

P.E.R.C. NO. 87-12

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LUMBERTON TOWNSHIP BOARD OF
EDUCATION,

Respondent,

-and

Docket No. CO-86-129-102

FLORENCE L. WALTHER TEACHERS
ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission holds, in agreement with a Commission Hearing Examiner and in the absence of exceptions, that the Lumberton Township Board of Education violated the New Jersey Employer-Employee Relations Act when it unilaterally changed the workload of teachers at the Junior High School by increasing their pupil contact time and decreasing their preparation time for the 1985-1986 school year.

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Docket No. CO-86-129-102

FLORENCE L. WALTHER TEACHERS
ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Parker, McCay & Criscuolo, Esqs.
(Ronald J. Ianoale, of Counsel)

For the Charging Party, Selikoff & Cohen, Esqs.
(Joel S. Selikoff, of Counsel)

DECISION AND ORDER

On November 25, 1985, the Florence L. Walther Teachers Association ("Association") filed an unfair practice charge against the Lumberton Township Board of Education ("Board"). The charge alleges the Board violated the New Jersey Employer-Employee Relations Act ("Act"), N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1) and (5),^{1/} when in September 1985, it unilaterally changed the workload of teachers at the Florence L. Walther school by reducing the number of preparation periods and increasing pupil contact time.

^{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, 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."

On January 29, 1986, a complaint and notice of hearing issued. On February 18, 1986, the Board filed its answer. It denied knowing that it unilaterally increased teachers' workload, but contended that it "has made every effort to meet and confer with the Charging Party about the alleged increase in workload."

On May 15 and 16, 1986, Hearing Examiner Alan R. Howe conducted hearings. The parties examined witnesses, introduced exhibits and argued orally. They waived filing post-hearing briefs.

On May 23, 1986, the Hearing Examiner issued his report and recommended decision. H.E. No. 86-59, 12 NJPER ____ (¶ ____ 1986). He found that the Board violated the Act when it unilaterally changed the workload of teachers at the Junior High School by increasing their pupil contact time and decreasing their preparation time for the 1985-1986 school year. He recommended an order restoring the status quo that existed prior to the change and that the Board negotiate with the Association before changing the teachers' workload.

The Hearing Examiner served his report on the parties and informed them that exceptions, if any, were due on or before June 6, 1986. Neither party filed exceptions or requested an extension of time.

I have reviewed the record. The Hearing Examiner's findings of fact (pp. 3-6) are accurate and are adopted and incorporated herein. Under all the circumstances of this case, and in the absence of exceptions, I also adopt his conclusions of law and remedy acting under authority delegated to the Chairman by the full Commission.

ORDER

The Lumberton Township Board of Education is ordered to:

A. Cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly, by unilaterally increasing the workload of five teachers in the Junior High School for the 1985-86 school year.

2. Refusing to negotiate in good faith with the said Association concerning the terms and conditions of employment of teachers represented by the Association, particularly, by unilaterally increasing the workload of five teachers in the Junior High School for the 1985-86 school year.

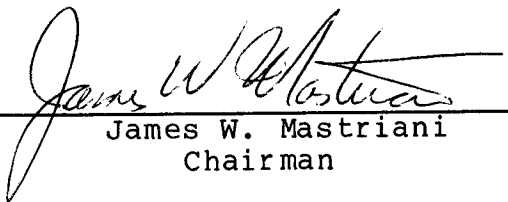
B. Take the following affirmative action:

1. Within sixty (60) days hereafter, restore the status quo ante by adjusting the instructional and supervisory contact time and preparation time of Judy Bunting, Roger Selah, Betsey Cella, Regina Collinson and Patrick Dunigan to that which was in effect in the 1984-85 school year, and continue to negotiate in good faith with the Association regarding any proposed changes in pupil contact time, i.e., workload, for the aforesaid teachers at the Junior High School prior to implementation.

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.


James W. Mastriani
Chairman

DATED: Trenton, New Jersey
August 8, 1986

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 interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly, by unilaterally increasing the workload of five teachers in the Junior High School for the 1985-86 school year.

WE WILL cease and desist from refusing to negotiate in good faith with the said Association concerning the terms and conditions of employment of teachers represented by the Association, particularly, by unilaterally increasing the workload of five teachers in the Junior High School for the 1985-86 school year.

WE WILL, within sixty (60) days hereafter, restore the status quo ante by adjusting the instructional and supervisory contact time and preparation time of Judy Bunting, Roger Selah, Betsey Cella, Regina Collinson and Patrick Dunigan to that which was in effect in the 1984-85 school year, and continue to negotiate in good faith with the Association regarding any proposed changes in pupil contact time, i.e., workload, for the aforesaid teachers at the Junior High School prior to implementation.

LUMBERTON TOWNSHIP 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 Street, Trenton, NJ 08608, (609) 292-9830.

H.E. NO. 86-59

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

In the Matter of

LUMBERTON TOWNSHIP BOARD OF
EDUCATION,

Respondent,

-and-

Docket No. CO-86-129-102

FLORENCE L. WALTHER TEACHERS
ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent Board violated §§5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act when, commencing with the 1985-86 school year, it unilaterally increased the workload of five of its teachers in the Junior High School. The Hearing Examiner applied a series of Commission decisions holding that such a unilateral change is mandatorily negotiable: Buena Regional School District, P.E.R.C. No. 86-3, 11 NJPER 444 (¶16154 1985). By way of remedy, the Hearing Examiner ordered the restoration of the status quo ante within sixty days and good faith negotiations before any further changes in workload were made as to the affected teachers.

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. 86-59

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

In the Matter of

LUMBERTON TOWNSHIP BOARD OF
EDUCATION,

Respondent,

- and -

Docket No. CO-86-129-102

FLORENCE L. WALTHER TEACHERS
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Appearances:

For the Respondent
Parker, McCay & Criscuolo, Esqs.
(Ronald J. Ianoale, Esq.)

For the Charging Party
Selikoff & Cohen, Esqs.
(Joel S. Selikoff, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on November 25, 1985 by the Florence L. Walther Teachers Association (hereinafter the "Charging Party" or the "Association") alleging that the Lumberton Township Board of Education (hereinafter the "Respondent" or the "Board") has engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (hereinafter the "Act"), in that in September 1985, the Board unilaterally implemented a change in

workload by reducing the number of preparation periods approximately 25% and correspondingly increasing pupil contact time for certain Florence L. Walther teachers, all of which constituted unilateral alterations of mandatorily negotiable terms and conditions of employment in violation of N.J.S.A. 34:13A-5.4(a)(1) and (5) of the of the Act.^{1/}

It appearing that the allegations of the Unfair Practice Charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on January 29, 1986. Pursuant to the Complaint and Notice of Hearing, hearings were held on May 15 and May 16, 1986, in Trenton, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Both parties argued orally and waived the filing of post-hearing briefs on May 16, 1986.

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

^{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; 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."

Upon the entire record, the Hearing Examiner makes the following:

FINDINGS OF FACT

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

2. The Florence L. Walther Teachers Association is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

3. During the 1983-84 school year there were eight (8) classroom periods per day, including a lunch period, and eight sections of students.

4. In the 1984-85 school year the Board, with the consent of the Association, increased the number of periods per day from eight (8) to nine (9) and, as a result, there were some increases and some decreases in teacher workloads at the Junior High School. The relative changes in pupil contact time^{2/} among the eight teachers in the Junior High School, as between the 1983-84 and 1984-85 school years, is set forth in Exhibit R-1. The number of student sections in the 1984-85 school year decreased from eight (8) to seven (7).

5. Beginning in September 1985, the following teachers at the Junior High School had an increase in workload: Judy Bunting; Roger Selah; Betsey Cella; Regina Collinson; and Patrick Dunigan.

^{2/} Pupil contact time consists of instruction time and supervisory time such as study hall.

The 9-period school day continued in the 1985-86 school year and the increases in both teaching minutes and pupil contact time is as set forth in Exhibit R-1. Also, the number of student sections during 1985-86 increased from seven (7) to eight (8).

6. There are a total of eight teachers at the Junior High School for the 1985-86 school year.

7. On or about January 29, 1986, the Board reduced the workloads of Bunting, Selah, Cella, Collinson and Dunigan from the workload level that existed at the beginning of September 1985. Thus, for example, the pupil contact time for Bunting was decreased from 1360 minutes per week to 1320 minutes per week because of an additional preparation period having been assigned (R-1). The Superintendent, Cornelius T. McGlynn, testified without contradiction that the reason for this reduction in workload among the five teachers, supra, was as a result of a Commission exploratory conference on the instant Unfair Practice Charge where he agreed to make more preparation time available, the result of which was that each of the five teachers received an additional preparation period.^{3/}

^{3/} The Superintendent admitted that there had been no negotiations by the Board with the Association before the increases in workload, which occurred in September 1985 and, further, that there were no negotiations between the parties before the reduction of workload, supra, in January 1986. Thus, there is no dispute between the parties that the changes in workload, either by way of increase or decrease, occurred without negotiations between the parties.

8. The Association introduced in evidence 18 exhibits (CP-2 through CP-19) which substantiate the changes in workload of the five affected teachers in the Junior High School, supra, between the 1983-84 school year and the 1985-86 school year. For example, Bunting's instructional contact time increased from 67.5% to 80% between the 1984-85 school year and the 1985-86 school year. (See CP-2 and CP-14). With the changes that were made by the Board in or around January 29, 1986, Bunting's instructional time remained the same at 80% but her supervisory time was reduced from 5% to 2.5% and her preparation time was increased from 15% to 17.5% (CP-2, CP-3 & CP-14).^{4/}

9. On September 25, 1985, the President of the Association, Dean A. Osmond, sent a letter to the Board demanding negotiations regarding the unilateral increase in teacher workload for the 1985-86 school year (CP-1). No negotiations took place until after the filing of the instant Unfair Practice Charge on November 25, 1985. The Superintendent attempted to initiate a meeting in the latter part of November 1985 but this did not come to pass. Commencing with January 16, 1986, the parties have had three negotiations meetings on the workload issue, namely, January 16,

^{4/} The Association's workload exhibits (CP-2 through CP-19) indicate clearly that, notwithstanding the downward adjustments made by the Board in January 1986, the workload of the five affected teachers in the Junior High School remains increased from that of the 1984-85 school year, which is also confirmed by the Board's exhibit (R-1).

April 14 and April 29, 1986. Although testimony was elicited as to the negotiating positions of the parties as of the last meeting on April 29th, it serves no purpose herein to delineate their negotiating positions as neither party is seeking a monetary remedy in this proceeding.

10. The current collective negotiations agreement between the parties expires June 30, 1986, and they are engaged in negotiations for a successor agreement.

DISCUSSION AND ANALYSIS

The Respondent Board Violated §§5.4 (a)(1) And (5) Of The Act When It Unilaterally, And Without Negotiations With The Association, Increased The Workload Of Five Teachers At The Junior High School For The 1985-86 School Year

As previously found, the Association has demonstrated, principally by Exhibits CP-2 through CP-19, in conjunction with R-1, that there was a unilaterally imposed increase in workload for the 1985-86 school year as opposed to that of the 1984-85 school year. The Superintendent has conceded that the changes made for the 1985-86 school year, both in September 1985 and January 1986, were made unilaterally and without negotiations. The good faith of the Board in making these changes does not vitiate a finding that it violated the Act: City of Orange, P.E.R.C. No. 79-10, 4 NJPER 420, 421 (1978).

The Commission has held in a legion of decisions that an increase in pupil contact time, either instructional or supervisory, constitutes a workload increase, which is mandatorily negotiable:

Byram Twp. Bd. Ed., P.E.R.C. No. 76-27, 2 NJPER 143 (1976), aff'd 152 N.J.Super. 12 (App. Div. 1977); Newark Bd. Ed., P.E.R.C. No. 79-38, 5 NJPER 41 (¶10026 1979), aff'd App. Div. Docket No. A-2060-78 (2/20/80); City of Bayonne Bd. Ed., P.E.R.C. No. 80-58, 5 NJPER 499 (¶10255 1979) aff'd App. Div. Docket No. A-954-79 (1980), pet. for certif. den. 87 N.J. 310 (1981); Dover Bd. Ed., P.E.R.C. No. 81-110, 7 NJPER 161 (¶12071 1981) aff'd App. Div. Docket No. A-3380-80T2 (3/16/82); Buena Reg. Bd. Ed., P.E.R.C. No. 79-63, 5 NJPER 123 (¶10072 1979); Bridgewater-Raritan Reg. Bd. Ed., P.E.R.C. No. 83-102, 9 NJPER 104 (¶14057 1983); Buena Reg. School District, P.E.R.C. No. 86-3, 11 NJPER 444 (¶16154 1985).

In the most recent Buena case the Commission, citing §5.3 of the Act on proposed new rules and modifications of existing rules, found that the Board in that case had indisputably increased the workload of certain teachers by requiring them to teach a sixth period each day as opposed to a prior practice of five periods per day. The Commission noted that the Board there did not negotiate before changing this term and condition of employment and, accordingly, the Board violated §5.4(a)(5) of the Act. Finally, the Commission concluded that the Board had neither a managerial prerogative nor a contractual right to make the changes without negotiations. By way of remedy, the Commission in Buena ordered the restoration of the workload level to that of the prior year and

negotiations in good faith over any future changes.^{5/}

The Hearing Examiner intends to recommend hereinafter a restoration of the status quo and the continuation of good faith negotiations on the workload issue. The Board's present posture in negotiations would appear to indicate that it is manifesting good faith but, as noted previously, good faith is no defense to a finding of a violation of §5.4(a)(5) of the Act.

In ordering restoration of the status quo ante, the Hearing Examiner is mindful of the contentions of the parties regarding the base year as to which the status quo should be restored. The Hearing Examiner rejects the Board's contention that it should be the 1983-84 school year since, logically analyzed, the increase in 1985-86 occurred in relationship to 1984-85. Both of these years involved 9-period days as opposed to the 8-period day in 1983-84.^{6/}

For all of the foregoing reasons, the Hearing Examiner finds and concludes that the Respondent Board violated §§5.4(a)(1) and (5) of the Act by the unilateral increase in the workloads of the five affected teachers in the Junior High School, supra, for the 1985-86 school year, which has not been rectified totally by the changes made by the Board in or around January 29, 1986.

^{5/} In Buena the Commission also ordered a monetary remedy which is not pertinent to the instant case.

^{6/} The Hearing Examiner concludes that the respective number of sections of students in a given year is not probative on the issue of base year.

* * * *

Upon the foregoing, and upon the entire record in this case, the Hearing Examiner makes the following:

CONCLUSION OF LAW

The Respondent Board violated N.J.S.A. 34:13A-5.4(a)(5), and derivatively 5.4(a)(1), when it unilaterally and without negotiations with the Association increased the workload of five of its teachers in the Junior High School for the 1985-86 school year.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER:

A. That the Respondent Board cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly, by unilaterally increasing the workload of five teachers in the Junior High School for the 1985-86 school year.

2. Refusing to negotiate in good faith with the said Association concerning the terms and conditions of employment of teachers represented by the Association, particularly, by unilaterally increasing the workload of five teachers in the Junior High School for the 1985-86 school year.

B. That the Respondent Board take the following affirmative action:

1. Within sixty (60) days hereafter, restore the status quo ante by adjusting the instructional and supervisory contact time of Judy Bunting, Roger Selah, Betsey Cella, Regina

Collinson and Patrick Dunigan to that which was in effect in the 1984-85 school year, and continue to negotiate in good faith with the Association regarding any proposed changes in pupil contact time, i.e., workload, for the aforesaid teachers at the Junior High School prior to implementation.

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.



Alan R. Howe
Hearing Examiner

Dated: May 23, 1986
Trenton, New Jersey

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, particularly, by unilaterally increasing the workload of five teachers in the Junior High School for the 1985-86 school year.

WE WILL NOT refuse to negotiate in good faith with the said Association concerning terms and conditions of employment of teachers represented by the Association, particularly, by unilaterally increasing the workload of five teachers in the Junior High School for the 1985-86 school year.

WE WILL within sixty (60) days hereafter, restore the status quo ante by adjusting the instructional and supervisory contact time of Judy Bunting, Roger Selah, Betsey Cella, Regina Collinson and Patrick Dunigan to that which was in effect in the 1984-85 school year, and continue to negotiate in good faith with the Association regarding any proposed changes in pupil contact time, i.e., workload, for the aforesaid teachers at the Junior High School prior to implementation.

LUMBERTON TOWNSHIP 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, 495 W. State Street, Trenton, New Jersey 08618, Telephone (609) 292-9830