

P.E.R.C. NO. 88-26

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MONTAGUE TOWNSHIP
BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-85-137-96

MONTAGUE TOWNSHIP
EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the Montague Township Board of Education violated the New Jersey Employer-Employee Relations Act when it unilaterally increased pupil contact time and decreased preparation time for the 1984-1985 school year. The Commission orders the Board to negotiate with the Montague Township Education Association over compensation for the lost preparation time.

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MONTAGUE TOWNSHIP
EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Morris, Downing & Sherred, Esqs.
(Craig U. Dana, of counsel)

For the Charging Party, New Jersey Education Association
(John W. Davis, UniServ Representative)

DECISION AND ORDER

On November 28, 1984, the Montague Township Education Association ("Association") filed an unfair practice charge against the Montague Township Board of Education ("Board"). The charge alleged that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsection 5.4(a)(5),^{1/} when it increased pupil contact time and decreased preparation time for the 1984-85 school year by lengthening teaching

^{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, or refusing to process grievances presented by the majority representative."

periods to 40 minutes, reducing physical education classes from five to three periods a week, and requiring teachers to cover their classes when art, music and physical education teachers were absent.

On March 4, 1985, the Director of Unfair Practices issued a Complaint and Notice of Hearing. The Board filed an Answer incorporating a statement of position which had asserted that it changed the schedules to increase academic time, decrease physical education time and equalize teachers' duty-free time and that it had a managerial prerogative and contractual right to do so.

On April 16, 1985, Hearing Examiner Judith Mollinger conducted a hearing. The parties examined witnesses, introduced exhibits and filed post-hearing briefs.

On March 18, 1986, after Hearing Examiner Mollinger left the Commission's employ, the case was transferred to Hearing Examiner Jonathon Roth to issue a report. N.J.A.C. 19:14-6.4. On June 19, 1987, he did so. H.E. No. 87-73, 13 NJPER 589 (¶18221 1987). He found that the unilateral changes violated subsection 5.4(a)(5) and ordered the Board to negotiate over compensation for lost preparation time and to post a notice of its violation and remedial action.

On July 7, 1987, the Association filed exceptions. It asks that the Commission require the employer to restore the schedules in effect before the 1984-85 school year and then negotiate over any proposed changes.

On August 24, 1987, after having received an extension of time, the Board filed exceptions. It asserts that it had a contractual right to change the schedules and that, in any event,

the matter is moot because a later collective negotiations agreement resolved the number of preparation periods.

We have reviewed the record. The findings of fact (pp. 3-6) are accurate. We adopt and incorporate them.

Under all the circumstances of this case, we agree with the Hearing Examiner that Bound Brook Bd. of Ed., P.E.R.C. No. 83-11, 8 NJPER 439 (¶13207 1982) is distinguishable; the Board violated its negotiations obligations, and that an order requiring negotiations over compensation for lost preparation time is proper. Since, however, the parties specified the number of preparation periods in a later contract, we will not order a return to the previous schedules or any other relief.

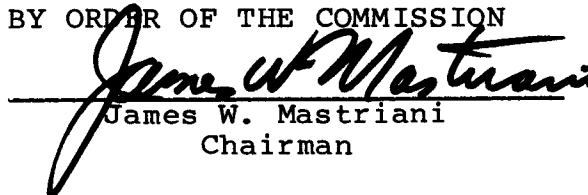
ORDER

The Public Employment Relations Commission orders the Montague Township Board of Education to:

1. Cease and desist from unilaterally changing the terms and conditions of employment, specifically pupil contact time, of employees in the negotiations unit represented by the Montague Township Education Association.

2. Negotiate with the Montague Township Education Association over compensation for teachers losing preparation time as a result of schedule changes during the 1984-85 school year.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Wenzler, Smith and Johnson voted in favor of this decision. None opposed. Commissioners Reid and Bertolino abstained.

DATED: Trenton, New Jersey
September 23, 1987
ISSUED: September 24, 1987

H.E. NO. 87-73

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

In the Matter of

MONTAGUE TP. BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-85-137-96

MONTAGUE TP. EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends that the Commission find that the Montague Township Board of Education violated § 5.4(a)(5) and derivatively (a)(1) of the Act when it unilaterally reduced the preparation time of elementary school teachers in the 1984-85 school year. The Hearing Examiner further recommends that that change was made pursuant to a change in educational policy and that the Board must negotiate compensation for the lost preparation time.

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. 87-73

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

In the Matter of

MONTAGUE TP. BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-85-137-96

MONTAGUE TP. EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Morris, Downing & Shered, Esqs.
(Craig U. Dana, of counsel)

For the Charging Party, New Jersey Education Association
(John W. Davis, UniServ Rep.)

HEARING EXAMINER'S RECOMMENDED REPORT AND DECISION

On November 28, 1984, the Montague Township Education Association ("Association") filed an unfair practice charge with the Public Employment Relations Commission ("Commission") alleging that the Montague Township Board of Education ("Board") violated subsection 5.4(a)(5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").^{1/} The Association alleged

^{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, or refusing to process grievances presented by the majority representative."

that in September 1984, the Board unilaterally increased the teachers pupil contact time by lengthening classroom teaching periods to 40 minutes, reducing physical education classes from 5 times per week to 3, which caused a loss of preparation time, and assigning unit members to cover classes when special teachers in art, music and physical education were absent. The Association alleged that the action of the Board was taken without negotiations and it seeks restoration of preparation time prior to September 1984. On December 21, 1984, the Board filed a statement of position denying that it violated any provisions of the Act. The Board asserted that it readjusted the daily schedule because students spent too much time in physical education classes and teachers were not having the same amount of duty-free time. It also asserted that the collective negotiations agreement executed by the Association and it permitted the change in schedules. On March 4, 1985, the Director of Unfair Practices issued a Complaint and Notice of Hearing. On March 21, 1985, the Board requested that its statement of position constitute its answer.

On April 16, 1985, Hearing Examiner Judith Mollinger conducted a hearing at which the parties examined witnesses, introduced exhibits and argued orally. The parties filed briefs by July 8, 1985. This case was transferred to me on March 18, 1986. Based upon the entire record I make the following:

FINDINGS OF FACT

The parties stipulated:

1. The Board is a public employer within the meaning of the Act.
2. The Association is a public employee representative within the meaning of the Act.
3. Exhibit J-2 reflects the schedule for teachers during the 1983-84 school year and shows both the length of class periods and that each class had five physical education classes.
4. Exhibit J-3 is the schedule for teachers during the 1984-85 school year and shows both the length of class periods and that each class has physical education three times per week.
5. Exhibits R-2 and R-3 are collective negotiations agreements executed by the Board and the Association covering the periods of July 1, 1978 through June 30, 1980 and July 1, 1980 through June 30, 1983, respectively.
6. Exhibit J-1 is the collective negotiations agreement executed by the Board and the Association covering the period July 1, 1983 through June 30, 1985. Article 7-D states: "The Board of Education will not unilaterally develop or implement any policy or decision that involves terms and conditions of this agreement. All such policies and decisions shall first be negotiated mutually with the Association and reduced to writing and signed by both parties." Article 8-E provides: "The length of the school day will be 6 hours and the teachers shall arrive 15 minutes before school opens and shall remain not less than 15 minutes after school closes." The

last paragraph of Article 1 provides:

This agreement represents and incorporates the entire agreement of the parties on all matters which were or could have been the subject of negotiations. During its term, it shall not be modified either in whole or in part, except by mutual agreement to reopen for negotiations, and it is agreed that neither party shall be required to reopen a negotiations or to negotiate any matter whether or not it is covered by this agreement.

Article 7A(5) provides that management rights include the Board's "authority to determine upon recommendation of the administrator and such others as are indicated in school board policy, class schedule, the duties, responsibilities and assignments of teachers and other employees with respect thereto."

7. During the 1983-84 school year at the Montague Township grammar school, classes commenced for pre-first grade through sixth grade at 9:05 a.m. and were completed at 2:55 p.m. There were nine periods ranging from 33 to 43 minutes and most periods were 38 minutes (J-2). The three lunch periods were 38, 38 and 33 minutes. In a typical week during the 1983-84 school term, all students had five periods of physical education, two periods of music and one period of art (T29). During these periods teachers had "unassigned" or preparation time and a lunch period (T19, T21). For example, Denise Chiriko is a third grade teacher at the elementary school and in a typical school week during the 1983-84 term, had eight unassigned duty-free periods (T29, T35).

8. On September 19, 1983, Charles Lusto was assigned Chief School Administrator. Upon his arrival, Lusto discovered that the schedule described in Finding of Fact Number 7 was in force. He

recommended changes in the schedule to provide greater emphasis on the academic curriculum and to equalize unassigned time allotment among unit employees. Lusto was concerned with an over-emphasis in physical education (T50, T53). Lusto maintained that his proposal to reduce the 190 weekly minutes of classroom time devoted to physical education comported with State law which required 150 minutes for physical education and health (T63). With respect to unassigned time, Respondent introduced R-1, a schedule which charts the number of unassigned periods each teacher in the elementary school grades pre-first through grade five had in any particular week, including the total number of unassigned minutes for each teacher. (The Board employed two sixth grade teachers and did not apply R-1 to them). Deducting a 38 minute period for lunch from those totals, the number of unassigned minutes per week for any teacher in 1983-84 ranged from 273 to 316 (R-1; T63, T74). In 1984-85, Lusto changed school schedules by reducing the total number of daily periods from nine to eight and making all periods 40 minutes long (T45, T67). For each level teacher, there were three periods of physical education, two periods of art and two periods of music in the course of a school week (T33, T59). By contrast in the 1983-84 school year, there were five periods of physical education (T45). During the 1984-85 term, each teacher had approximately seven unassigned periods per week (T59). The change in periods has

resulted in each teacher now having a total of 240 minutes of unassigned time per week (T74).^{2/}

Teacher Chiriko asserted that in the 1984-85 school term she had six unassigned periods (T35). She did explain, however, that the five physical education classes during the 1983-84 term were reduced to three the subsequent year (T45-T46).

ANALYSIS

Reductions in preparation time which cause corresponding increases in pupil contact time and requests for additional compensation given such reductions are mandatorily negotiable issues. Red Bank Bd. of Ed. v. Warrington, 138 N.J. Super 564 (App. Div. 1976); Kingwood Tp. Bd. of Ed., P.E.R.C. No. 86-85, 12 NJPER 102 (¶17039 1985); Kingwood Tp. Bd. of Ed., P.E.R.C. No. 85-94, 11 NJPER 219 (¶16084 1985). Compensation is negotiable even when increases in pupil contact time are caused by a change in educational policy. Newark Bd. of Ed., P.E.R.C. 79-38, 5 NJPER 41 (¶10026 1976, aff'd App. Div. Dkt. No. A-2060-78 (2/20/80). See also Board of Education of Woodstown-Pilesgrove v. Woodstown-

^{2/} On cross-examination, Lusto was asked about the reduction in unassigned time from 1983-84 term to the 1984-85 term:
 Question: So it went from a minimum amount of 315 minute whatever the lunches to 240 or 354 minus the lunch to 240?
 Answer: That's correct.
 Question: So there was a reduction of unassigned time?
 Answer: Yes, a reduction of free time, yes.
 Question: No question about that either?
 Answer: No. (T63).

Pilesgrove Reg. Education Association, 81 N.J. 582 (1980). Changes in schedules amounting to an increase in teacher workload triggers the negotiations obligation. Andover Reg. Bd. of Ed., P.E.R.C. No. 87-4, 12 NJPER 601 (¶17225 1986), appeal pending App. Div. Dkt. No. A-213-86T6 (5/26/87). As a corollary, whenever collective negotiations agreements or past practices permit the employer to make changes in hours or workloads, employee organizations waive their rights to negotiate matters that are otherwise mandatorily negotiable. Old Bridge Municipal Utility Authority, P.E.R.C. No. 84-116, 10 NJPER 261 (¶15126 1984); Randolph Tp. Bd. of Ed., P.E.R.C. No. 83-41, 8 NJPER 600 (¶13282 1982); Maywood Bd. of Ed., 168 N.J. Super 45 (1979), certif. den. 81 N.J. 292 (1979). Specifically, an employer meets its negotiations responsibilities with respect to increases in pupil contact time when it acts pursuant to its agreement. Sussex-Wantage Reg. Bd. of Ed., P.E.R.C. No. 86-57, 11 NJPER 611 (¶16247 1985); Bound Brook Bd. of Ed., P.E.R.C. No. 83-11, 8 NJPER 439 (¶13207 1982).

The Chief School Administrator testified that he effectively recommended changes in the 1984-85 school schedule to redress the "over-emphasis" on physical education of students and to give each teacher (except sixth grade teachers) the same number of preparation minutes. In 1983-84, teachers had 273 to 316 minutes of preparation time per week. In 1984-85, they each had 240 minutes or 6 periods of preparation time per week. I find that the Board unilaterally reduced the number of preparation periods or minutes per week for teachers based on educational policy.

The only issue is whether the increase in pupil contact time was made pursuant to the collective negotiations agreement executed by the Board and the Association. Sussex-Wantage. The Board relies principally upon Bound Brook Bd. of Ed. in its defense of the change.^{3/}

J-1 contains clauses setting the length of the school workday, stating that the agreement incorporates all matters which were or could have been the subject of negotiations and retaining in the Board the right to determine class schedule and duties, responsibilities and assignments of teachers. The management rights

^{3/} In Bound Brook Bd. of Ed., the Education Association alleged that the Bound Brook Board of Education violated subsections 5.4(a)(5) and derivatively (a)(1) of the Act when it unilaterally extended the time certain elementary school teachers had to spend in the classroom. The Commission dismissed the complaint because it found that the Board had a right, "by the contract's express terms to make the change." The Commission relied on clauses setting the length of the school workday, purporting to provide three preparation periods per week, retaining in the Board the right to manage the school district and direct employees except as specifically limited by the agreement, making non-arbitrable any matter not specifically covered by a contract provision and stating that the agreement incorporates the entire understanding of the parties on all matters which were or could have been negotiated (zipper clause). The Commission concluded that the contract established that the Board had the right to make five and ten minute adjustments in classroom time, "provided it did not trespass upon the contractual clauses setting the length of workday and the number of free periods within the workday." [Id. at 441] In a footnote, the Commission cautioned that the case was of "limited precedential value since it turns on a question of contractual interpretation which can only be resolved by consideration of the terms of the particular contract, how the terms interrelate with one another and the nature and extent of the particular charge."

clause further provides that the Board will not unilaterally implement any policy or decision involving the terms and conditions of "this agreement." Unlike the agreement in Bound Brook Bd. of Ed., J-1 contains no preparation period or time clause. In the absence of a contractual provision delineating the parties' rights and obligations concerning preparation time, the parties' past practice sets the governing terms and conditions of employment. See Wharton Bd. of Ed., P.E.R.C. No. 83-35, 8 NJPER 570 (¶13263 1982). The Board representative testified that the number of preparation minutes for pre-first through fifth grade teachers was reduced from 1983-84 to 1984-85. Accordingly, I conclude that the Board violated subsections 5.4(a)(5) and (a)(1) of the Act when it reduced the number of preparation minutes of the teachers in the 1984-85 term.

RECOMMENDED ORDER

I recommend that the Commission ORDER

A. That the Board cease from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by unilaterally substituting pupil contact time for preparation time for pre-first through fifth grade teachers at the elementary school without first negotiating the change with the Association.

2. Refusing to negotiate in good faith with the Association concerning terms and conditions of employment of its

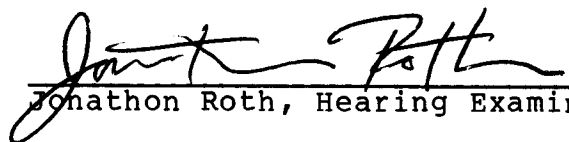
pre-first through fifth grade teachers, particularly by unilaterally substituting pupil contact time for preparation time for pre-first through fifth grade teachers at the elementary school without first negotiating the change with the Association.

B. That the Board take the following affirmative action:

1. Negotiate with the Montague Education Association compensation for the teachers preparation time the effected teachers lost.^{4/}

2. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice on forms to be provided by the Commission shall be posted immediately upon receipt thereof and, after being signed by the Respondent's authorized representative, shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

3. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply herewith.


Jonathon Roth, Hearing Examiner

DATED: June 19, 1987
Trenton, New Jersey

^{4/} The Association seeks a remedy in part requiring that the Board reinstate the unassigned time teachers had in the 1983-84 term. Since the Board's change in schedule was based upon educational policy, I do not find it appropriate to place the parties at status quo ante. Accordingly, compensation is the most appropriate remedy. See Maywood Bd. of Ed., P.E.R.C. No. 87-110, 13 NJPER 269 (¶18111 1987).

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

A. That the Board cease from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by unilaterally substituting pupil contact time for preparation time for pre-first through fifth grade teachers at the elementary school without first negotiating the change with the Association.

2. Refusing to negotiate in good faith with the Association concerning terms and conditions of employment of its pre-first through fifth grade teachers, particularly by unilaterally substituting pupil contact time for preparation time for pre-first through fifth grade teachers at the elementary school without first negotiating the change with the Association.

B. That the Board take the following affirmative action:

1. Negotiate with the Montague Education Association compensation for the teachers preparation time the effected teachers lost.

2. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice on forms to be provided by the Commission shall be posted immediately upon receipt thereof and, after being signed by the Respondent's authorized representative, shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

3. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply herewith.

Docket No. CO-85-137-96

MONTAGUE TP. 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 Public Employment Relations Commission, 495 West State St., CN 429, Trenton, NJ 08625 (609) 984-7372.