

P.E.R.C. NO. 94-14

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SAYREVILLE BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-91-262

SAYREVILLE EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge filed by the Sayreville Education Association against the Sayreville Board of Education. The charge alleged that the Board violated the New Jersey Employer-Employee Relations Act by requiring teachers to administer a new test which involved ten duties that had not previously been performed and which resulted in an uncompensated increase in workload. The Commission finds that this substitution of one form of teaching duties for another did not trigger a mid-contract negotiations obligation.

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Appearances:

For the Respondent, Wilentz, Goldman & Spitzer, attorneys
(Glen D. Savits, of counsel)

For the Charging Party, Balk, Oxfeld, Mandell & Cohen,
attorneys (Arnold S. Cohen, of counsel)

DECISION AND ORDER

On March 28, 1991, the Sayreville Education Association filed an unfair practice charge against the Sayreville Board of Education. The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsection 5.4(5),^{1/} by requiring teachers to administer a new test which involved ten duties that had not

^{1/} This subsection prohibits public employers, their representatives or agents from: "(5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit...."

previously been performed and which resulted in an uncompensated increase in workload.

On May 13, 1991, a Complaint and Notice of Hearing issued. The Board's Answer contends that administering the test is part of the teachers' regular teaching duties and that there has been no increase in workload. It further contends that the Association has waived its right to seek additional compensation.

On January 16 and March 9, 1992, Hearing Examiner Alan R. Howe conducted a hearing. The parties examined witnesses and introduced exhibits. They waived oral argument but filed post-hearing briefs.

On January 25, 1993, the Hearing Examiner recommended dismissing the Complaint. H.E. No. 93-16, 19 NJPER 106 (¶24049 1993). He concluded that the Board's actions fell within the province of non-negotiable educational policy decisions.

On March 11, 1993, after an extension of time, the Association filed exceptions. It states that it is not challenging the Board's right to increase workload because of the State-mandated test, but instead claims that the workload increases attendant to implementing this educational policy are negotiable. Specifically, the Association claims that the workload of middle and high school teachers increased regarding the preparation and administration of the test. It further claims that teaching staff members have averaged 8 additional hours of preparation time in the middle school and 16 additional hours in the high school.

On March 29, 1993, after an extension of time, the Board filed a reply. It argues that although workload increases are negotiable in some circumstances, there is no obligation to negotiate when the dominant issue is an educational goal. It contends that the Association relies on cases involving an increase in student contact time not present here; failed to meet its burden of proving an increase in workload; and waived any claim for extra compensation.

We have reviewed the record. The Hearing Examiner's findings of fact (H.E. at 3-10) are accurate. We incorporate them here.

N.J.S.A. 34:13A-5.3 requires that a public employer negotiate before changing a mandatorily negotiable term and condition of employment. Workload, in general, is mandatorily negotiable. Burlington Cty. College Faculty Ass'n v. Bd. of Trustees, 64 N.J. 10, 14 (1973); In re Maywood Bd. of Ed., 168 N.J. Super. 45, 59 (App. Div. 1979), certif. den., 81 N.J. 292 (1979); In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 26 (App. Div. 1977); Middletown Tp. Bd. of Ed., P.E.R.C. No. 88-118, 14 NJPER 357 (¶19138 1988).

The Association claims that there was a workload increase severable from the decision to require teachers to administer the disputed tests. But there is no allegation that there has been a reduction in contractual preparation time or duty-free time. Nor is there an allegation that there has been an increase in pupil contact

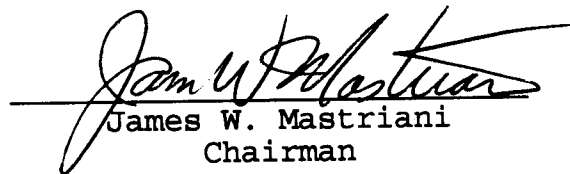
time. Instead, teachers have been required to perform certain functions during regular class time instead of other teaching functions that they would normally perform. This substitution of one form of teaching duties for another did not trigger a mid-contract negotiations obligation.

The Association relies on Freehold Bor. Bd. of Ed., P.E.R.C. No. 82-38, 7 NJPER 604 (¶12269 1981), which held that there may be a mandatorily negotiable compensation claim even if the increase in workload arises pursuant to a managerial prerogative. As in Freehold, however, we are unable to conclude that a mandatorily negotiable increase in workload occurred. Other cases relied on by the Association involved compensation claims after a reduction in preparation or duty-free time, or an increase in pupil contact time or teaching periods. None of those changes occurred here and we conclude that there was no unilateral change in a term or condition of employment. We therefore dismiss the Complaint.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo and Wenzler voted in favor of this decision. Commissioner Smith voted against this decision. Commissioner Bertolino abstained from consideration. Commissioner Regan was not present.

DATED: August 24, 1993
Trenton, New Jersey
ISSUED: August 25, 1993

H.E. NO. 93-16

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

In the Matter of

SAYREVILLE BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-91-262

SAYREVILLE EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission dismiss charges of unfair practices, which alleged that the Respondent Board violated Section 5.4(a)(5) of the Act when it unilaterally made changes in the manner of the administering of a certain State-mandated test (HSPT) in September 1990 and thereafter refused to negotiate compensation with respect to an alleged increase in workload. The Hearing Examiner found that the Board in having made changes in 1990 was implementing educational policy which was non-negotiable under Woodstown-Pilesgrove and a host of Commission decisions.

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 which 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/or conclusions of law.

H.E. NO. 93-16

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

In the Matter of

SAYREVILLE BOARD OF EDUCATION,

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Appearances:

For the Respondent, Wilentz, Goldman & Spitzer, Attorneys
(Glen D. Savits, of counsel)

For the Charging Party, Balk, Oxfeld, Mandell & Cohen,
Attorneys (Arnold S. Cohen, of counsel)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION^{1/}

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on March 28, 1991, by the Sayreville Education Association ("Charging Party" or "Association") alleging that the Sayreville Board of Education ("Respondent" or "Board") has 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. ("Act"), in that teaching staff members are now required to give an early warning test for HSPT, as a result of which they must now perform ten additional duties which

^{1/} See companion decision, H.E. No. 93-13, 19 NJPER _____ (¶24032 1992).

were never previously performed; and as a further result, teaching staff members have averaged eight additional hours of work in the Middle School and 16 such hours in the High School; this workload increase occurred over a two to three-month period, ending about December 1, 1990, for which additional compensation is sought; all of which is alleged to be in violation of N.J.S.A. 34:13A-5.4(a)(5) of the Act.^{2/}

The Association had also filed an Unfair Practice Charge on March 6, 1991, as of Docket No. CO-H-91-237. Identical Complaints and Notices of Hearing were issued on May 13, 1991. By agreement, the Unfair Practice Charge in Docket No. CO-H-91-237 was heard first on November 25, 1991, in Newark, New Jersey. [1 Tr 4, 124, 125].

The matter of the instant Unfair Practice Charge is being determined separately because the issues raised were separately litigated in hearings on January 16 and March 9, 1992, in Newark, New Jersey. The parties were given an opportunity to examine witnesses and present relevant evidence.

Oral argument was waived as to the hearings on both Unfair Practice Charges (3 Tr 179). After several extensions, post-hearing briefs were filed by July 8, 1992.

Upon the entire record in Docket No. CO-H-91-262, I make the following:

^{2/} This subsection prohibits public employers, their representatives or agents from: "(5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

FINDINGS OF FACT

1. The Sayreville Board of Education is a public employer within the meaning of the Act, as amended.

2. The Sayreville Education Association is a public employee representative within the meaning of the same Act.

3. The Respondent commenced administering a High School Proficiency Test (HSPT) in the 1984-1985 school year. This resulted from the State switching from a minimum basic skills test (fifth or sixth grade level) to a more difficult test (HSPT) in the ninth grade, which became a prerequisite to graduation. The test was divided into three portions: reading, writing and mathematics. [2 Tr 10; 3 Tr 62, 63].

4. Because the HSPT had assumed such importance, beginning in 1984, the Board administered a pre-test to its ninth grade students and a pre-test and a post-test to its eighth grade students to prepare them for taking the HSPT. The results of the post-test were used for students who might require remedial instruction at grade nine. Seventh grade students were expected to keep an HSPT notebook and were given sample tests throughout the year. Eighth grade teachers were asked to review any weaknesses that they observed after administering the test. During the 1986-1987 school year, sixth graders were also included in the HSPT process since they were moved to the Middle School. [3 Tr 63-67].

5. In the 1990-1991 school year, many changes occurred in the administration of the HSPT. Fifth grade students were now

included since they had been moved to the Middle School. The State had at the same time decided to change the test so that it would be more indicative of the skills required of a high school graduate. A more difficult version of the HSPT was now to be given to students in the eleventh grade. In order to provide preparation for the taking of the HSPT, a new Early Warning Test was given to fifth through eighth grade students in the 1990-1991 school year. If a student failed he or she would be placed in a basic skills curriculum in order to prepare for passing the HSPT in the eleventh grade. [3 Tr 67-71].

6. To assist in the preparation of students for the changes made to the HSPT, the State devised a prototype called the Due Notice Test, which was administered to students in the ninth, tenth and eleventh grades. The Board also decided to distribute practice HSPT tests to the same ninth through eleventh grade students. [3 Tr 66, 70].

7. George A. Marotta, the Math Supervisor for the Middle School and the High School, testified without contradiction that on the first day of school in September 1990, he gave the various teachers a folder which contained a copy of the Early Warning Test to be given to grades five through eight. Also, included within the folder was a copy of the Due Notice Test for the students in grades nine through eleven. The teachers were told specifically why this was being done and that the administration wanted to familiarize them with the tests. It was intended that the teachers familiarize

the students with the new expectations, particularly, those in the Middle School, who would ultimately have to take the HSPT in the eleventh grade. [3 Tr 73, 74].

8. Marotta testified further that when the teachers were given their copies of the tests they were asked to make a classroom set and then administer the test at the rate of two or three questions per day, utilizing the "do now" method. Marotta volunteered that the test might be administered and spread out over three months to December 1st. He gave the teachers five or six different ways in which they might complete their task. [3 Tr 65, 74, 75].

9. Since the Middle School and High School tests were now more difficult for the students than past tests, the teachers in both the Middle and High Schools were given a copy of the answer sheet, on which they were to indicate the percentage of students who had a correct answer. The teachers were told to skip any items that they deemed inappropriate. The Middle School teachers were told not to cause any anxiety among the students. [3 Tr 76, 77].

10. The Middle School teachers were given a yellow answer sheet, in addition to the test. This sheet enabled the teacher to indicate with the symbol "Y" whether the teacher felt that he or she had covered the content, skill or concept of a particular question. The placing of a "Y" on the yellow answer sheet was not mandatory. Only about one-half of the Middle School teachers returned these sheets and no one was reprimanded. The teachers in the High School

were also given a separate answer sheet. These teachers were asked to make comments with respect to any one of the five clusters listed. [3 Tr 75, 76, 83-85; R-13].

11. None of the Middle School teachers directed any comments to their supervisors with respect to the administering of their tests between September 1st and December 1, 1990. Among the teachers at the High School, only one teacher wrote to supervision with respect to the validity of certain questions and that was Richard Brown, currently an NJEA UniServ Representative, infra. Marotta testified credibly that no High School teacher complained to him about the tests. [1 Tr 60; 3 Tr 79-81, 85, 86].

12. The testimony of Georgia B. Baumann, a Language Arts Supervisor, tracked that of Marotta with respect to the way in which the HSPT and the two other tests were administered by the teachers in the Middle School and the High School, beginning in September 1990. She confirmed that the teachers were asked to indicate the percentages of the questions answered correctly and incorrectly by the placing of a "Y" on a portion of the answer sheet. Teachers also copied their own class sets as in the past. While Middle School teachers were requested to complete the administration of the tests by December 1, 1990, the High School teachers were asked to do so by November 1st. [3 Tr 143-148, 150, 163, 164].

13. Under date of August 24, 1985, Baumann sent a memorandum to the Superintendent, Marie Parnell, which indicated that teachers in the seventh through ninth grades were then involved

in an "actual HSPT test..." (J-6, R-15; 2 Tr 106; 3 Tr 156-158). Exhibit R-12 established the same involvement of teachers in the HSPT during the spring of 1986, while Baumann testified that the tests given in 1990-1991 were no longer than those given in the prior years (3 Tr 159-161). Finally, Baumann testified without contradiction that none of the teachers ever complained when the tests were given in 1990 as involving "...too much work..." (3 Tr 161).

14. The Association filed a grievance on December 17, 1990, seeking compensation due to an increase in teachers' workload, which had resulted from their being required to administer the new HSPT, as follows:

1. Administer the test individually to get the answer key, except at the Middle School where they were given an answer key;
2. Make up the answer key;
3. Make up the answer sheet;
4. Make copies of the test for their classes;
5. Make copies of the answer sheet for their classes;
6. Correct the tests (determining correct/incorrect);
7. Tally each question as to the number of correct responses;
8. Convert the tally of each question as to the percent correct;
9. Review curriculum to detect areas not covered on the tests;
10. Submit all information to the Supervisor by approximately December 1, 1990.

[J-5A].

The Board answered "no violation" on December 21, 1990 (J-5B). Appeals by the Association to the Superintendent and the Board proved unavailing. The final answer of the Board was issued on April 10, 1991. [J-5C & 5D]. [3 Tr 86-88, 167, 168; 2 Tr 39-41, 96-100].

* * * *

15. Brown, currently an NJEA UniServ Representative, was a math teacher in the High School from September 1966 through August 1991. He has also served as a Grievance Chairman for the Association. [1 Tr 60; 2 Tr 37, 88].

16. Prior to the 1990-1991 school year Brown had taught computer classes, which did not require the administering of the HSPT. On the opening day of school in September 1990, teachers received test materials and were told to administer the test to all students between September and December 1, 1990. The teachers also learned the terms Early Warning Test and Due Notice Test at a September department meeting. [2 Tr 12, 13, 64; 15, 16, 19-22; CP-7, CP-8, CP-9].

17. Brown testified with respect to his claimed workload increase in the administering of the 1990-1991 HSPT during the 90 days ending December 1, 1990, as follows: (1) since no answer key was supplied, he had to determine the answers and eliminate "logical errors" in the 95 or 96 questions, all of which required his spending 10 to 11 hours to complete; and (2) he expended five school days administering the HSPT because it had been broken into five

parts, which were given within 43-minute periods. Additionally, 30 minutes per day were allotted to handing out and collecting the tests. However, Brown did not recall having complained to Marotta that administering the HSPT was extra work. [2 Tr 23-27, 81, 83, 84, 88, 89; CP-10A to CP-10E, 2 Tr 28-32].^{3/}

18. I cannot credit, in logic or in fact, the testimony of Brown that the teachers in the Middle School and the High School used 20% to 40% of their planning time on the HSPT for the three months between September and December 1, 1990 (2 Tr 62, 63). If Brown should be credited on this point, would not the faculties of the Middle School and the High School have been compelled to reduce their planning time significantly during this three-month period to the detriment of the preparation of lesson plans, the grading of tests, etc. (2 Tr 63)? There is nothing in the record, independent of Brown's testimony above, which suggests that such a dislocation occurred.

19. Carol Kadi, the President of the Association during the 1990-1991 school year, is neither an English teacher nor a math teacher and, therefore, has never administered the HSPT (3 Tr 29, 30, 141). As a result of teachers' complaints with respect to the

^{3/} Notwithstanding that I admitted into evidence Exhibits CP-11A to CP-11D during the course of Brown's testimony, I am according them no weight in this Decision since, upon reflection, I have accepted the position of the Respondent that their admission was prejudicial to the Respondent due to lack of opportunity to have cross-examined at least some of the teachers referred to in the several documents (2 Tr 33, 93, 94; and 37-39, 42-62).

HSPT in the fall of 1990, Kadi spoke briefly with Marotta and Baumann in October 1990, regarding test answers. Additionally, she spoke to Marotta about the answer key. [3 Tr 30-39]. Baumann testified without contradiction that Kadi never stated to her that the teachers were complaining about doing extra work (3 Tr 166).

ANALYSIS

The Respondent Board Did Not Violate Section 5.4(a)(5) Of The Act By The Method And Manner In Which It Required Its Middle School And High School Teachers To Administer The HSPT, Beginning In September 1990.

Any fair reading of the instant record, and the Findings of Fact which I have previously made (¶'s 3-19), can leave no doubt but that, pursuant to State mandates dating back to at least 1984, the Board was required to adapt to those mandates in administering the HSPT. It is true that by 1990-1991, the Board had exceeded the State's requirements with respect to the Early Warning Test and the Due Notice Test among the fifth, sixth and seventh grades and the tenth and eleventh grades, respectively. However, this is totally irrelevant to any issue before me since it clearly involves a non-negotiable matter of educational policy since, as our Supreme Court has stated:

...The nature of the terms and conditions of employment must be considered in relation to the extent of their interference with managerial prerogatives. A weighing or balancing must be made. When the dominant issue is an educational goal, there is no obligation to negotiate...^{4/}

4/ Bd. of Ed. of Woodstown-Pilesgrove Reg. School Dist. v. Woodstown-Pilesgrove Ed.Assn., 81 N.J. 582, 591 (1980).

Implicit in what I have stated above is that State mandates have been the root cause of the Board having had to change the method and manner by which it has administered the HSPT. The situation presented here is not unlike a case which I decided in 1982: Upper Freehold Reg. Bd. of Ed., H.E. No. 82-31, 8 NJPER 166 (¶13073 1982), adopted P.E.R.C. No. 82-105, 8 NJPER 311 (¶13139 1982). There the Association had challenged the unilateral action of the Board's Superintendent in removing from the teachers' personnel files copies of a document which he deemed inconsistent with the Board's policy on "Professional Improvement Plans (PIP's)." Since the Commissioner of Education had issued preemptive regulations regarding the PIP's, the policies and procedures governing them "...must be developed under the direction of the district's chief school administrator..." (8 NJPER at 312). Thus, the Superintendent's authority to review was non-negotiable and could not be usurped by an agreement between the Association and any subordinate administrator within the District.

I can perceive no significant distinction between the Commission's decision in Upper Freehold and that presented by the State's mandates in this case with respect to how, when and to whom the HSPT is to be administered in the Middle School and the High School. As previously noted, the Board's discretionary decision to expand the test to various grades not mandated by the State is but an instance of the Board's implementation of an educational policy decision, i.e., strengthening student preparation for taking the HSPT.

Turning now to the evidence adduced regarding the alleged workload increase, I have considered especially the following:

1. Marotta, on the first day of school in September 1990, gave the Middle School and High School teachers a folder containing the several tests and told them why this was being done and what was expected of them (Finding of Fact No. 7).

2. When the teachers were given their copies of the tests they were asked to make a classroom set and administer the test at the rate of two or three questions per day, which would be spread out over three months to December 1st (Finding of Fact No. 8).

3. The teachers were given a copy of the answer sheet and were instructed upon its use, including, in the case of the Middle School teachers, a yellow answer sheet upon which each teacher was to indicate by the symbol "Y" whether the teacher felt that he or she had covered the content, skill, or concept of a particular question (Findings of Fact Nos. 9 & 10).

4. Of all of the Middle School and High School teachers, only one teacher, Richard Brown, made a written response to the validity of certain questions. The credited testimony of Marotta was that no High School teacher complained to him about the test (Finding of Fact No. 11).^{5/}

5. The Association's grievance of December 17, 1990, seeking compensation for an increase in workload, listed ten items

^{5/} Kadi never stated to Baumann that the teachers were complaining about doing extra work (Finding of Fact No. 19).

of additional work that teachers were required in their administering of the new HSPT, which are set forth within the Findings of Fact made herein (Finding of Fact No. 14).

6. Association witness Brown was the only teacher who testified with any particularity as to the increase of his workload during the months of September to December 1990. He testified that since he was given no answer key, he spent 10 to 11 hours in determining answers and eliminating "logical errors" in some 95 or 96 questions and, additionally, Brown expended five school days in administering the HSPT. He did not recall having complained to Marotta that administering the HSPT was extra work. Finally, I have found that the testimony of Brown that teachers in the Middle School and High School used 20% to 40% of their planning time on the HSPT for the three months from September to December 1, 1990, should not be credited. [Findings of Fact Nos. 15-18].

7. Teachers have been involved in the administering of the HSPT since at least August 1985 and, continuing thereafter, through 1986 to 1990-1991 (Finding of Fact No. 13).

* * * *

Although I might have concluded from this record that the entire matter was de minimis, i.e., a very small quantum of workload increase over a period of 90 days, I rejected this approach. Rather, as I have previously indicated, the resolution lies in evaluating the proper relationship among educational policy, the managerial prerogatives of the Board and the claimed workload increase, all of which bear upon the administering of the HSPT.

The Board has cited the case of Freehold Boro Bd. of Ed., P.E.R.C. No. 82-38, 7 NJPER 604 (¶12269 1981) where the Commission dismissed a charge of unfair practices together with a Scope Petition. There the Board had decreed that all teachers must complete an Individual Instruction Plan (IIP) for all students assigned to any teacher in the areas of math and reading. The Board's contention was that this was a managerial prerogative and that State regulations created a complex scheme of minimum basic skills testing, the setting of goals and remediation for pupils in need of it. Thus, according to the Board, the IPP process was State mandated and therefore not negotiable. At this point the Charging Party acknowledged that no negotiations were required regarding the Board's decision to use the IPP process but, however, the workload question may be separated. Therefore, negotiations on workload are not foreclosed.

In dismissing the Association's Complaint in Freehold Boro, the Commission went so far as to assume "...some measure of increased workload..." but then quickly noted that there was no indication that any such increase could not be accommodated within the strictures of the preparation time and compensation provisions already in the parties' contract. Additionally, it was found that there was no increase in pupil contact time nor a lengthening of the workday. The only alleged increase in workload was the responsibility of the teachers to complete the State-mandated IPP's for each student.

Of note is Nutley Bd. of Ed., P.E.R.C. No. 80-33, 5 NJPER 401 (¶10208 1979), where the Association proposed that teachers inform their superiors about students in need of "attention" for possible child study referral. This was deemed non-negotiable since the Commissioner of Education had issued comprehensive regulations on the subject and, thus, the Association was intruding upon the dominion of educational policy.

In Madison Boro Bd. of Ed., P.E.R.C. No. 80-116, 6 NJPER 185 (¶11088 1980) the Association challenged the Board's action in unilaterally reducing guidance personnel and expanding certain programs, which allegedly increased the workload of guidance counselors. The Commission, relying upon Woodstown-Pilesgrove, supra, held that the dominant issue was the goal of the Board to provide a better guidance program "...thereby rendering the workload changes which resulted from that decision non-negotiable..." (6 NJPER at 186).

Finally, in Fairview Bd. of Ed., P.E.R.C. No. 81-19, 6 NJPER 395 (¶11204 1980) the Commission held that the Board's decision to require all tenured teachers to prepare lesson plans two weeks in advance, and to submit them biweekly instead of once a month, related predominantly to teacher evaluation and course preparation, i.e., matters of educational policy beyond the scope of negotiations.

Under the authorities previously cited, I cannot conclude other than that the claim of the Association herein that a negotiable workload increase occurred in late 1990 must be

rejected. Any increase in the quantum of work, which was attributable to the changes in the administering of the HSPT between September and December 1990, originated from changes mandated by the State. Thus, an obligation upon the Board to negotiate regarding HSPT could never have arisen under the above-cited authorities.^{6/}

I have made a "past practice" finding in Finding of Fact No. 13, supra. Without citing it again, suffice it to say that the administering of the HSPT in some form or other has been ongoing since 1985. However, past practice is not the basis upon which my decision is made. Rather, it is the overriding aspect of the implementation of educational policy.

* * * *

Based on the foregoing, I must recommend dismissal of the Complaint for the reasons above stated.

CONCLUSION OF LAW

The Respondent Board did not violate N.J.S.A. 34:13A-5.4(a)(5) when it unilaterally implemented the mandates of the State Board of Education with respect to the administering of the HSPT during the period September to December 1, 1990 since these actions fell within the province of non-negotiable educational policy decisions.

^{6/} I note here the several workload decisions cited by the Association and discussed at pp. 8, 9, 11-15 of its Brief. I have not discussed them for the reason that they are cases applicable to typical negotiable workload situations unlike the instant case.

RECOMMENDED ORDER

I recommend that the Commission ORDER that the Complaint be dismissed.

A handwritten signature in cursive script, appearing to read "Alan R. Howe", written above a horizontal line.

Alan R. Howe
Hearing Examiner

Dated: January 25, 1993
Trenton, New Jersey