P.E.R.C. NO. 85-68

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CHERRY HILL BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-84-37-36

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission holds that the Cherry Hill Board of Education violated the New Jersey Employer-Employee Relations Act when it unilaterally reduced full-time cafeteria employees from six to five and one-half hours per day and also correspondingly reduced the salaries of their employees.

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COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO,

Charging Party.

Appearances:

For the Respondent, Davis & Reberkenny, Esqs. (Kenneth D. Roth, Of Counsel)

For the Charging Party, Reitman, Parsonnet, Maisel and Duggan, Esqs. (Bennet D. Zurofsky, Of Counsel)

DECISION AND ORDER

On August 9, 1983, the Communications Workers of America, AFL-CIO ("CWA") filed an unfair practice charge against Cherry Hill Board of Education ("Board") with the Public Employment Relations Commission. The charge alleged that the Board violated subsections 5.4(a)(1), (3), and (5)[1/] of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq ("Act"), when it unilaterally reduced the hours of work of several full-time cafeteria employees from six to five and one-half hours per

1/ These subsections prohibit public 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; (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act; and (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."

day and also correspondingly reduced the salaries of these employees.

On October 21, 1983, the Director of Unfair Practices issued a Complaint and Notice of Hearing. The Board then filed an Answer asserting that declining enrollment caused a shift from split to double school sessions, the consequent elimination of one lunch period, and a reduction in these employees' work hours. It further asserted that it had a contractual right and a managerial prerogative to make the changes it did.

On November 30, 1983, Hearing Examiner Arnold H. Zudick conducted a hearing. The parties entered stipulations of fact, examined witnesses, and introduced exhibits. Both parties submitted post-hearing briefs and reply briefs.

On March 29, 1984, the Hearing Examiner issued his report and recommended decision. H.E. No. 84-50, 10 NJPER 216 (¶15111 1984) (copy attached). He concluded that the Board violated subsections 5.4(a)(1) and (5) of the Act. He reasoned that while the Board had the managerial right to eliminate an unnecessary lunch period and determine the number of cafeteria workers it employs, it nevertheless had a duty, which it breached, to negotiate a change in hours and compensation. He recommended an order requiring the Board to restore the employees' six hour work day, pay the affected employees back pay for hours of work lost, negotiate over any future proposed changes in hours and salaries and post a notice of its violations and remedial actions taken. The Hearing Examiner rejected CWA's claim that the Board's actions violated subsection 5.4(a)(3).

On April 18, 1984, after receiving an extension of time, the Board filed exceptions. It asserts that: (1) the reductions were not mandatorily negotiable under the balancing tests of Local 195, IFPTE v. State, 88 N.J. 393, 403-404 (1982) ("Local 195"); (2) N.J.S.A. 18A:16-1 and 18A:28-9 preempted negotiations; (3) the contract authorized its actions; and (4) the Hearing Examiner improperly applied the parol evidence rule to exclude evidence of a rejected CWA negotiations proposal which would have guaranteed against any reduction in working hours.

On May 7, 1984, after receiving an extension of time, CWA filed a response supporting the Hearing Examiner's findings and conclusions insofar as he found that the reductions violated subsections 5.4(a)(1) and (5). It filed a cross-exception on the Hearing Examiner's rejection of its claim that the Board's actions also violated subsection 5.4(a)(3).[2/]

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 3-7) are accurate. We adopt and incorporate them here.

We first consider whether the Board violated subsection 5.4(a)(3) when it made the reductions. There is no evidence that anti-union animus motivated the reductions. Bridgewater Township v. Bridgewater Public Works Assn., 95 N.J. 235 (1984). Accordingly, we dismiss that portion of the Complaint alleging a violation of subsection 5.4(a)(3).

We next consider whether the Board had an obligation to

2/ The Board objected to CWA's cross-exception as being out-of-time. Given the extension of time CWA received, however, we hold the cross-exception was timely.

negotiate with CWA before it reduced employee work hours from six to five and one-half hours per day. We conclude it did.

Under Local 195, a subject is mandatorily negotiable if:

> ...(1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interefere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions.
> Id. at pp. 403-404.

Initially, applying Local 195's second test, we reject the Board's arguments that N.J.S.A. 18A:16-1 and N.J.S.A. 18A:28-9 preempted negotiations over its reductions. The former statute invests general discretion in the boards of education to take certain actions, but does not preclude a board from exercising this discretion through negotiated agreements fixing terms and conditions of employment. State v. State Supervisory Employees Ass'n, 78 N.J. 54, 84 (1978). The latter statute does not apply to nonteaching staff members such as cafeteria employees and in any event does not preempt negotiations over reductions in work year and work hours as opposed to reductions in staff. Piscataway Township Bd. of Ed. v. Piscataway Twp. Principals Ass'n, 164 N.J. Super. 98 (App. Div. 1978) ("Piscataway"); In re Hackettstown Bd. of Ed., P.E.R.C. No. 80-139, 6 NJPER 263 (¶11124 1980), aff'd App. Div. Docket No. 385-80T3 (1/8/82) pet. for certif. den. 89 N.J. 429 (3/16/82) ("Hackettstown").

Applying Local 195's first and third tests, we conclude, on balance, that these cafeteria workers have been intimately and directly affected by the reduction in their work hours and that adherence to the contractual guarantee the Board gave these workers would not significantly interfere with the determination of governmental policy.[3/] It has been well established since the first precedents interpreting the New Jersey Employer-Employee Relations Act that working hours are mandatorily negotiable. Englewood Bd. of Ed. v. Englewood Ed. Assn., 64 N.J. 1, 6-7 (1973); Galloway Tp. Bd. of Ed. v. Galloway Tp. Assn. of Ed. Secs., 78 N.J. 1 (1978); Bd. of Ed. of Woodstown-Pilesgrove v. Woodstown-Pilesgrove Ed. Assn., 81 N.J. 582, 589 (1980); Local 195 at 403; Piscataway; Hackettstown; In re Sayreville Bd. of Ed., P.E.R.C. No. 83-105, 9 NJPER 138 (¶14066 1983) ("Sayreville"); In re East Brunswick Bd. of Ed., P.E.R.C. No. 82-111, 8 NJPER 320 (¶13145 1982) ("East Brunswick"). Here, the parties negotiated an explicit contractual guarantee that "...[t]he regular work week for full-time employees shall be thirty (30) hours, consisting of five, six hour days." The parties negotiated over the proper amount of compensation for full-time employees with that guarantee in mind. Permitting a unilateral reduction in working hours would destroy the parties' explicit agreement concerning work hours and the

3/ We agree with the Hearing Examiner that CWA had obtained through negotiations a contractual guarantee that full-time cafeteria workers were entitled to work six hours each day. We further agree that the evidence the Board sought to submit concerning a withdrawn negotiations proposal was neither admissible under the parol evidence rule nor, in any event, of enough significance to displace the clear wording of the present contractual guarantee, especially since the withdrawn proposal was primarily intended to guarantee the work hours of part-time employees.

integrity of the negotiated relationship between working hours and salaries. Preservation of the parties' negotiated agreement, further, does not interfere with any governmental policy determination. We agree with the Hearing Examiner that the Board had a managerial prerogative to convert to single sessions and to eliminate a fifth lunch period. It could and did accomplish these goals without unilaterally cutting the work hours and compensation of its full-time cafeteria workers. The negotiated agreement does not impose an extra cost on the Board for exercising its managerial prerogative; it merely prevents the Board from unilaterally saving money it obligated itself to expend on employee compensation and employees were entitled to receive. As we held in Sayreville and East Brunswick, a public employer, short of the abolition of a position, must negotiate reductions in compensation and work year to the extent it is merely trying to save money otherwise expended on employee compensation. We further note that the Board is still entitled to the benefit of its negotiated bargain and may assign or not assign cafeteria workers whatever related employment duties it sees fit during their 30 hours of guaranteed work each week. Accordingly, we conclude that the Board violated subsections 5.4(a)(1) and (5) when it unilaterally reduced the working hours of its full-time cafeteria workers.

We next consider whether the Board had an obligation to negotiate with CWA before it reduced compensation. We hold it did and would so hold regardless of whether the unilateral reduction in hours in itself violated subsections 5.4(a)(1) and (5).

The precedents already cited establish that compensation is a classic example of a mandatorily negotiable term and condition of employment. The employer and CWA negotiated salaries for full-time cafeteria workers; these employees are entitled to receive these negotiated salaries.[4/] Further, even if we assume the Board could unilaterally decrease work hours, that right would not entitle it to presume that its employees had no interest in negotiating over any proposed reduction in compensation. The parties never negotiated over the proper compensation for a five and one-half hour work day for full-time employees. By contrast, the parties did negotiate over, and CWA undoubtedly exchanged something for, a guarantee of 30 hours of work per week and a salary based on that guarantee. The employees obviously had an interest in having their representative negotiate over compensation before they lost the benefit of the parties' bargain and before they lost work and money they justifiably expected to receive. Under these circumstances, the Board had an obligation to negotiate with CWA before it reduced employee compensation. Because the Board left this obligation completely unfulfilled, a return to the status quo ante is warranted. Galloway Tp. Bd. of Ed. v. Galloway Tp. Assn. of Ed. Secs., 78 N.J. 1 (1984); Maywood Bd. of Ed., P.E.R.C. No. 85-47,

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4/ We disagree with the Board's assertion that it is entitled to pro-rate these employees' compensation because they assertedly became part-time rather than full-time employees when their hours were reduced. We have found that this reduction was illegal and that these employees are entitled to have their work hours restored. In any event, these employees remain full-time employees since they are available during the full length of the cafeteria work day. Thus, whatever arrangements the parties made for paying part-time employees are inapplicable here.

No. 85-47, 10 NJPER ___ (¶_____ 1984).

ORDER

The Cherry Hill Board of Education is ordered to:

1. Cease and desist from unilaterally reducing the work hours and compensation of full-time cafeteria workers;

2. Negotiate in good faith before changing the work hours and compensation of full-time cafeteria workers;

3. Restore the status quo ante by returning affected cafeteria employees to a six-hour work day unless the parties have negotiated a different work day during successor contract negotiations or they have negotiated until impasse on that issue;[5/]

4. Pay the affected cafeteria employees the monetary differences, together with interest at 12% per annum, between the amounts they would have received had their negotiated work hours and compensation not been unilaterally reduced and the amounts they were in fact paid since these reductions in force took effect and up until such time, if any, as the parties may have negotiated a different work day during successor contract negotiations or they may have negotiated to impasse on that issue;

5. 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

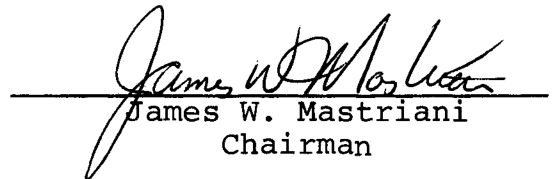
5/ The parties' collective negotiations agreement containing the guarantee of 30 hours of work per week expired in June 1984.

the Commission, shall be posted immediately upon receipt thereof, and, after being signed by the Respondent's authorized representative, shall be maintained for a period of at least sixty (60) consecutive days. Reasonable steps shall be taken by the Respondent to ensure that such notices are not altered, defaced or covered by other material.

6. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply with this order.

The Complaint is dismissed insofar as it alleges that the Board violated subsection 5.4(a)(3).

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Hipp, Graves, Suskin and Wenzler voted for this decision. Commissioner Newbaker abstained.

DATED: Trenton, New Jersey
December 19, 1984
ISSUED: December 20, 1984

"APPENDIX A"

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL cease and desist from unilaterally reducing the work hours and compensation of full-time cafeteria workers.

WE WILL negotiate in good faith before changing the work hours and compensation of full-time cafeteria workers.

WE WILL restore the status quo ante by returning affected cafeteria employees to a six-hour work day unless the parties have negotiated a different work day during successor contract negotiations or they have negotiated until impasse on that issue.

WE WILL pay the affected cafeteria employees the monetary differences, together with interest at 12% per annum, between the amounts they would have received had their negotiated work hours and compensation not been unilaterally reduced and the amounts they were in fact paid since these reductions in force took effect and up until such time, if any, as the parties may have negotiated a different work day during successor contract negotiations or they may have negotiated to impasse on that issue.

CHERRY HILL 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, 429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.

H. E. No. 84-50

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

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-and-

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COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends that the Commission find that the Cherry Hill Board of Education violated subsection 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act when it failed and refused to negotiate with the CWA regarding its decision to reduce the hours and salaries for certain full-time cafeteria employees. The Hearing Examiner recommended that the hours and salaries be returned to the *status quo ante*, and that a back pay award be issued. The Hearing Examiner recommended dismissal of the subsection 5.4(a)(3) allegation.

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.

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Appearances:

For the Respondent
Davis & Reberkenny, Esq.
(Kenneth D. Roth, Of Counsel)

For the Charging Party
Reitman, Parsonnet, Maisel and Duggan, Esqs.
(Bennet D. Zurofsky, Of Counsel)

HEARING EXAMINER'S RECOMMENDED REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on August 9, 1983, and amended on October 7, 1983, by the Communications Workers of America, AFL-CIO ("CWA" or "Charging Party") alleging that the Cherry Hill Board of Education ("Board") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). The CWA alleged that the Board unilaterally changed the hours and the pay of certain cafeteria workers it represents all of which was alleged to be in violation of subsections 34:13A-5.4(a)(1), (3) and (5) of the Act. 1/

1/ These subsections prohibit public 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; (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this Act; (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."

The CWA alleged in particular that the Board violated certain provisions of the parties' collective agreement, and the Act, when it unilaterally reduced the hours of work for certain employees from 6 hours per day to 5-1/2 hours per day, and when it unilaterally reduced the pay for those employees a proportionate amount. The Board denied committing any violation of the Act and argued that there was no legal obligation to negotiate with the union regarding the reduction, and that the parties' collective agreement did not designate which titles or employees would work six hours per day. Furthermore, the Board argued that it did discuss the reduction with the CWA and that it made an offer to resolve the matter which was rejected by the CWA.

It appearing that the allegations of the Unfair Practice Charge may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on October 21, 1983. The Answer denying any violation was the Board's position statement of August 17, 1983 (Exhibit C-2). A hearing was held in this matter on November 30, 1983 in Trenton, New Jersey, at which time the parties had the opportunity to examine and cross-examine witnesses, present relevant evidence and argue orally. Both parties submitted post-hearing briefs and reply briefs, the last of which was received on February 10, 1983.

An Unfair Practice Charge having been filed with the Commission, a question concerning alleged violations of the Act exists, and after hearing, and after consideration of the post-hearing briefs, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

Upon the entire record the Hearing Examiner makes the following:

Findings of Fact

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

2. The Communications Workers of America, AFL-CIO is an employee representative within the meaning of the Act and is subject to its provisions.

3. At the commencement of the hearing the parties stipulated certain facts. Additional facts were adduced through testimony and exhibits. The CWA has, since 1975, been the majority representative of a unit of cafeteria workers, cooks, and related titles employed by the Board. The Board and CWA are parties to a collective agreement, Exhibit J-1, effective through June 1984. That agreement has an hours clause in Article 8 as follows:

Article VIII

Hours of Work

> A. The regular work week for full-time employees shall be thirty (30) hours, consisting of five, six hour days. The regular work week for satellite kitchen workers shall be the equivalent of thirty (30) hours. Work days shall be exclusive of lunch periods which shall be optional with the employees and without pay. Part-time employees shall work such hours as required by their immediate supervisor.
>
> B. The work year shall consist of 182 work days.
>
> C. The work week for all employees shall be scheduled by their respective supervisors. The Board has the right to stagger the work day, however, the Board's representatives will consult with the Union's repre-

> sentatives and shall give a minimum of one week's notice before implementing staggered schedule. 2/

Exhibit A of J-1 provided for a salary increase for unit employees as follows:

> For the 1982-1983 school year, retroactive to September 1, 1982 and for the 1983-1984 school years, each employee employed as of June 30 of the previous school year will receive an increase in salary equivalent to $.35 per hour multiplied by the total number of hours the employee has contracted to work in the schol year. 3/

Finally, Article 5, Section F of J-1 provided for a layoff procedure in the event of a reduction in force.

4. By memorandum dated April 26, 1983 (Exhibit J-3), Marian Loew, the Board's Director of Food Services, advised CWA Local President Angelina McKee, that in accordance with Article 5 Sec. F of J-1, it was reducing the work hours of all six-hour employees in High Schools East and West to 5-1/2 hours per day effective September 1983. The Board asserted in J-3 that due to declining enrollment it was eliminating one 42 minute lunch period (a reduction of from five to four lunch periods) and that therefore the length of work time required of the affected employees was reduced. The affected employees (a total of 16) were listed in J-3. The record shows that J-3 was distributed to all unit employees in their pay envelopes on April 29, 1983. (Transcript "T" p. 5).

In response to J-3 the CWA, by letter dated May 2, 1983 addressed to Personnel Administrator William Laub (Exhibit J-4),

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2/ The evidence supports the plain language in Article 8 Section A that "full time" is defined as six hours a day 30 hours a week. (Transcript "T" pp. 45, 69, 109). Nothing in the contract, however, specifically listed which titles were full time and which were part time.

3/ Exhibit A of J-1 also shows that full-time employees were salaried rather than hourly employees, and part-time employees received a pro-rata amount of the full-time salary.

indicated that the reduction from six to 5-1/2 hours violated the contract, and it asked for a meeting to discuss the issue. Subsequently, on May 6, 1983 the Board unilaterally placed a notice (Exhibit J-5) in the employees' paychecks advising them of the reduction to 5-1/2 hours, and asking them how many hours they wished to work in 1983-84.

Thereafter, pursuant to the CWA's request, a meeting was held on May 12, 1983 to discuss the reduction in hours. The meeting was attended by Laub and Loew on behalf of the Board, and by McKee, and CWA representative Gloria Williams on behalf of the Charging Party. The evidence shows that the Board "discussed" the reason for the reduction in hours, and that it indicated that no layoffs would be necessary. The Board also asserted that it offered to transfer the two most senior employees to the two remaining six-hour positions, but that the CWA rejected that proposal (Exhibit J-7) and no agreement was reached. 4/ (T p. 7)

Subsequently, by letters dated June 6, 1983, both the CWA (Exhibit J-6), and the Board (Exhibit J-7) reviewed the results of the May 12 meeting. The CWA reiterated its position that the reduction violated the parties' contract. The Board in its letter argued that the contract did not require any employees to be employed for six hours a day.

4/ The evidence supports a finding that the May 12 meeting was only a "discussion" and was not a "negotiations" meeting within the meaning of the Act. In its Answer (Exhibit C-2), and in Laub's June 6 letter (Exhibit J-7) the Board clearly referred to the May 12 meeting as a discussion, and the Board presented no evidence that said meeting was in fact - or was intended to be - a negotiations session. In addition, the Board's assertion that there were two remaining six-hour positions was contained in its Answer, and in Laub's letter (J-7). However, there was no testimony to support those assertions and no evidence to show what those positions were or where they were.

Finally, Laub admitted that the CWA never agreed that the Board could unilaterally reduce hours. (T p. 111).

5. A few days after McKee received J-3 she approached Loew and asked her what her salary would be in 1983-84 as a result of the reduction in hours. Loew prepared Exhibit CP-1 which, including the contractual raise, showed an increase from the 1982-83 salary, and she give it to McKee but indicated that she was not certain of the calculations and would report back to her (T p. 50). The following day Loew advised McKee that the calculations on CP-1 were incorrect, and she gave McKee the new calculations (Exhibit CP-2) which, even including the raise provided for in Exhibit A of J-1, showed an overall reduction in her 1983-84 salary as compared to her 1982-83 salary. 5/ McKee has been receiving the 1983-84 salary as calculated on CP-2.

The record shows that there were no negotiations between the Board and the CWA regarding the establishment of the 1983-84 salaries, and that there was no agreement between the parties regarding the Board's computation for those salaries. (T p. 12).

6. The record shows that during the spring of each year the Board circulated forms to unit employees requesting them to indicate whether they would return to work in the Fall (Exhibit J-19), and occasionally requesting them to indicate whether they wanted

5/ Exhibit A of J-1 provided for a 35 cent per hour increase over the previous year's salary. In preparing CP-1 Loew took McKee's 1982-83 salary ($5824.00) and added $350.35 which was the number of hours at 5-1/2 hours per day (1001 hours per year) times 35 cents per hour which resulted in $6174.35 for the year. However, in calculating CP-2, Loew first decreased McKee's 1982-83 salary by determining the average hourly rate for that salary and multiplying it by 5-1/2 (instead of 6) hours to equal $5339. She then added the $350.35 for a final 1983-84 salary of $5689.35 which was $134.65 less than McKee's 1982-83 salary, and was $485 less than the 1983-84 salary calculated in CP-1.

to work six, five, or four hours per day. (Exhibits J-5 and J-17). Once those forms were completed the Board prepared individual employment contracts which listed the employee's position, hours of work, and salary for the next school year. (Exhibits J-2, J-9 through J-15). The employees were required to sign those contracts. The facts show that Angelina McKee signed her 1983 individual employment contract (Exhibit J-9) under protest. That contract indicated that she would work 5-1/2 hours per day.

7. The record further shows that several employees have had their hours reduced from six to five, or from five to four hours per day. In some cases the employee voluntarily requested the reduction in hours (T pp. 66, 81, 88), but in other cases Lowe unilaterally reduced the employees from six to five hours per day (T pp. 90-91). Nevertheless, Lowe testified that when she initiated the reduction in employee hours from six to five hours per day she did not notify the CWA (T p. 102), and there is no evidence that the affected employee(s) notified the CWA of the reduction.

8. During the 1977 contract negotiations the CWA sought the following clause guaranteeing the hours of employment.

> Guarantee employees will work no less than their present hours of employment. (Exhibit J-18 item 13).

The record shows that although the CWA introduced that clause to apply to all employees, the real purpose of the clause was to prevent part-time employees from having their hours reduced to the extent that it would affect their benefits. (T pp. 76-77). The Board did not agree to accept that clause and apparently it was dropped by the CWA. (T pp. 76-78). That clause did not subsequently appear in any future agreement.

Analysis

Having reviewed the entire record herein, including the briefs and reply briefs, the undersigned finds that the Board violated the Act by unilaterally reducing the hours and the salary of the affected employees. The Board violated the Act, not because it exercised its managerial right to eliminate one lunch period, but because it unilaterally changed and set new hours for the "full time" employees and then unilaterally determined the salary for those employees.

The Managerial Prerogative v. The Negotiable Subjects

It appears from the record that the Board unlawfully broadened the exercise of its managerial rights. The Board does have the managerial right to unilaterally eliminate unnecessary lunch periods, it does have the right to unilaterally determine how many "full time" and how many "part time" employees to employ, it does have the right to unilaterally layoff or reduce the force of employees ("RIF") which includes the elimination of a position, and it has the unilateral right to create new positions. What the Board does not have the right to do, certainly in the context of this case, is to unilaterally set (absent a contractual waiver) the number of hours full-time employees shall work, nor the amount of compensation for that work, but that is exactly what the Board did herein. The Board failed to distinguish between its right to eliminate one lunch period, and the CWA's right to negotiate over hours and compensation. The Board had the right to unilaterally implement the former, but was required to negotiate the latter.

The Board first argued that the impact of its decision to eliminate the lunch period was non-negotiable. The law in this area, however, clearly supports the CWA's position. First, pursuant to the balancing test established by the State Supreme Court in Woodstown-Pilesgrove Bd.Ed. v. Woodstown-Pilesgrove Ed. Assn., 81 N.J. 582 (1980), the dominant issue in this matter must be identified. If the issue primarily involves the implementation of educational policy, or where negotiations would significantly interfere with the determination of such a policy, then negotiations would not be appropriate. But, if there is no real educational or managerial policy issue at stake, then where the decision involves terms and conditions of employment it is mandatorily negotiable.

The facts of the instant case show quite clearly that the dominant concern of the Board is one of budget and compensation and not of educational policy. Negotiations over the affected employees' hours and salary would not prevent the Board from eliminating a lunch period.

The facts and decision in Woodstown-Pilesgrove, supra, are particularly relevant herein. The board in that case had a policy of releasing students and teachers early the day before Thanksgiving. When the board changed the calendar and elected to have the students attend a full school day before that holiday the association sought to arbitrate over the increased hours. The Court held that arbitration over additional compensation would not interfere with the managerial objective to require additional student instruction, and it thus found the dominant issue to involve budgetary considerations.

The Court said:

> There being no demonstration of a particularly significant educational purpose, and the budgetary consideration being the dominant element, it cannot be said that negotiation...of that matter significantly or substantially trenched upon the managerial prerogative of the Board.... 81 N.J. at 594.

The Court in Woodstown-Pilesgrove even recognized that negotiations (or aribitration) over additional compensation for the teachers might have an effect on the managerial decision to keep the schools open longer than the law required.

> Where the condition of employment is significantly tied to the relationship of the annual rate of pay to the number of days worked, then negotiation would be proper even though the cost may have a significant effect on a managerial decision to keep the schools open more than 180 days. 81 N.J. at 591.

In a subsequent decision, IFPTE, Local 195 v. State, 88 N.J. 393 (1982), the Supreme Court again upheld a union's right to negotiate over subjects:

> ...that intimately and directly affects the work and welfare of public employees unless such negotiated agreement would significantly interfere with the determination of governmental policy. 88 N.J. at 404.

That Court held that the union's right to negotiate that "the normal workweek shall consist of five consecutive workdays" did not "interfere with the determination of the hours or days during which a service will be operated. 88 N.J. at 412.

In applying those cases to the instant facts it becomes obvious that the CWA has the right to negotiate over any proposed changes in hours and compensation for the affected ameployees because such subjects intimately affect their work and welfare, and

because such negotiations will not prevent or interfere with the Board's decision to eliminate lunch periods. The Board herein apparently believed that since it eliminated a lunch period, it had a unilateral right to reduce hours and compensation. That it is not correct. The Court in Woodstown-Pilesgrove indicated that negotiations over such subjects are proper even though the cost may effect the managerial decision. See also Morris County and Morris County Park Commission v. Morris Council No. 6, N.J.C.S.A., App. Div. Docket No. A-795-82T2, January 12, 1984. [6/]

In addition to arguing that the impact of its decision to eliminate a lunch period was non-negotiable, the Board argued in its post-hearing brief that the reduction in hours was essentially a RIF in that it was the same as the Board eliminating all full-time positions in the cafeteria unit and replacing them with part-time positions. Finally, the Board argued in the alternative that it could have elected to terminate the employees in question and rehire those employees for a 5-1/2 hour position to achieve the same result. These arguments are equally without merit.

In its argument that it RIF'ed the affected employees the Board relied upon N.J.S.A. 18A:28-9 and 18A:16-1, and upon Article 5 Section F, the layoff or reduction in force article of

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6/ In Morris County, supra, the County unilaterally discontinued the practice of permitting employees to commute back and forth to work in County vehicles. The Council sought to negotiate over compensation. The Court held that compensation was negotiable and that negotiations over compensation would not affect the County's managerial right to control the use of vehicles.

Similarly, in the instant case, negotiations over hours and compensation will not affect the Board's managerial right to eliminate lunch periods.

the parties' collective agreement. 7/ However, the Board's reliance upon those statutes and Article 5 is misplaced, and its argument must fail. Neither those statutes nor Article 5 Section F are operable herein. Despite the Board's assertions, there was no layoff or reduction in force in this case. No employees were terminated. The only thing that did occur is that apparently all of the employees in the cafeteria unit had their work hours and salaries unilaterally reduced. That is not a reduction in force, and absent a real RIF, the Board was required to negotiate over work hours and salaries.

In Piscataway Twp. Bd.Ed. v. Piscataway Twp. Principals Assoc., 164 N.J. Super., 98 (App. Div. 1978), and in In re Sayreville Bd.Ed., P.E.R.C. No. 83-105, 9 NJPER 138 (¶14066 1983), the respective boards of education unilaterally reduced certain positions

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7/ The cited provisions of the statute are as follows:

N.J.S.A. 18A:16-1. Officers and employees in general

Each board of education, subject to the provisions of this title and of any other law, shall employ and may dismiss a secretary or a school business administrator to act as secretary and may employ and dismiss a superintendent of schools, a custodian of school moneys, when and as provided by section 18A:13-14 or 18A:17-31, and such principals, teachers, janitors and other officers and employees, as it shall determine, and fix and alter their compensation and the length of their terms of employment.

N.J.S.A. 18A:28-9. Reduction of force; power to reduce and reasons for reduction

Nothing in this title or any other law relating to tenure of service shall be held to limit the right of any board of education to reduce the number of teaching staff members, employed in the district whenever, in the judgment of the board, it is advisable to abolish any such positions for reasons of economy or because of reduction in the number of pupils or of change in the administrative or supervisory organization of the district or for other good cause upon compliance with the provisions of this article.

from twelve to ten months of work. The Court and the Commission, respectively, found violations of the Act and held that absent a RIF, the respective boards were required to negotiate with the respective labor organizations. In addition, both the Court and the Commission found that N.J.S.A. 18A:28-9 only applied where a RIF occurred.

The Court in Piscataway, supra, held:

> While cutting staff pursuant to N.J.S.A. 18A:28-9 would be permissible unilaterally without negotiation...there cannot be the slightest doubt that cutting the work year, with the consequence of reducing annual compensation of retained personnel who customarily, and under the existing contract, work the full year..., and without prior negotiation with the employees affected, is in violation of both the text and the spirit of the...Act. 164 N.J. Super. at 101.

In comparison to Piscataway, it is clear that all of the affected instant employees were "retained personnel," thus no RIF occurred and the Board should have negotiated over any change in their hours and salaries.

Moreover, the Board's argument that it could have terminated the affected employees and then re-employed them, or that it eliminated the full-time positions and created new part-time positions, cannot excuse its negotiations obligation herein. First, the Commission in Sayreville, supra, in addition to holding that 18A:28-9 was inapplicable in the absence of a RIF, also held:

> We similarly reject the Board's argument that it could have abolished the position...;it did not do so and thus that contention is irrelevant. 9 NJPER at 140.

Second, in In re Hackettstown Bd.Ed., P.E.R.C. No. 80-139, 6 NJPER 263 (¶11124 1980), the Commission considered the board's argument that pursuant to 18A:28-9 it abolished certain twelve and eleven

month positions and then re-employed the employees in ten-month positions, and found that it was a distinction without a difference and that the work year was still negotiable. The Board's assertion herein that it eliminated the full-time positions and created part-time positions, therefore, was nothing more than an unlawful circumvention of its negotiations obligation.

Finally, regarding the Board's desire to reduce hours and salaries herein to save money, the Commission in Sayreville held that:

> ...[T]o the extent the Board is merely trying to save money otherwise expended on employee compensation, it must, short of the abolition of a position, negotiate reductions in compensation and work year. 9 NJPER at 141.

See also In re East Brunswick Bd.Ed., P.E.R.C. No. 82-76, 8 NJPER 124 (¶13054 1982).

The Collective Agreement: Negotiations and Waiver

In addition to the above arguments advanced by the Board, the Board also made several arguments related to the parties' collective agreement, and arguments involving negotiations and waiver.

First, the Board asserted that it eliminated the full-time positions of the affected employees and employed those employees in 5-1/2 hour part-time positions. The Board apparently believed that since Article 8 Section A of J-1 provided that supervisors shall determine part-time hours, that it had the right to set the hours of the affected employees. Then, the Board apparently believed that because Exhibit A of J-1 provided that part-time employees shall receive a pro-rata share of the full-time salary,

that it could fix the salary of the affected employees by arriving at a pro-rata share.

The Board's argument and actions in that regard carry little weight herein. The Board failed to see the true nature of its actions. At the very least, the Board did not abolish or eliminate the full-time positions, rather, it unilaterally made the full-time positions 5-1/2 hours. Those positions, therefore, were not part time within the meaning of J-1, and thus neither the hours nor the salary for those positions could be unilaterally set by the Board. In the alternative, even if the Board abolished the six-hour full-time positions, it then created a 5-1/2 hour full-time position and it was still obligated to negotiate compensation with the CWA. In neither situation, however, were the employees filling a part-time position.

Evidence of the Board's intent in that regard can be derived from Exhibit J-3. In that document the Board stated:

> ...all contracts for six hour employees at High School East and West will be offered at 5-1/2 hours for the coming year.

The intent of that announcement was to reduce the full-time positions to 5-1/2 hours. The Board did not indicate that it was abolishing full-time positions or that it was creating a new part-time position. The Board's intent was to save money and it attempted to do that by unilaterally and unlawfully reducing the hours and salaries of full-time employees, and then arguing that they were part-time employees. That argument is without merit. 9/

9/ Although the Board asserted in its Answer (C-2) and in Laub's letter (J-7) that two six-hour positions existed somewhere in the bargaining unit, there was no other evidence to support that position, and no evidence to show whether those positions were the same as the affected employees' positions, where those positions were available, and whether those positions were filled. As (continued)

Second, the Board argued that since the contract did not specify which titles, or which or how many, if any, employees were six-hour employees, that it was not bound to keep any of the employees in six-hour positions. That argument is unacceptable. The past practice shows that all of the 16 affected people were six-hour employees in the 1982-83 school year, and many of them had been six-hour employees for several years. Since the Board unlawfully unilaterally reduced the full-time hours and would only offer 5-1/2 hours in the individual contracts, the employees who signed those agreements were in fact demonstrating their desire to be retained as full-time employees.

There was an existing practice that the affected employees were six-hour employees, and the Commission in Sayreville, supra, has held:

> ...an employer violates its duty to negotiate when it unilaterally alters an existing practice...such as the length of the work year or the amount of an employee's salary, even though that practice...is not specifically set forth in a contract. 9 NJPER at 140.

Furthermore, even though the parties' contract did not specifically list which titles or employees were six-hour employees, the past practice established that information, and there was nothing in the contract which authorized the changes made by the Board. The Commission in Sayreville established that point:

> ...even if the contract did not bar the instant changes, it does not provide a defense for the Board since it does not expressly and specifically authorize such changes. 9 NJPER at 140.

9/ (continued) evidenced by J-3, however, those two alleged six-hour positions were clearly not available in High Shools East and West, and the undersigned finds that even the existence of two such positions does not negate what the undersigned finds was the Board's intent which was to reduce the hours of the full-time positions rather than creating new part-time positions.

Finally, the Commission in Sayreville also established that regardless of whether an employee has been employed in a unit position for a long or short time,

> ...the Board cannot unilaterally determine what salary that employee will receive nor change how many months that employee will work. 9 NJPER at 140.

Third, the Board argued that the affected employees were hourly employees, that they signed individual employment contracts for 5-1/2 hours of work, that those individual contracts supersede the parties' collective agreement, and, therefore, since the employees agreed to 5-1/2 hours of work in those contracts no violation occurred. Those arguments are without merit. The undersigned first notes that Exhibit A of J-1 clearly indicates that full-time employees are salaried, not hourly employees. Second, the employees only signed the contracts for 5-1/2 hours because that was all the Board would allow, and if they failed to sign those contracts they may have waived their right to retain their jobs. Third, and most important, it is a well established labor law principle that, generally, terms and conditions of employment set forth in collective bargaining agreements between employers and labor organizations supersede different terms and conditions set forth in any individual employment contracts. 10/ Individuals do not have the right to alter the terms of a collective agreement by agreeing to hours or salaries that are either more or less than provided for in the collective agreement, and the employer certainly cannot rely on the

10/ See J.I. Case Company v. N.L.R.B., 321 U.S. 332, 14 LRRM 501 (1944); Order of Railroad Telegraphers v. Railway Express Agency, 321 U.S. 342, 14 LRRM 506 (1944); Mossberg v. Standard Oil Co. of N.J., 98 N.J. Super. 393, 67 LRRM 2386 (Law Div. 1967); and Quinlan v. Consolidated Edison Co. of New York, Inc., 237 N.Y.S. 2d 745, 52 LRRM 2625 (Sup. Ct. 1963).

individuals' actions to negate a collective agreement.

Here the issue is clear. The contract on its face provides that full-time employees shall work six hours. The Board cannot claim that because individuals signed contracts to work 5-1/2 hours (because they had no choice) that those individual contracts then supersede the collective agreement. The Board's duty here was to negotiate changes with the CWA, and not to accept changes that the employees were essentially compelled to agree upon. 11/

Fourth, the Board argued that because the CWA was unsuccessful in getting item 13 of J-18 included in the parties' contract in 1977 ("guarantee employees will work no less than their present hours of employment"), that the CWA, therefore, either negotiated or waived away the right to guarantee the employees hours of employment. However, that argument is without merit because it runs contrary to both the parol evidence rule and the rules of waiver. What happened in contract negotiations in 1977 is not the controlling factor in this case. The important factors

11/ The undersigned recognizes that several employees have in the past voluntarily agreed to a reduction in hours, but the CWA was not opposed to such voluntary reductions. The reduction of hours and salaries in the instant case, however, was involuntary, and opposed by the CWA, consequently, the individual contracts for 5-1/2 hours could not outweigh the collective agreement.

The undersigned is also aware that several employees have, in the past, had their work hours involuntarily reduced. The CWA has taken no action with respect to such reductions because for those employees whose hours were reduced from a part-time amount, the collective agreement permits the Board to make such reductions for part-time employees. For those employees who, in the past, were involuntarily reduced from a full-time position, the evidence shows that the Board never informed the CWA of such reductions, and there was no evidence that the CWA was otherwise aware of the reductions. Thus the evidence of the past practice herein is not inconsistent with the principle that the collective agreement supersedes the individual contracts.

herein are whether the hours clause in J-1 is clear on its face, and/or whether a clear waiver exists in the agreement. If the contract clause is clear on its face, then the parol evidence rule applies and outside evidence cannot be used to otherwise change the meaning of the clear language, but may only be used as an aid in interpreting that language. 12/

The undersigned finds that the hours clause in J-1 is clear on its face, the regular work week for full-time employees is six hours a day, five days a week. 13/ Since the undersigned has already found that, despite the Board's actions, the affected employees remained full-time employees, then they were entitled to work six hours a day unless those hours were renegotiated. Consequently, parol evidence of the CWA's decision to drop the "guarantee" language in 1977 cannot be used to change the otherwise clear language in the agreement.

The Appellate Division in Cherry Hill Bd.Ed. v. Cherry Hill Assoc. School Administrators, App. Div. Docket No. A-26-82T2, December 23, 1983, has very recently criticized this very Board for attempting, just as in the instant case, to use parol evidence of negotiations to prove its case. The Court held:

12/ See Casriel v. King, 2 N.J. 45 (1949); Atlantic Northern Airlines Inc. v. Schwimmer, 12 N.J. 293 (1953); In re Raritan Twp. M.U.A., P.E.R.C. No. 84-94, 10 NJPER 147 (¶15072 1984); In re Twp. of Vernon, P.E.R.C. No. 84-41, 9 NJPER 655 (¶14283 1983); In re Borough of Bergenfield, P.E.R.C. No. 82-1, 7 NJPER 431 (¶12191 1981).

13/ The undersigned notes that the first sentence of Art. 8 Section C, part of the hours clause, does state that "the workweek for all employees shall be scheduled by their respective supervisors." However, that sentence is not meant to negate the clear language in Art. 8 Section A that full-time employees shall work six hours a day. Rather, that language in Art. 8 Sec. C applies to the Board's right to schedule the time during the day that the full timers shall work their six hours of employment.

> Our courts have expressly disapproved attempts, such as the Board's here, to offer parol evidence of preliminary negotiations leading to the final agreement, where that evidence would tend to change the plain import of the ultimate language. Slip. op. at 5.

That language by the Court is precisely on point in the instant matter. The evidence of the 1977 negotiations cannot be used to negate the clear hours clause for full-time employees.

Notwithstanding the above finding, even if the hours clause was unclear and parol evidence was allowed, the undersigned finds that the "guarantee" language in J-18 was primarily intended to guarantee the hours for part-time employees because the contractual language regarding part timers gave the Board the right to set their hours. There was no such language concerning full-time employees.

In addition to the application of the parol evidence rule, the instant facts show that the CWA did not waive the negotiability of hours or salaries for full-time employees. The law on this subject is well established. Unless a contract clearly and unequivocally authorizes an employer to make particular changes in terms and conditions of employment, a waiver would not exist in the contract and an employer could not unilaterally make such changes. See In re State of New Jersey, P.E.R.C. No. 77-40, 3 NJPER 78 (1977); In re Deptford Bd.Ed., P.E.R.C. No. 81-78, 7 NJPER 35 (¶12015 1980), aff'd App. Div. Docket No. A-1818-80T6.

Of course, waivers could also occur during the negotiations process if a labor organization fails to demand negotiations on a particular item or agrees to a contract which does not contain a particular item. See In re Raritan Twp. M.U.A., supra; In re

Twp. of Vernon, supra; and, In re Borough of Bergenfield, supra. But there was no such waiver herein.

In reviewing the hours for full-time employees in the instant agreement (J-1) the undersigned has already found that that clause is clear on its face and mandates six hours of work per day for such employees. Proof that the hours language regarding full-time employees is not subject to unilateral change can also be derived by contrasting that language with the hours language for part-time employees. The part-time language in Art. 8 Section A clearly says that part-time employees shall work the hours required by their supervisor. That language is a clear and unequivocal waiver regarding part-time hours giving the Board the right to set such hours. If the Board had achieved such a waiver regarding the full-time hours the language for full-time employees would have been the same as for part-time employees, but no such language exists.

Furthermore, since the undersigned has already found that the parol evidence rule applies herein, evidence of negotiations cannot be relied upon to prove a waiver to negotiate over full-time hours or salaries.

In addition, the cases relied upon by the Board to establish a waiver are easily distinguishable from the instant matter. For example, the Board's reliance upon Township of Vernon, supra, was misplaced. The Board cited that case to establish that because the CWA did not get the "guarantee" clause into the 1977 agreement that therefore the hours of full-time employees could be unilaterally changed. But that case does not support that assertion, and in fact, Township of Vernon support's the undersigned's finding regarding the

application of parol evidence herein. In that case the union had failed in negotiations to include a longevity clause in the parties' agreement and then it ratified the agreement. The union contended that longevity had been agreed upon. However, the Commission found first, that, in application of the parol evidence rule, since the agreement on its face was clear and did not contain a longevity clause, that none had been agreed upon. Second, the Commission found that the union had indeed negotiated over longevity but dropped its demand for that item.

In the instant case the agreement clearly gives the hours and salaries for full-time employees and the evidence does not support a finding that the CWA ever negotiated to permit a unilateral change in hours. In fact, William Laub, the Board's Administrative Assistant for Personnel, admitted that the CWA never agreed that the Board had a right to unilaterally cut full-time hours.

Finally, the undersigned has already determined that the meeting on May 12 was not a negotiations session and therefore the CWA did not have the opportunity to negotiate over the change in hours and salaries for full-time employees.

Remedy

Had the Board not violated the Act and instead negotiated with the CWA in the Spring of 1983 over a change in hours and salaries for the affected employees, it would either have had a new agreement in place in the Fall of 1983, or it would have been required to maintain the status quo and employ the affected employees for six hours a day at the negotiated salary plus the negotiated

increase based upon a six-hour workday. 14/ Since it would be both unfair and detrimental to the CWA to require it to negotiate while the hours and salaries of the affected employees are still reduced, the CWA is entitled to an immediate return of the status quo and a make whole remedy to bring it back to where it would have been if the Board had not violated the Act, and where no agreement had been reached on a change in hours and salaries. Therefore, a back pay award is necessary to achieve a make whole remedy. Once that is accomplished the Board is then required to negotiate with the CWA over any future change in the hours or salaries for the affected "full time" employees.

Support for a back pay award in this case is found in both Galloway Twp. Bd.Ed. v. Gallway Twp. Assoc. of Educational Secretaries, 78 N.J. 1 (1978) ("Galloway I"); and Galloway Twp. Bd.Ed. v. Galloway Twp. Education Assoc., 78 N.J. 25 (1978) ("Galloway II"); as well as in Piscataway Twp. Bd.Ed., supra. The facts and holding in Galloway I are particularly relevant. In that case the board unilaterally reduced the hours of certain secretaries from seven to four hours per day. The Commission found a violation and ordered a restoration of the original hours and a back pay award. The State Supreme Court affirmed both the Commission's authority to issue back pay awards and affirmed the specific back pay award in that case. The Court in Galloway I relied upon decisions of the United States Supreme Court when it held:

> The Court [U.S. Supreme Court] has stressed that the primary purpose of a back pay order is to make the aggrieved employees whole:

14/ As the undersigned has already found, the mere fact that the affected employees would be employed for six hours a day would not prevent the Board from eliminating a lunch period.

> ...back pay is...a remedy designed to restore, so far as possible, the status quo that would have obtained but for the wrongful act. NLRB v. J.H. Ruther-Rex Mfg. Co., 396 U.S. 258, 265 (1969).

78 N.J. at 11.

Similarly, in Piscataway Twp., where the board unilaterally reduced the work year with a proportionate reduction in salary, the Court upheld the Commission's back pay award.

The result in this case must be the same. The CWA is entitled to have the employees' hours and salaries brought back to where they would have been but for the Board's unlawful Act, prior to requiring it to negotiate over any future change in hours.

Accordingly, based upon the entire record and the above analysis, the undersigned makes the following:

Conclusions of Law

1. The Cherry Hill Board of Education violated N.J.S.A. 34:13A-5.4(a)(5) and derivatively 5.4(a)(1), by unilaterally changing the hours of work and the salary of certain full-time employees represented by the CWA.

2. The Board did not violate N.J.S.A. 34:13A-5.4(a)(3) because there was no showing that the Board discriminated against the affected employees because of their exercise of protected activities.

Recommended order

The Hearing Examiner recommends that the Commission ORDER:

A. That the Board cease and desist from:

Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, and from failing and refusing to negotiate in good faith with

the CWA concerning terms and conditions of employment of CWA unit members, particularly, by failing and refusing to negotiate with the CWA about changing the hours and salaries for full-time cafeteria workers in High Schools East and West.

B. That the Board take the following affirmative action.

1. Immediately cease implementing the current hours and salaries for the affected employees and restore the _status quo ante_ by returning to a six-hour day for the affected employees with a salary computed on the basis of a six-hour day including the negotiated increase for 1983-84.

2. Pay the affected cafeteria employees whose hours and salaries were unilaterally reduced the monetary difference between the amounts they would have received had their hours not been unilaterally reduced and the amounts they were in fact paid since that reduction took effect, plus interest at 12%.

3. Forthwith engage in good faith negotiations with the CWA regarding any future changes in the hours and salaries for full-time cafeteria employees at High Schools East and West.

4. 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 Township's authorized representative shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken by the Township to insure that such notices are not altered, defaced or covered by other materials.

5. Notify the Chairman of the Commission within

twenty (20) days of receipt what steps the Township has taken to comply herewith.

C. That the Complaint be dismissed regarding the allegation that the Board violated §5.4(a)(3) of the Act.

Arnold H. Zudick
Hearing Examiner

Dated: March 29, 1984
Trenton, New Jersey

Appendix "A"

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

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

WE WILL NOT refuse or fail to negotiate in good faith with the CWA concerning terms and conditions of employment of CWA unit members, particularly, by failing and refusing to negotiate over the hours of work and salary for full-time cafeteria employees in High Schools East and West.

WE WILL forthwith restore the status quo ante by returning to six hours per day for full-time cafeteria employees and restore their salaries and increases based upon a six-hour workday.

WE WILL immediately pay the affected employees the difference between the salaries they actually received and the salaries they would have received had they continued to work six hours a day.

WE WILL forthwith enter into good faith negotiations with the CWA regarding any future change in the hours and salaries of full-time cafeteria employees.

CHERRY HILL 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 James Mastriani, Chairman, Public Employment Relations Commission, 429 E. State State Street, Trenton, New Jersey 08608 Telephone (609) 292-9830.