charging Party.

For the Piscataway Township Board of Education

Rubin and Lerner, Esqs.
By: Frank J. Rubin, Esq.

For the Piscataway Township Education Association

Mandel, Wysocker, Sherman, Glassner,
Weingartner and Feingold, Esqs.
By: Jack Wysocker, Esq.

HEARING EXAMINER'S RECOMMENDED REPORT AND DECISION

On October 14, 1975 an Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") by the Piscataway Township Education Association (the "Association") against the Piscataway Township Board of Education (the "Board") alleging the latter engaged in an unfair practice within the meaning of the New Jersey Employer-Employee Relations Act (the "Act"), specifically N.J.S.A. 34:13A-5.4(a) (1), (5) and (7),[1/] in compelling all teachers at the Grandview School to attend a workshop held after regular school hours on five separate dates. It is maintained that the collective negotiations agreement between the parties does not provide for compulsory attendance under these circumstances. This action, therefore,

1/ N.J.S.A. 34:13A-5.4(a) (1), (5) and (7) prohibit employers, their representatives or agents 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; (7) Violating any of the rules and regulations established by the commission."

constituted a unilateral imposition of a new rule or modification of an existing rule governing working conditions in violation of N.J.S.A. 34:13A-5.3.

It appearing that the allegations of this Charge, if true, might constitute an unfair practice within the meaning of the Act, a Complaint and Notice of Hearing was issued on November 18, 1975. A hearing was held on December 22, 1975. It was reconvened on January 16, 1976 and again on February 26, 1976. Both parties were given an opportunity to examine witnesses, to present evidence and argue orally. Briefs were submitted by both parties by April 23, 1976.

Upon the entire record in the matter, the Hearing Examiner finds:

1. The Piscataway Township Board of Education is a public employer within the meaning of the Act and is subject to its provisions.

2. The Piscataway Township Education Association is a public employee representative within the meaning of the Act and is subject to its provisions.

3. An Unfair Practice Charge having been filed with the Commission alleging the Piscataway Township Board of Education has engaged or is engaging in an unfair practice within the meaning of the Act, a question concerning an alleged violation of the Act exists and this matter is appropriately before the Commission for determination.

I

On September 19, 1975 the Principal of the Grandview School in Piscataway sent a memorandum (Attachment 1) to all teachers, stating that the National Conference of Christians and Jews will conduct a workshop consisting of five weekly meetings. The meetings would begin at 3:15 p.m. after the close of school and attendance would be compulsory. According to the Principal of the School, Mr. Cohen, the workshop was scheduled because Grandview School was to "receive students from another attendance area, which meant black and Puerto Ricans and other minorities would be coming into the Grandview School...where minorities have not been present up to this year." The workshop was intended to help the staff deal with problems that might arise.

The Piscataway Township Education Association brought this action contending that the Board of Education, through Mr. Cohen, unilaterally and without prior negotiations with the Association, imposed new rules and modified the existing rules governing working conditions of its employees by compelling attendance at said workshop. The Association stated that it does not quarrel with the

idea or purpose of the workshop and "is fully aware of the problems involved in inter-racial relations as well as the value of such workshops." The Association further acknowledges the Board's right to arrange such in-service workshops and even to make attendance mandatory. The Association argues, however, when the Board scheduled this series of meetings after the regular school hours this changed the terms and conditions of employment of the teachers involved by violating the terms of the existing labor negotiations contract between the parties. As the Association correctly points out, the extension of hours is a term and condition of employment that requires prior collective negotiations. The Board of Education of Englewood and Englewood Teachers Association, 64 NJ 1, 7, (1973); Rutgers, the State University and the Rutgers Council of American Association of University Professors, P.E.R.C. No. 76-13, 2 NJPER 13 (1976); In the Matter of Hillside Board of Education v. Hillside Education Association, P.E.R.C. No. 76-11, 1 NJPER 55 (1975).

The Association apparently recognizes the contractual right of the Board to schedule mandatory meetings after regular school hours in certain instances and it did stipulate that such meetings have taken place. It argues however, that the action of the Board went beyond any contractual rights and it points out several significant differences between the workshops and other meetings which it claims render the workshop unique -- the workshop "was held after school hours, the series of meetings dealt with one specific topic and was announced in advance, the announcement and program referred to the staff of the entire school, a considerable number of outside personnel were involved in the workshop, the teachers were notified in writing that they must attend and must arrange their schedules so that they could attend, all other meetings (except in the event of emergencies) were suspended during that time." It was the Association's position that, heretofore, this type of workshop was always voluntary, occurred during school hours and/or compensation was granted for attendance.

The contract provides in Article VII [2/] "...No teacher unless on special assignment shall be required to report for duty earlier than ten minutes prior to the pupils' entrance to the classroom. All teachers shall be permitted

2/ This language has been in prior contracts between the parties beginning with the 1971-1973 contract.

to leave the building ten minutes after the close of the school day except when on special assignments or when required to attend a professional meeting." Article XIII paragraph I provides "the Board shall pay the full costs of tuition and other reasonable expenses for workshops, seminars, in-service training or any other programs the teachers is requested or required to take by the administration except for courses required for certification."

The Board of Education maintains the workshop was not a modification of the terms and conditions of employment since required attendance at the workshop is covered under Articles VII and XIII above. They maintain that the parties specifically bargained over the right to require attendance at such meetings. Therefore, compelling attendance at the workshop was not a unilateral change in working hours, and hence, not violative of the Act. 3/ 4/

3/ The Board also raised the separate defense of a "managerial prerogative under the facts alleged herein" and it argues that the instant case is comparable to Porcelli v. Titus, 108 NJ Super. 1 (App. Div. 1970). In that case, the Board of Education of the City of Newark, following the racial violence of 1967, suspended the negotiated promotional procedure for its teachers, and in its place, implemented a procedure to increase minority representation in the administrative and teaching staff of the school system. The court, noting that the Board of Education faced a crisis situation, applied traditional contract law doctrine regarding frustration and impossibility, stating that "A contract is to be considered subject to the implied conditions that the parties shall be excused in case, before the breach, the state of things constituting the fundamental basis of the contract ceases to exist without default of either of the parties" and the court upheld the Board of Education of the City of Newark. At the close of hearing in this matter the Association moved to strike the defendants' separate defense that "requiring attendance at the workshops is a managerial prerogative under the facts alleged herein." The Hearing Examiner reserved decision on the motion at the time of hearing.

It is noted that the Board did not introduce any evidence concerning civil disturbances in Piscataway. The Board argues in its Brief that "the outbursts of personal violence and property damage are surely within the ambit of judicial notice. The Hearing Examiner is not satisfied that the facts are so generally known that he may take judicial notice of them. (Rule 9(2) of the N.J. Rules of Evidence makes taking such judicial notice discretionary in a court of law.) Therefore in the absence of any evidence of a crisis situation the Motion to Strike the Board's separate defense is granted.

4/ The parties are, in effect, asking the Commission to interpret their contract and to function as an arbitrator.

Continued...

4/ Continued...

It is noted the grievance procedure of the contract provides for arbitration with the following exception:

> Disputes involving questions of unfair labor practice, scope of negotiations questions, questions of representation, and any other matters within the jurisdiction of the Public Employment Relations Commission as well as constitutional issues shall not be arbitrable...

The Association brought this action before the Commission rather than an arbitrator and the Board chose not to seek to have the matter deferred to arbitration pursuant to the Commission's policy as stated in In re City of Trenton, P.E.R.C. No. 76-10, 1 NJPER 58 and In re Board of Education of East Windsor, E.D. No. 76-6, 1 NJPER 59. The common understanding of the parties was that the instant dispute fell within the above-quoted exception and was not arbitrable, and this Hearing Examiner will not second guess their understanding. The question then is what is the role of the Commission where, as here, the parties cannot resolve a matter through their own grievance procedure. Should the Commission interpret the parties' contract in order to determine if there was a unilateral alteration in the rules governing working conditions? The stated declaration of policy of the Act is that the interests of the people of the State of New Jersey are best served by the prompt settlement of labor disputes. Forcing the parties into the courts for a resolution of their dispute at this juncture would certainly run counter to the Act's stated policy.

In the private sector the courts have held that the National Labor Relations Board should, in the appropriate circumstance, interpret the contract of the parties. (See footnote 9 below)

> "Admittedly, the Board has no plenary authority to administer and enforce collective bargaining contracts. Those agreements are normally enforced as agreed upon by the parties usually through grievance and arbitration procedures, and ultimately by the courts. But the business of the Board, among other things, is to adjudicate and remedy unfair labor practices...Hence, it has been made clear that in some circumstances the authority of the Board and the law of the contract are overlapping, concurrent regimes, neither pre-empting the other. NLRB v. C & C Plywood Corp. 385 U.S. 421, 64 LRRM 2065 (1967), Carey v. Westinghouse Electric Corp., 375 U.S. 261, 268, 55 LRRM 2042 (1964);... Arbitrators and the courts are still the principal sources of contract interpretation, but the Board may proscribe conduct which is an unfair labor practice even though it is also a breach of contract remediable as such by arbitration and in the courts. Smith v. Evening News Assn., 371 U.S. 195, 197-198, 51 LRRM 2646 (1962). It may also, if necessary, adjudicate an unfair labor practice, interpret and give effect to the terms of a collective bargaining contract, NLRB v. C & C Plywood Corp., 385 U.S. 421, 64 LRRM 2065 (1967)." Chase Mfg. Co. 492 F 2d 130, CA 7 (1974), 85 LRRM 2603.

Similarly, the Public Employment Relations Board of New York has followed this same line of reasoning in Town of Orangetown, 8 PERB 3042. Therefore, to best effectuate the policies of this Act, I have seen fit in this Recommended Report and Decision to interpret the parties contract.

The bulk of the testimony, as well as the 68 documents in evidence, relate to the question of whether various meetings called by the Board through its school principals were mandatory or voluntary. Meetings of all types were scheduled throughout the year on a regular basis. Such meetings included regular faculty meetings (which occurred once or twice a month depending upon the particular school), regular scheduled grade level meetings, meeting with publishers of text-book series and their representatives and so forth.

Although the Association did not dispute the right of the Board to schedule individual mandatory after school meetings, their witnesses by and large maintained that most meetings scheduled were voluntary. However, the Association witnesses were not consistent on this point.[5/] The Board witnesses consistently maintain that these same meetings were mandatory. Significantly, a memorandum was sent to all teachers in the Grandview School by Carl Cohen in April 1975, (some five months prior to the notification of the workshop in question) which states that "I would like to reiterate with the staff the policy on attendance at in-service, faculty, or any meeting that takes place after school: (a) Unless specifically excused from attending a meeting all staff members are required to be present. This of course does not include grade level meetings where only certain grades are concerned." The School Board also introduced evidence of workshops consisting of a series of meetings which occurred after school and at which attendance both was mandatory and no compensation was given. These workshops included the California Test of Basic Skills Series ordered by Mr. Cohen, the Science Curriculum - Improved Studies workshops at the New Market School and at least one of the Weehawkin Language Arts program workshops.[6/]

I do not question the veracity of the witnesses for the Education Association. However, in viewing the totality of the testimony including that concerning the mandatory nature of individual meetings, I find the testimony of the witnesses for the Board, particularly Mr. Cohen and Mr. Rankin,[7/] more consistent, logical, and credible, and therefore more persuasive. I find that the

5/ As an example, see the testimony of Gerald Matcho, Volume 2 of the transcript, page 9, line 6, to end.

6/ The Board stipulated that the Weehawkin Language Arts workshop of November 1974 was voluntary.

7/ Who is also a school principal employed by the Board.

Board has compelled attendance by teachers at a series of meetings after school, without compensation.

There was also evidence concerning the history of the language of Article VII of the contract. Gordon Moore, a negotiator for the Board of Education[8/] testified that during 1970-71 negotiations for the 1971-73 contract, the Association introduced a proposal with the following language: "The Board shall pay the full costs of tuition and other reasonable expenses for workshops, seminars, in-service training, or any other such programs which a teacher is requested to take or required to take by the administration. Said teacher shall also be compensated for such time spent in such programs beyond a normal school date at a rate established [elsewhere]." The 1971-73 contract was ultimately written with a provision identical to Article VII of the current contract, which is quoted above. Moore testified it was the Board's position during the negotiation for the 1971-73 contract that "it had the prerogative of establishing...workshops, seminars, in-service training or other kinds of teacher meetings and that the Board would not relinquish through negotiations the right to establish or to hold such meetings as proposed by the Association." He did not recall specifically, however, what was said during these negotiations.

The Association maintains that this testimony, in effect, constitutes a waiver argument by the Board. The Association, in interpreting the Board's argument, maintains the Board is claiming the Association "waived" its right to bargain over a change in working conditions. It points out that in the private sector, evidence of a waiver must be clear, convincing and unequivocal C & C Plywood, supra, Proctor Mfg. Co. 131 NLRB 142, 48 LRRM 1222 (1961).

A waiver argument on the part of the Association seems misplaced. In the cases which are alluded to, as indeed most "waiver" cases [9/] [see for

8/ Mr. Moore was formerly a teacher in the school district and, in fact, at one time was President of the Piscataway Township Education Association. While Mr. Moore personally proved to be entirely credible as a witness, I reviewed his testimony most carefully in light of a potential conflict of interest. It is noted that his testimony related to negotiations after he left the Association. It is also significant that this testimony does not conflict with any of the Association witnesses. Matcho testified only that he has no recollection of this aspect of the 1970-1971 negotiations.

9/ The N.J. Supreme Court here stated in Lullo v. Inter. Assoc. of Fire Fighters, 55 NJ 409 (1970) that the Commission may look to the private sector for guidance in interpreting our Act.

example, New York Mirror, 151 NLRB No. 110, 58 LRRM 1465; Ador Corp. 150 NLRB 1658, 38 LRRM 1280 (1965); The Developing Labor Law, BNA 1971, page 332/ the contract is silent as to the right of the employer to do a given act and the employer claims he derives his right to act on the basis of a managements rights or "zipper" clause in the contract. It is claimed because of the language of this clause, the employee association waived its right to bargain. In the instant case there is a definite contract provision, Article VII, and the parties have a four-year history of living with this provision that certainly reveals the parties state of mind as to their understanding of the contract. Moreover, even in true "waiver" situations, the NLRB has held that,

> "While in some situations the rule of 'clear and unequivocal' waiver may be a realistic appraisal of the bargain reached, in other situations it may not be. The answer does not, in our view, call for a rigid rule, formulated without regard for the bargaining postures, proposals, and agreements of the parties, but rather, more appropriately, should take into consideration such varied factors as (a) the precise wording of, and emphasis placed upon, any zipper clause agreed upon; (b) other proposals advanced and accepted or rejected during bargaining; (c) the completeness of the bargaining agreement as an 'integration'--hence the applicability or inapplicability of the parol evidence rule; and (d) practices by the same parties, or other parties, under other collective-bargaining agreements. These are but a few of the many factors that could and would be considered..." Radioear Corp., 81 LRRM 1402 (1972). See also, Valley Ford Sales, 86 LRRM 1407 (1972), petition to Review Board order denied, 91 LRRM 3836 (1972).

The concept of waiver has also been dealt with in a Hearing Examiner's Recommended Report and Decision in In re State of New Jersey and Local 195, IFPTE, P.E.R.C. 77-6, 2 NJPER ___. Even if this were a true waiver situation, in applying the above standards, I find it would be inappropriate to apply a "clear and unequivocal" test in this matter.

I therefore find that on the basis of the totality of circumstances including the failure of the Association to object to other earlier workshops, held after school and without compensation, the credibility of the witnesses, and the language of the contract, that the Board had the right under the contract to order a workshop consisting of a series of meetings held after school

without compensation. 10/

The Association argues that there were other factors surrounding the workshop that places it outside the contemplation of the contract and therefore obligated the Board to negotiate the impact of the series workshop prior to its implementation. The Board readily acknowledges that this series of meetings was unique but argues this uniqueness is of little consequence. There is a point at which every action taken is unique; the test must be whether there is a meaningful alteration of the rules governing working conditions. In reviewing the Association's list of factors, i.e., the meeting was announced in advance, the program referred to the staff of the entire school, outside personnel were involved in the workshop and all other meetings were suspended during the period the workshop was in session, a number of things must be borne in mind.

First, some of these factors were not unique at all. The attendance of the entire school is normally required at faculty meetings, advance notice is routinely given of meetings, specific topics of meetings are often announced in advance of meetings and outside personnel, to wit, representatives of book publishers, have conducted meetings.

Second, the Association cannot attack the meetings on factors which are matters of basic educational policy. Having already admitted that the subject of the meeting is a matter of education policy, it cannot complain about the personnel who conduct the workshop. 11/ Having qualified people conduct the workshop is, most assuredly, a matter of educational policy.

10/ The Association also introduced evidence of a Board proposal submitted in the 1975 negotiations that compelled teachers to attend "professional gatherings," evening meetings and parent conferences. This proposal was abandoned. They argue that evidence of this proposal should militate against the finding that the Board bargained for the right to compel attendance at the workshop. I do not find this persuasive. The proposal is addressed to attendance at functions unrelated to the workshop. The Association also argues this workshop should be under contract language that"teachers shall be compensated for attendance at extracurricular activities." The provision clearly is referring to student extracurricular activities. It has nothing to do with professional meetings.

11/ The Association does not claim that their own members should be given this work, rather the issue here is that the Board is not following precedent.

Third, the Association must prove how these factors, if they are changes, had impact upon terms and conditions of employment. In this regard, the Association has made it clear they are talking about a change in hours worked. It is highly significant that the notification of the workshop (Attachment I) specifically cancelled all other meetings during the period in which the workshop was to run.[12/] The effect of this notice is to limit the number of meetings that a teacher had to attend during these five weeks to one after school meeting per week.

There is no direct evidence before me as to how many meetings the teachers at the Grandview School would normally have to attend during this period if the workshop had not taken place. It is possible, on the basis of evidence before me, that, between faculty, grade level, in-service and other miscellaneous meetings, a teacher would attend five mandatory meetings during this period. This would be true even if the contract language did not contemplate workshops. Of course, it is also possible that the workshops increased the hours of teachers, but, the burden of proof is upon the Association.[13/] To prevail, it had to prove by a preponderance of the evidence that the scheduling of this workshop extended the hours of employment of the teachers of the Grandview School. This it did not do.

In conclusion, for the reasons set forth above, the undersigned does not find that the Association has met its burden in proving the allegations of its charge by a preponderance of the evidence.

12/ The notice states - during this period of time while the in-service is in session - all other meetings will be suspended and unless an emergency arises, this will be the only meeting scheduled during the month of October.

13/ N.J.A.C. 19:14A-3.3.

O R D E R

Accordingly, for the reasons hereinabove set forth, IT IS HEREBY ORDERED that the Complaint in this instant matter be dismissed in its entirety.

Edmund G. Gerber
Hearing Examiner

DATED: November 17, 1976
Trenton, New Jersey

ATTACHMENT I

TO: STAFF

FROM: CARL COHEN - JEANNE CASTORAL

RE: IN-SERVICE WORK SHOP

DATE: SEPT. 19, 1975

1. As was stated at our opening faculty meeting we will be involved in a pilot in-service program during this school year.

2. The in-service program which will be conducted by the National Conference of Christians and Jews and headed by Mr. Jack Marrero, will be designed to assist staff in understanding all students and to provide teachers with the skills which may lead to the best possible education for each child.

3. All staff members are required to attend the in-service program which will consist of five sessions of approximately one and one half hours in duration. (see schedule below). Please make the necessary arrangements in your personal schedules so that there are no conflicts.

4. This in-service training is a pilot program in Piscataway and will be evaluated at the conclusion. Depending on how successful it is, this program may be used in other schools throughout our district.

5. There will be more information available at the first session. The meetings will take place in the All Purpose Room and are scheduled to begin at 3:15 sharp. The meetings will not last longer than 4:45 P.M.

MEETING DATES:

Thursday, October 2nd.
Thursday, October 9th
Thursday, October 16th
Wednesday, October 22nd
Thursday, October 30th

NOTE: During this period of time while the in-service is in session, all other meetings will be suspended and unless an emergency arises this will be the only meeting scheduled during the month of October.