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

In the Matter of

MERCER COUNTY VOCATIONAL-TECHNICAL SCHOOLS BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-84-95-110

MERCER COUNTY VOCATIONAL-TECHNICAL SCHOOOLS ADMINISTRATORS ASSOCIATION,

Charging Party.

MERCER COUNTY AREA VOCATIONAL-TECHNICAL SCHOOLS BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-84-107-111

MERCER COUNTY VOCATIONAL-TECHNICAL SECRETARIAL NEGOTIATING UNIT,

Charging Party.

MERCER COUNTY VOCATIONAL-TECHNICAL SCHOOL DISTRICT BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-84-108-112

MERCER COUNTY VOCATIONAL-TECHNICAL COORDINATORS ASSOCIATION,

Charging Party.

MERCER COUNTY VOCATIONAL-TECHNICAL SCHOOLS BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-84-109-113

MERCER COUNTY VOCATIONAL-TECHNICAL SCHOOLS CUSTODIANS & PAINTER I,

Charging Party.

SYNOPSIS

A Commission Hearing Examiner denies a motion for permission to proffer parol evidence. In the instant matter, each of the four Charging Parties (employee organizations) entered into separate, three-year collective negotiations agreements with the Respondent Board of Education. The charges allege that the Board terminated the contracts and unilaterally set new terms and conditions of employment for unit employees. The Board asserts that it exercised

its rights under a mutually negotiated contract termination clause. The contractual clause was as follows: "This Agreement can be terminated by either party by giving sixty (60) days written notice of intent to terminate."

The Hearing Examiner noted that parol evidence is not admissible to vary the terms of a written agreement. Parol evidence may be admissible when the language of a contract is ambiguous. The courts have consistently excluded parol evidence concerning negotiations history where that evidence would tend to change the plain import of the contract language.

The Hearing Examiner determined that under all the circumstances presented herein, the contract provision was clear and unambiguous. Accordingly, Charging Parties' motion was denied.

H. E. No. 85-5

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Charging Party.

MERCER COUNTY AREA VOCATIONAL-TECHNICAL
SCHOOLS BOARD OF EDUCATION,

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-and- Docket No. CO-84-107-111

MERCER COUNTY VOCATIONAL-TECHNICAL
SECRETARIAL NEGOTIATING UNIT,

Charging Party.

MERCER COUNTY VOCATIONAL-TECHNICAL
SCHOOL DISTRICT BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-84-108-112

MERCER COUNTY VOCATIONAL-TECHNICAL
COORDINATORS ASSOCIATION,

Charging Party.

MERCER COUNTY VOCATIONAL-TECHNICAL
SCHOOLS BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-84-109-113

MERCER COUNTY VOCATIONAL-TECHNICAL
SCHOOLS CUSTODIANS & PAINTER I,

Charging Party.

Appearances:

For the Mercer County Vocational-Technical Schools
Board of Education
Baggitt, Mancino & Carroll, Esqs.
(David W. Carroll, Esq.)

For the Mercer County Vocational-Technical Schools
Administrators Association
Wayne J. Oppito, Counsel

For the Mercer County Vocational-Technical Secretarial Negotiating Unit; Mercer County Vocational-Technical Coordinators Association; Mercer County Vocational-Technical Schools Custodians & Painter I
Ruhlman, Butrym & Friedman, Esqs.
(Richard A. Friedman, Esq.)

For the Mercer County Board of School Estimate
Zauber, Szaferman, Lakind, Blumstein & Watter, Esqs.
(Barry D. Szaferman, Esq.)

HEARING EXAMINER'S DECISION ON
MOTION TO PROFFER PAROL EVIDENCE

On October 6 and 7, 1983, four Unfair Practice Charges were filed by the above-referred Associations with the Public Employment Relations Commission alleging that the Respondent Mercer County Vocational-Technical Schools Board of Education (the 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. (the Act). More specifically, it is alleged in the Charges that the Board violated subsections 5.4(a)(1) and (5) of the Act when it unilaterally reduced the salaries of employees covered by a collective negotiations agreement negotiated, agreed upon and ratified by the Board and the aforementioned Associations. 1/

It appearing to the Administrator of Unfair Practice Proceedings that the allegations of the Charges, if true, would constitute unfair practices within the meaning of the Act, a consolidated Complaint and Notice of Hearing was issued herein.

At a prehearing conference on April 27, 1984, the parties

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; (5) Refusing to negotiate in good faith concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

identified a threshold issue for determination prior to the commencement of hearing -- an evidentiary proffer to be made by the Associations concerning an article in the parties' collective negotiations agreements (Duration of Agreement -- 60 day notice of contract termination). Accordingly, a briefing schedule was agreed upon which would secure a determination concerning this issue prior to the hearing commencement.

On May 29, 1984, Charging Parties moved for permission to introduce parol evidence at the hearing concerning the meaning and applicability of the "notice of intent to terminate" clause in the parties' collective negotiations agreements. In their answer, Respondents opposed the evidentiary proffer and contended that said evidence was inadmissible under the parol evidence rule. The Charging Parties thereafter replied to Respondent's opposition to the proffer, arguing in favor of admissibility.

In their Charges, Charging Parties allege that in June 1982, the Associations and the Board entered into a collective negotiations agreement covering schools years 1982-83, 1983-84, and 1984-85. It is alleged that said agreements specified all terms and conditions of employment, including salaries, for the covered years.

Said contracts each included a clause which provided as follows: "This Agreement can be terminated by either party by giving sixty (60) days written notice of intent to terminate."

On June 21, 1983, the Respondent adopted a resolution terminating the agreements with Charging Parties. Thereupon, Respondent reduced the salaries being paid to unit employees from the

levels provided in the collective negotiations agreements. On August 16, 1983, the Respondent resolved to honor the negotiated agreements and continued to do so until September 16, 1983, when it again ceased adhering to the collective negotiations agreements and reduced the salaries of unit employees from the levels provided for in the collective negotiations agreements.

The Respondent admits having entered into collective negotiations agreements with the various Associations covering the period from 1982-85. The Respondent further admits that the contract contains a 60-day termination clause. The Respondent also admits having reduced the salaries of unit employees on July 1, 1983 to levels below those provided for in the parties' agreements. The Respondent admits that it subsequently paid the unit employees their respective salary amounts provided for in the agreements for the period July 1, 1983-September 16, 1983, after which it again reduced unit employees' salaries.

Respondent Board of Education maintains that its action terminating the various agreements herein was a valid exercise of a mutually negotiated contract termination clause. Respondent Board of School Estimate contends that it properly exercised its statutory authority under N.J.S.A. 18A:54-28 in acting to reduce the requested salary line item by the Vocational School Board in an amount it deemed appropriate and that said Vocational School Board acted properly in complying with the reduced appropriation made by the Board of School Estimate.

The Charging Parties maintain that the 60-day notice of termination provision in the parties' contract was intended to re-

flect the statutory notification requirement found in N.J.S.A. 18A: 28-8. The Charging Parties argue that it must first be determined what the written document means (Charging Parties' letter brief at at 2) -- and whether the proffered evidence is relevant to prove a meaning to which the language of the writing is reasonably susceptible; and in determining meaning the Hearing Examiner must admit all relevant evidence. The Charging Parties also argue that labor policy requires that a more flexible approach to interpretation be taken vis-a-vis collective negotiations agreements.

The Respondents counter that the contract language (the 60-day notice of contract termination) is clear on its face and that the provision refers not to individual employee agreements but to the collective negotiations agreement. The Respondents note that any parol agreement which is contradictory to the express terms of a subsequent written contract is ineffectual and evidence of it (the parol agreement) is inadmissible. In New Jersey, Respondents note this rule has long been applied to collective bargaining agreements. The Respondents contend that the intent of the parol evidence rule is to make for certainty and to bind parties to the written words as set forth in documents which they had an opportunity to review and sign. Citing Cherry Hill Board of Education and Cherry Hill Association of School Administrators, P.E.R.C. No. 83-13, 8 NJPER 444 (¶13209 1982), aff'd, App. Div. No. A-26-82T2, the Respondents note that where the Commission excluded parol evidence concerning negotiations history, the Court affirmed and said that New Jersey courts have consistently disapproved attempts to offer parol evidence of preliminary negotiations where that evidence would tend to change the plain import of the ultimate contract language.

In Harker v. McKissock, 12 N.J. 310 (1953), the Supreme Court considered the admissibility of parol evidence. The Court stated:

> The "parol evidence rule" is not a rule of evidence, but a rule of substantive law. It is not concerned with the probative trustworthiness of particular data, but rather with the source and the components of jural acts. In determining the constitutive parts of jural acts certain kinds of fact are legally ineffective in the substantive law. The embodiment of the terms of a jural act in a single memorial constitutes the integration of the act, i.e., its formation from negotiations and transactions in themselves without jural effect into "an integral documentary unity"; and it is a legal consequence of such integration that "all other utterances of the parties on that topic are legally immaterial for the purpose of determining what are the terms of their act."...The integration of a transaction is either voluntary or compulsory by law. The essence of voluntary integration is the intentional reduction of the act to a single memorial: and where such is the case the law deems the writing to be the sole and indisputable repository of the intention of the parties....
>
> This principle serves to bar parol variation of the intent expressed in the provision of the National constitution cited supra. The document is testimonially conclusive....The intention thus expressed is the law of the contract; and as in the case of all other contracts, and for the same reason, the contractual expression is proof against parol variation.
>
> Extrinsic evidence of a substantially different intention is not admissible to overcome and qualify the intrinsic force of the written words "all monies, books, and properties" constituting the embodiment of the jural act. Evidence of the circumstances attending the integration is admissible, not to vary or contradict the terms of the writing, but to secure light by which to measure its actual significance. The inquiry is essentially interpretive. So far as the evidence would show, not the meaning of the writing, but an intention wholly unexpressed in the memorial, it is irrelevant. (citations omitted). Harker v. McKissock, supra, 321.

While there are exceptions to the parol evidence rule, it is only under circumstances where contract language is ambiguous. In Allen v. Metropolitan Life Ins. Co., 83 N.J. Super. 223 (App. Div. 1964), the Court considered (and rejected) the applicability of the exception. The Court stated:

> ...When the language of a contract is ambiguous or otherwise doubtful, parol evidence is admissible, not to contradict, alter or vary the terms of the written agreement, but rather to explain the real intent of the parties. But where the language employed has an ordinary meaning or where the meaning is plain and unambiguous on its face, there is no ground for the application of the rule and parol or extrinsic evidence is inadmissible. (citations omitted) Allen v. Metropolitan Life Ins. Co., supra, 237.

Further in this regard, in Local 461 and District III, etc. v. Singer Co., 540 F. Supp. 442 (D.C. N.J., 1982), the court determined that the collective bargaining agreement was clear and unambiguous and therefore parol evidence could not be considered to aid in its interpretation.

Finally, in Jay-El Beverages, Inc. v. Miller Brewing Co., 461 F.2d 658 (3rd Cir. 1972), the Court considered the applicability of the parol evidence rule to preclude evidence concerning the meaning of a contract termination clause. The contract provision stated:

> As is the custom in our industry these sales to you are made on a shipment to shipment basis only. Either of us can terminate this relationship at any time without incurring liability to the other.

The court determined that the foregoing language was unequivocal and thus precluded the use of parol evidence for purposes of contract interpretation.

In the instant matter, the undersigned is called upon to

determine whether certain parol evidence should be admitted into evidence at the hearing in this matter for the purpose of "interpreting" or clarifying a specific contract provision. That contract provision is the third paragraph of the last article of the parties' contract. The article, entitled "Duration of Agreement," states as follows:

DURATION OF AGREEMENT

> A three year Agreement has been negotiated by the Board, (namely for School Year 1982/1983, 1983/1984, 1984/1985), and agreed to by all parties but it is understood that an individual Agreement with an employee cannot exceed a given school year in duration. The school year is from July 1, to June 30th.
>
> Increases of salary detailed in this Agreement shall be applicable to all employees hired prior to March 1, of the given school year. If employment takes place after said date, those employees shall not receive a salary adjustment.
>
> This Agreement can be terminated by either party by giving sixty (60) days written notice of intent to terminate.

The word "agreement" appears in said article at four places, as follows: (line 1, supra) "A three year Agreement," (line 4) "an individual Agreement," (line 7) "this Agreement" and (line 12) "This Agreement."

The Hearing Examiner notes that the provision concerning which the Charging Parties wish to adduce evidence occurs as the final sentence of each of four collective negotiations agreements, each one of which was negotiated and executed by the Board and the four respective employee representatives. The language of the provision is clear.

The undersigned finds that in the context of the instant unfair practice charge, the final Article of the parties' collective negotiations agreements -- more specifically: "This Agreement can

be terminated by either party by giving sixty (60) days written notice of intent to terminate" -- to be clear and unambiguous. Therefore, parol evidence is inadmissible to aid in the interpretation thereof.

In accordance with the foregoing discussion, Charging Parties' motion is hereby denied.

Charles A. Tadduni
Hearing Examiner

Dated: July 17, 1984
Trenton, New Jersey