

P.E.R.C. NO. 97-25

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LENAPE VALLEY REGIONAL
BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-92-358

LENAPE VALLEY REGIONAL
SUPERVISORS' ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the Lenape Valley Regional Board of Education violated the New Jersey Employer-Employee Relations Act when it unilaterally reduced the work year of the Subject Area Supervisor, Science/Industrial Technology by abolishing his 205-day position and replacing it with a 185-day position entitled Subject Area Supervisor, Science/Industrial Arts.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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SUPERVISORS' ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Rand, Algeier, Tosti & Woodruff,
attorneys (Russell J. Schumacher, of counsel)

For the Charging Party, Wayne J. Oppito, attorney

DECISION AND ORDER

On May 6, 1992, the Lenape Valley Regional Supervisors' Association filed an unfair practice charge against the Lenape Valley Regional Board of Education. The Association alleges that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (5) and (7),^{1/} by unilaterally reducing the work year of the

^{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 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. (7) Violating any of the rules and regulations established by the commission."

Subject Area Supervisor, Science/Industrial Technology by abolishing his 205-day position and replacing it with a 185-day position entitled Subject Area Supervisor, Science/Industrial Arts.

On August 4, 1994, a Complaint and Notice of Hearing issued. On August 29, the Board filed its Answer. It asserts that it acted within its managerial prerogative to abolish a position and assign an employee to a new position.

On June 1, 1995, Hearing Examiner Edmund G. Gerber conducted a hearing. The parties examined witnesses and introduced exhibits. They waived oral argument but filed post-hearing briefs.

On December 5, 1995, the Hearing Examiner recommended dismissing the Complaint. H.E. No. 96-9, 22 NJPER 45 (127023 1995). He concluded that the Board acted within its prerogative to abolish one position and create another. He further concluded that although the salary for the new position was not covered by the parties' collective negotiations agreement, the Association had waived its right to negotiate over that issue.

On December 19, 1995, the Association filed exceptions. It asserts that the Hearing Examiner erred in finding the two positions to be different and determining that the Association had waived its right to negotiate. On December 28, the Board filed an answering brief and cross-exceptions. It asserts that the Hearing Examiner erred in finding that the salary for the new position was not established by the collective negotiations agreement. Nevertheless,

it agrees with the Hearing Examiner that the two positions are different and that the Association waived any right to negotiate compensation.

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

Before July 1991, Andrew Goodman was employed by the Board as a science department chairperson, a 185-day position. Beginning in July 1991, Goodman was employed as Subject Area Supervisor, Science/Industrial Technology, a 205-day position. The new position required Goodman to develop "technical prep[aration] programs in one or more specific occupational clusters," to supervise two industrial arts teachers in addition to the six science teachers he had been supervising as a department chairperson, and to perform the duties he had performed as a department chairperson.

On March 11, 1992, the Board ratified its first collective negotiations agreement with the Association. It provided salaries for Category "A" supervisors for the modern language, business education, and social studies departments based on a work year of 185 days; Category "B" supervisors for the humanities, science and technology, and mathematics departments based on a work year of 205 days; and Category "C" supervisors for the athletic and physical education department based on a work year of 205 days.

Two weeks later, the superintendent notified Goodman that the principal was recommending that his position be re-evaluated

from Category B to Category A and that he planned to discuss the matter with the principal and the Board. On April 3, Goodman was notified that the Board would be considering the superintendent's recommendation that the 205-day position be abolished and a new 185-day Supervisor, Science/Industrial Arts position be established. Goodman was offered the new position at a Category A salary.

On April 7, 1992, Goodman notified the superintendent that he wished to continue as a Category B supervisor and that any changes in terms of employment would circumvent the contract with the Association. On April 14, Goodman was notified that the Board had voted to abolish the Supervisor, Science/Technology position for reasons of economic efficiency. On April 15, Goodman accepted the new position but reserved his right to challenge the work year change. On May 6, the Association filed this charge. For the 1993-94 school year, Goodman's title and duties were changed to limit them to supervision of science teachers only. That change was incorporated into the parties' successor contract.

The length of an employee's work year and its inseparable concomitant -- compensation -- are subject to mandatory negotiations before being put into effect. In re Piscataway Tp. Bd. of Ed., 164 N.J. Super. 98, 100 (App. Div. 1978). Accordingly, an employer ordinarily has a duty to negotiate before reducing an employee's work year. See State of New Jersey (DEP) v. CWA, 285 N.J. Super. 541 (App. Div. 1995), certif. den. 143 N.J. 519 (1996). The

negotiability of a work year does not depend on how the reduction is accomplished -- for example, as in this case, abolishing one position and moving the employee into a new position does not make the work year reduction non-negotiable. Hackettstown Bd. of Ed., P.E.R.C. No. 80-139, 6 NJPER 263 (¶11124 1980) (officially abolishing a 12 month position and creating a new 10 month position rather than reducing months of service is "distinction without a difference")^{2/}; Bayshore Reg. Sewerage Auth., P.E.R.C. No. 88-104, 14 NJPER 332 (¶19124 1988) (reducing laboratory technician's workweek from 40 hours to 20 hours and eliminating non-laboratory duties).

The Hearing Examiner found that the Board had a managerial prerogative to reduce Goodman's work year because there were differences in the two positions. We disagree. Work year reductions involving the elimination of summer work in a school district invariably result in a change in duties. The elimination of summer duties for the vice-principals in Piscataway and the teacher and guidance counselor in Hackettstown presumably involved changes in their duties and/or job descriptions. Yet those reductions in work year could not be accomplished without first negotiating with the majority representative.

The Board acknowledges that after the reduction in Goodman's work year, many (but not all) of his duties and

^{2/} The Court affirmed our analysis in Hackettstown in the course of confirming an arbitration award issued after we issued our decision. NJPER Supp.2d 108 (¶89 App. Div. 1982), certif. den. 89 N.J. 429 (1982)

responsibilities were the same. Board's Answer. When Goodman went from being a science department chairperson to Supervisor, Science/Industrial Technology, his responsibilities were increased to cover the industrial arts (technology) department and its two teachers and to develop an industrial technology program. When the Board decided that it was no longer going to commit money to the industrial technology program and that one year later it would abolish the automotive program, it had a right to change Goodman's duties to comport with its plans. But that right did not extinguish its duty to negotiate before reducing his work year and compensation. To hold otherwise could subject school employees to frequent and unpredictable fluctuations in compensation dependent only upon unilateral changes in duties and assignments. It is not at all uncommon for teaching and supervision duties to change each year to accommodate changes in curriculum and enrollment, but that does not make work year reductions non-negotiable.

Trenton Bd. of Ed., P.E.R.C. No. 88-16, 13 NJPER 714 (¶18266 1987); Bergen Pines Cty. Hosp., P.E.R.C. No. 87-25; 12 NJPER 753 (¶17283 1986); and Willingboro Bd. of Ed., P.E.R.C. No. 85-74, 11 NJPER 57 (¶16030 1984), were relied on by the Hearing Examiner. These cases are distinguishable. In Trenton, the union accepted the assignment of additional duties to an employee whose title was changed to reflect the change in duties. The union instead alleged that the employer had a duty to negotiate additional compensation. We dismissed the union's claim because it had not sought such

negotiations. In Bergen Pines, employees were placed in a new title and we ordered the Board to negotiate over compensation. There was no change in work hours. In Willingboro, we held that a Board had the right to assign additional duties related to an employee's normal duties and there were no workload or compensation issues.

For 1992-93, the Board did not reduce Goodman's supervisory responsibilities, yet it unilaterally reduced his work year and compensation. We conclude that by this action, the Board violated its duty to negotiate. One year later, the Board eliminated Goodman's supervisory responsibilities over industrial arts and incorporated his new Supervisor of Science title into its negotiated agreement with the Association. Because a new title and work year were negotiated for 1993-94, the backpay portion of our remedy is limited to the 20 days lost during the 1992-93 school year.

ORDER

The Lenape Valley Regional Board of Education is ordered to:

A. Cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by unilaterally reducing the work year and compensation of Andrew Goodman during the 1992-93 school year.

2. Refusing to negotiate in good faith with the Lenape Valley Regional Supervisors' Association, particularly by unilaterally reducing the work year and compensation of Andrew Goodman during the 1992-93 school year.

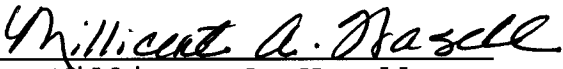
B. Take this action:

1. Pay Andrew Goodman the difference between what he would have been paid as a 205-day supervisor and what he was paid as a supervisor for the 1992-93 school year.

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 shall, after being signed by the Respondent's authorized representative, be posted immediately and 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 Acting Chair of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply with this order.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Acting Chair

Acting Chair Wasell, Commissioners Buchanan, Finn, and Wenzler voted in favor of this decision. Commissioners Klagholz and Ricci voted against this decision. Commissioner Boose abstained from consideration.

DATED: September 26, 1996
Trenton, New Jersey
ISSUED: September 27, 1996

H.E. NO. 96-9

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

In the Matter of

LENAPE VALLEY REGIONAL
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-and-

Docket No. CO-H-92-358

LENAPE VALLEY REGIONAL
SUPERVISORS' ASSOCIATION,

Charging Party.

Appearances:

For the Respondent,
Rand, Algeier, Tosti & Woodruff, attorneys
(Russell J. Schumacher, of counsel)

For the Charging Party,
Wayne J. Oppito, attorney

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On May 6, 1992, the Lenape Valley Regional Supervisors Association filed an unfair practice charge against Lenape Valley Regional Board of Education. The charge alleges that on or about April 13, 1992, the Board, "...under the guise of a reduction in force", abolished a 205 work days position, Subject Area Supervisor-Science and Technology, and created a substantially similar 185 work days position, Subject Area Supervisor-Science and Industrial Arts. The Board's action is an alleged unilateral change in work year without negotiations, violating subsections 5.4(a)(1),

(5) and (7)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.^{2/}

On August 29, 1994, the Board filed an Answer admitting the abolition of the 205 work days position Subject Area Supervisor-Science and Technology and the creation of the 185 work days position, Subject Area Supervisor-Science and Industrial Arts. It also admits that the two positions share "many of the same duties and responsibilities" but denies they are identical, and further denies that any reduction in force and unlawful unilateral change occurred. It asserts that it acted within a managerial prerogative to abolish a position and assign an employee to a newly-created position.

On June 1, 1995, I conducted a Hearing at which the parties examined witnesses and presented exhibits. Post-hearing briefs were filed by September 19, 1995.

^{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 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. (7) Violating any of the rules and regulations established by the commission."

^{2/} On March 14, 1994, the Director of Unfair Practices issued a decision dismissing the charge (D.U.P. No. 94-32, 20 NJPER 162, ¶25074 1994). However, on June 30, 1994, the Commission issued a decision remanding the matter to the Director to issue a Complaint and Notice of Hearing (P.E.R.C. No. 94-122, 20 NJPER 285, ¶25144 1994). On August 9, 1994, a Complaint and Notice of Hearing was issued.

Upon the record, I make the following:

FINDINGS OF FACT

1. The Lenape Valley Regional Board of Education is a public employer within the meaning of the Act. The Lenape Valley Regional Supervisors Association is a public employee representative within the meaning of the Act and represents departmental chairpersons and the Athletic Director of the Board.

2. The parties' applicable collective negotiations agreement ran from July 1, 1991 - June 30, 1993 (J-1).^{3/}

Article V, "Terms of Employment (Responsibilities and Duties)," "G." states in a pertinent portion: "Category A supervisors shall work a total of 185 days. Category B and C supervisors shall work an additional 20 days for a total of 205 days."

Article VII, "Salaries", under "Salaries and Stipends", states that base salary is determined by "appropriate placement on the teachers salary guide." Category 'A' supervisors, those overseeing modern language, business education, and social studies departments each receive a \$3,300 stipend in the "first year of contract" and \$3,400 in the second year. Category 'B' supervisors, those overseeing Humanities, Science and Technology and Mathematics

^{3/} "J" represents joint exhibits, followed by the number given the exhibit. Similarly, "CP" represents charging party exhibits and "R" represents respondent exhibits.

departments each received a \$3,000 stipend in both contract years and "additional contractual duties will be remunerated at 10% of annual teaching salary (20 days work during July and August) 1991-92 and 1992-93." Category "C" refers to the athletic director stipend exclusively.

3. Before 1991, Andrew Goodman was employed as science department chairman, a 10 month or 185 day position requiring a supervisors certificate. Goodman supervised and administered five laboratory classrooms, developed a budget, ordered materials, observed and evaluated teachers, interviewed and recommended applicants for science teaching positions, etc. (T25-T28).

4. On or about July 1, 1991, Goodman was hired as "Subject Area Supervisor, Science/Industrial Technology", following a reorganization in which departmental chairperson positions were abolished and subject area supervisor positions were created. The titles were not included in the teachers negotiations unit but were recognized in a separate negotiations unit represented by the Association (T10, 11, 29).

Goodman's new position was for 205 days and required him to work the 20 added days between July 1 and August 31 (T31). Goodman actually received a ten month contract and "a second contract for summer work which was similar to other contracts over the years for various projects..." (T29). That summer, Goodman was responsible for "developing" "technical preparation programs in one or more specific occupational clusters...", pursuant to his new job

description adopted June 18, 1991 (J-2; T21, 31), Goodman specifically acknowledged doing the "initial work...during the summer of '91" (T21). Another duty that summer was distributing and paying for school supplies (T30).

Goodman also became responsible for evaluating two more teachers (added to the six in the science department) during the school year, September-June (T10, 14, 33).

5. Goodman did not readily accomplish the "industrial technology" objectives enumerated in Section "E" - "Objectives-Industrial Technology" of his new job description (J-2; T31). Although Goodman developed a "basic structure" or "game plan" for the next several years, the Board lacked the equipment and facilities necessary to meet the technological objectives (T32).

On October 30, 1991, Goodman proposed to Superintendent Joseph Stracco a "Program of Technical Preparation in Technical Drafting", a two page statement of "objectives", prefaced by an introduction (R-2; T33, 52). Stracco conceded that in the 1991-92 term, the Board had "a decrease in enrollment and obviously some budgetary considerations." In other words, the Board "[was] not going to commit any dollars at all" to various technical preparation programs identified in the new job description (T52). This testimony is consistent with Goodman's characterization of existing facilities.

Stracco was nevertheless critical of Goodman's failure to produce a plan commensurate with all the objectives in the description.

The Board presented no evidence of reprimands nor any document corroborating Stracco's criticism. Nor was there any evidence suggesting that Goodman impeded the Board's implementation of the "industrial technology" program. (see also finding 7).

6. On March 11, 1992, the Board adopted a collective agreement for the subject area supervisors, including "science and technology", retroactive to July 1, 1991 (CP-1; T12). (see finding 2).

7. On March 25, 1992, Superintendent Stracco issued a memorandum to Goodman stating in part that the high school principal "is recommending that your Supervisor's position be re-evaluated from Category B to Category A." The Superintendent also advised that he will discuss the proposal "in detail" with the Board (CP-2A).

Attached to the memorandum was the building principal's evaluation of Goodman, dated March 24, 1992. Among his "summary comments" is that Goodman fulfilled his duties in an "acceptable manner" and that he,

...demonstrated a commitment to the personnel and program in both fields. It is my opinion that the limited nature of vocational training in a comprehensive high school precludes the need for Mr. Goodman to remain on a 12 month contract.

As indicated in the memo presented by Mr. Goodman on the program and curriculum in the Technology Department, our existing program is sufficient to meet the needs of our current student body. And with selected adjustments and updates, our program can be effectively supervised by an individual who is on a 10 month contract. It is my recommendation that Mr. Goodman be so employed for the 1992-93 school year. [CP-2B].

Goodman received both documents on or about April 1, 1992 at a meeting with the Superintendent and building principal (T15-T16; CP-3).

8. By letter dated April 3, 1992 Superintendent Stracco advised Goodman of an April 13 Board meeting at which "...the matter concerning your re-employment will be discussed, namely the recommendation that you not be re-employed as Supervisor of Instruction, Science and Technology, the reason being the abolishment of the position." The letter continued,

I will be recommending a new position be established entitled Supervisor of Instruction, Science and Industrial Arts. This will be a Category A position and will commence on September 1, 1992. The salary for this position will be as stipulated in the agreement with the Lenape Valley Regional Supervisor's Association [CP-3].

The letter added that Goodman would be recommended for the position if he expressed interest by April 16, 1992 (CP-3).

9. On April 7, 1992, Goodman sent a memorandum to Stracco acknowledging receipt of the April 3 letter and stating his interest in continuing as a "Category B" supervisor for the 1992-93 school year. He also wrote that "changes in supervisors job titles and/or terms of employment would constitute a unilateral attempt to circumvent the negotiated agreement..." (CP-4). Goodman was not a member of the Association negotiating team (T11). Nothing in the record indicates he held any position in the Association.

10. On April 8, Stracco issued a reply memorandum which stated his disagreement with the notion that the Board may not

unilaterally "abolish a position",^{4/} and maintained that the Category B positions has been fully negotiated". The letter also seeks Goodman's response by April 16, 1992 (CP-5).

11. On April 12, 1992, the Board approved the abolishment of Subject Area Supervisor-Science and Technology position and the "first reading" of Subject Area Supervisor-Science/Industrial Arts job description (CP-6). Stracco recommended that the new position did not have to be 205 days because the Board did not allocate money and "we were no longer going to pursu[e] [sic] planning and in fact we were going to recommend the ensuing year that the automotive program be abolished..." (T53, 65). On his recommendation that Goodman be appointed to the new position, Stracco testified;

...maybe Mr. Goodman might not be the best person to supervise industrial arts teachers because he had no industrial arts background, but he was a supervisor. In our evaluation of the supervisors certificate it didn't make any difference whether you understood French or German or Spanish; You could supervise those people. So we had...ultimately one [industrial arts teacher] and we felt that Mr. Goodman... could supervise those people (T54).

^{4/} Stracco cited N.J.S.A. 18A:28-9 which states: 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.

Stracco conceded that the Board "unilaterally downgraded" the "science technology" position from Category B to Category A (T68).

The Association did not formally request negotiations over changes in work year concerning the Science/Industrial Technology position (T72). The Association did not rebut Stracco's testimony that, "throughout this...entire scenario, episode...no grievance, no formal notification was ever given, to my knowledge to the Board...requesting that it be negotiated" (T73).

12. On April 14, Stracco sent a letter to Goodman confirming the Board's abolishment of the position, Supervisor of Instruction, Science and Technology, "for reasons of economic efficiency." The letter also confirms that a "new 10 month position, Supervisor of Instruction, Science and Industrial Arts" is "established", and is being offered to him effective September 1, 1992 (CP-7).

13. On April 15, Goodman sent a memorandum to Stracco, "accepting" the new position and "not waiving" his rights (CP-8).

14. On May 19, 1992, the Board adopted the job description for "Subject Area Supervisor Science/Industrial Arts" (J-3). The description differs from that for "Subject Area Supervisor Science/Industrial Technology" in three respects: 1) the new position is 185 days; 2) it does not include Section E of the earlier description, which concerned "objectives-Industrial Technology" (see finding 5); and 3) the new program objective is to develop a curriculum "...with specific emphasis on

Science/Industrial Arts" rather than emphasis on "Science/Industrial Technology" (J-3).

15. The Board Business Administrator advised Goodman by letter dated May 20, 1992 that the Board approved a resolution appointing him Subject Area Supervisor-Science/Industrial Arts, Category A, with a "pensionable salary" of \$59,505 (for teaching) plus \$3,500 for "supervisor of instruction" (CP-9).

In 1992, Goodman continued to evaluate the same eight teachers under the new job description, with the two "technology" teachers now identified as the "industrial arts" teachers instructing the same courses in varying numbers of Sections (T21). But in 1993-94, Goodman was "science supervisor", a ten month position, in which he supervised only six teachers and had no budget responsibilities for the industrial arts program (T40-T41).

ANALYSIS

The length of an employee's work year is mandatorily negotiable. In re Piscataway Tp. Bd. of Ed., 164 N.J. Super. 98 (App. Div. 1978). In Piscataway, a board of education unilaterally adopted a resolution reducing the yearly term of employment of several unit employees from 12 months to 10 months. The action entailed a proportionate reduction in salaries and was adopted during the term of a negotiated agreement. The Court wrote:

The Board here argues that economy motivated the action complained of and that there is no material difference between the Board's right to cut staff and the right to cut months of service

of staff personnel where the economy motive is common to both exercises. We disagree. While cutting staff pursuant to N.J.S.A. 18A:28-9 would be permissible unilaterally without prior negotiations, see Union Cty. Bd. of Ed. v. Union Cty. Teach. Ass'n, 145 N.J. Super. 435 (App. Div. 1976), certif. den. 71 N.J. 348 (1977), but cf. State of New Jersey v. State Supervisory Employees Ass'n, 78 N.J. 54 (1978), there cannot be the slightest doubt that cutting the work year, with the consequences of reducing annual compensation of retained personnel who customarily, and under the existing contract, work the full year (subject to normal vacations), and without prior negotiations with the employees affected, is in violation of both the text and the spirit of the Employer-Employee Relations Act. Cf. Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25 (1978).

[Id. at 101]

See also Burlington Cty. College Fac. Assn. v. Bd. of Trustees, 64 N.J. 10 (1973).

An official abolishment of a twelve month position pursuant to N.J.S.A. 18A:28-9 and the subsequent creation of a ten month position is a "distinction without a difference" to the holding in Piscataway. Hackettstown Bd. of Ed., P.E.R.C. No. 80-139, 6 NJPER 263 (¶11124 1980), Chanc. Div. No. C1, aff'd. NJPER Supp.2d 108 (¶89 App. Div. 1982), certif. den. 89 N.J. 429 (1982).^{5/}

A parallel tenet is that public employers have a managerial prerogative to abolish and create positions and to transfer, assign and reassign employees to meet operational needs. Ramapo-Indian

^{5/} P.E.R.C. No. 80-139 ruled on arbitrability; however, was not appealed. This is an affirmation of a grievance arbitration award.

Hills Reg. H.S. Dist. Bd. of Ed., 176 N.J.Super. 35 (App. Div. 1980); Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Assn, 78 N.J. 144 (1978); Piscataway Tp. Bd. of Ed., P.E.R.C. No. 88-42, 13 NJPER 823 (¶18317 1987).

Under some circumstances, the deletion of a responsibility or two merely disguises a designation of a different title for what is essentially the same job. In those cases, the Board retains the statutory duty to negotiate to impasse before implementing any change. Deptford Bd. of Ed., P.E.R.C. No. 81-78, 7 NJPER 35 (¶12015 1980), NJPER Supp.2d 118 (¶98 App. Div. 1982). Such cases are closer to Piscataway than to Ramapo-Indian Hills. See also East Brunswick Bd. of Ed., P.E.R.C. No. 82-111, 8 NJPER 320 (¶13145 1982); Sayreville Bd. of Ed., P.E.R.C. No. 83-105, 9 NJPER 138 (¶14066 1983).

Similarly, if a Board unilaterally determines to abrogate a negotiated work year provision by reducing the work year and salary of unit titles, it will have violated the Act. Middlesex Bd. of Ed., P.E.R.C. No. 94-31, 19 NJPER 544 (¶24257 1993).

The Board argues that it had the prerogative to abolish the position, Supervisor-Science/Industrial Technology, pursuant to a "change in organization resulting from Goodman's own assessment that the industrial technology program was not viable..." (post-hearing brief at p.4). It also argues that it properly created the new position, Supervisor, Science and Industrial Arts, and assigned Goodman to it. Finally, it argues that it had no obligation to negotiate over compensation for the new position because it is a

"Category A" title, for which "terms and conditions...had already been agreed to by the parties." It urges that assuming there was a change in Goodman's terms and conditions of employment, the Association "bore the burden" to demand negotiations but failed to do so.

I agree that the Board acted within its prerogatives to abolish the 205-day position, Supervisor, Science and Technology and to create the 185-day position, Supervisor, Science and Industrial Arts. But I disagree with the Board that the "terms and conditions" concerning the latter position had already been negotiated with the Association.

The two positions are different. The first, created in June 1991, was responsible for developing "technological preparation programs" in one or more "occupational clusters". These responsibilities were added to the customary supervisory duties of what were initially departmental chairpersons and later, after reorganization, subject area supervisors. The approved job description enumerates nine goals for the "technology" portion, the last of which required a written report by October 30, 1991.

Goodman conceded that the technology portion was one of the things worked on that summer (1991), the other being a distribution of supplies. He also submitted a report by October 30, 1991. The Board determined from the report and from other factors, including reduced enrollment and a tight budget, that the "technology" plan for the schools, as conceived, was not economically feasible.

The Board's timing was unfortunate. About one month after signing a collective agreement, retroactive to July, 1991, identifying the Science and Technology title as a 205-day position, the Board resolved to abolish it and create the 185-day Science and Industrial Arts position.

The new position had none of the technology responsibilities of its predecessor. While Goodman continued to supervise eight teachers in 1992-93, (compared to six as science department chairman), the record shows that his evaluating responsibilities were completed during the ten month or 185-day period. Goodman also had budget responsibilities for the industrial arts program, which were deleted in the following school term.

While Goodman continued to have evaluation responsibility over the Industrial Arts employees, it is undisputed that some of his responsibility diminished by the elimination of plans to upgrade the industrial arts curriculum to a technology curriculum.^{6/}

The Board effectively created a new position. It did not return Goodman to his old duties. In doing so, it acted within its prerogative to create a new position, the 185-day Supervisor, Science/Industrial Arts title. Trenton Bd. of Ed., P.E.R.C. No.

^{6/} The Association relies on Passaic Cty. Manchester Reg. Bd. of Ed., H.E. No. 92-8, 17 NJPER 486 (¶22236 1991) in which the Hearing Examiner rejected an argument that a ten month position differed from an abolished twelve month position. However, in Manchester, the affected employee was never a 10-month employee nor did the contract even provide for 10-month employees.

88-16, 13 NJPER 714 (§18266 1987); Bergen Pines Cty. Hosp., P.E.R.C. No. 87-25; 12 NJPER 753 (§17283 1986); Willingboro Bd. of Ed., P.E.R.C. No. 85-74, 11 NJPER 57 (§16030 1984).

I disagree with the Board that salary for the new position had already been negotiated because the title was slotted under Category "B", pursuant to the collective agreement. The parties negotiated compensation for all ten month positions identified in the agreement. The new 185-day position, Supervisor, Science and Industrial Arts was not included in the agreement and no salary has ever been negotiated for this particular position. The Board under these circumstances has an obligation to negotiate salary on demand.

The Commission wrote in Trenton Bd. of Ed.:

...the creation of th[e] position did not obligate the Board to engage in negotiations. It is equally settled, however, that the question of the amount of compensation the occupant of the new position is entitled to receive is severable from the decision to create a position and is mandatorily negotiable. Ramapo-Indian Hills; Fairview Bd. of Ed., P.E.R.C. No. 84-43, 9 NJPER 659 (§14285 1984).

[Trenton Bd. of Ed. at 715]

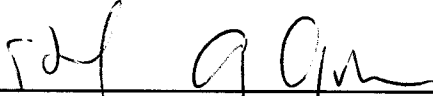
See also, Monroe Tp. Bd. of Ed., P.E.R.C. No. 85-35, 10 NJPER 569 (§15265 1984).

Here, the Association had the opportunity to demand negotiations over severable aspects of the managerial decision to create a new position, but it never did so. In failing to demand negotiations, the Association waived its right to negotiations.

Accordingly, I recommend that the Complaint be dismissed.^{7/}

RECOMMENDATION

I recommend that the Complaint be dismissed.



Edmund G. Gerber
Hearing Examiner

Dated: December 5, 1995
Trenton, New Jersey

^{7/} Goodman's April 7, 1992 memorandum to the Superintendent (see finding 9) was not a demand to negotiate on behalf of the Association. At best, it may be considered a grievance. See Monroe; Hoboken Bd. of Ed., P.E.R.C. No. 80-36, 5 NJPER 410 (¶10213 1979).

No facts suggest an independent violation of subsection 5.4(a)(1) or a violation of 5.4(a)(7).