

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PISCATAWAY TOWNSHIP BOARD OF
EDUCATION,

Respondent,

-and-

Docket No. CO-77-185-137

PISCATAWAY TOWNSHIP EDUCATION
ASSOCIATION,

Charging Party.

PISCATAWAY TOWNSHIP BOARD OF
EDUCATION,

Petitioner,

-and-

Docket No. SN-77-23

PISCATAWAY TOWNSHIP EDUCATION
ASSOCIATION,

Employee Representative.

SYNOPSIS

In the absence of exceptions filed by either party, the Commission adopts the findings of fact and conclusions of law contained within the Hearing Examiner's Recommended Report and Decision in a consolidated unfair practice and scope of negotiations proceeding. The Hearing Examiner found, and the Commission affirms, that the Piscataway Township Board of Education unilaterally and without negotiations implemented a decision to have health aides perform unit work previously performed by two nurses, that such decision was mandatorily negotiable, and that the impact of that decision affected the terms and conditions of employment of the remaining nurses. Therefore the Board was found to have violated N.J.S.A. 34:13A-5.4(a)(1) and (5). Reliance is placed on the Commission's decision in In re Middlesex County College, P.E.R.C. No. 78-13, 4 NJPER 47 (4023 1977).

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ASSOCIATION,

Respondent.

Appearances:

For the Piscataway Twp. Board of Education,
Rubin, Lerner & Rubin, Esqs.
(Frank J. Rubin, of Counsel)

For the Piscataway Twp. Education Association
Mandel, Wysoker, Sherman, Glassner & Weingartner, Esqs.
(Jack Wysoker, of Counsel)

DECISION AND ORDER

On January 7, 1977, the Piscataway Township Education Association ("Association") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") alleging that the Piscataway Township Board of Education ("Board") had committed unfair practices within the meaning of the New Jersey

Employer-Employee Relations Act ("Act"). Specifically, it was alleged that the Board had violated N.J.S.A. 34:13A-5.4(a)(1), (3) and (5) by refusing to negotiate both a decision to replace two certified school nurses with health aides and the impact of that decision on the remaining school nurses. On January 26, 1977, the Board filed a Petition for Scope of Negotiations Determination as a response to the unfair practice charge seeking a determination as to whether the actions placed in issue by the charge were mandatorily negotiable.

It appearing that the allegations contained in the charge, if true, might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on June 24, 1977, as well as an order consolidating the unfair practice case with the scope matter.

Pursuant thereto, a hearing was held before James F. Schwerin, Hearing Examiner of the Commission, on November 16, 1977 and January 11, 1978, at which both parties had the opportunity to examine and cross-examine witnesses, present evidence and argue orally. Prior to the hearing both parties had submitted briefs on the scope of negotiations matter, and post-hearing briefs were submitted by March 20, 1978.

On April 18, 1978 the Hearing Examiner issued his Recommended Report and Decision, which Report included findings of fact and conclusions of law and a recommended order. The original of the Report was filed with the Commission and copies were served upon all parties. A copy is attached hereto and

made a part hereof. H.E. No. 78-30, 4 NJPER ____ (Para. ____ 1978).

None of the parties has filed exceptions to the Hearing Examiner's Recommended Report and Decision. See N.J.A.C.

19:14-7.3.

Upon careful consideration of the entire record herein, the Commission adopts the findings of fact and conclusions of law rendered by the Hearing Examiner substantially for the reasons cited by him: specifically, that the decision in issue was mandatorily negotiable, that implementation of that decision had an impact upon the terms and conditions of employment of the remaining nurses, and that the Board violated N.J.S.A. 34:13A-5.4 (a)(1) and (5) by unilaterally implementing that decision without negotiations as to either the decision or its impact. The Commission notes that there is no dispute as to the factual allegation that the Board has hired health aides to perform work that had been performed by the two nurses, who were on leave. It is also uncontested that the Board never attempted to negotiate this decision with the Association, and at all times denied its negotiability.

The Commission has previously ruled on the issue of the unilateral reassignment of unit work in In re Middlesex County College, P.E.R.C. No. 78-13, 4 NJPER 47 (Para 4023, 1977). Therein it was held that while a reduction in force (RIF) to reduce services was a management prerogative, merely shifting unit work outside the unit is mandatorily negotiable.

The Board does contest whether the Association had ever demanded negotiations with respect to the matter in issue. In view of the documentary evidence presented and the Hearing Examiner's opportunity to observe the demeanor of the contradictory witnesses, the Commission accepts the Hearing Examiner's finding that there had been a demand to negotiate.

ORDER

For the reasons set forth above, the Commission hereby adopts the aforementioned Hearing Examiner's Recommended Order. IT IS HEREBY ORDERED that the Piscataway Township Board of Education shall:

(a) Cease and desist from interfering with, restraining or coercing its employees in the exercise of rights guaranteed to them by the Act by refusing to negotiate in good faith with the Piscataway Township Education Association the decision to replace school nurses with health aides and the impact of said decision on employees terms and conditions of employment or by assigning unit work to non-unit employees without prior negotiations.

(b) Take the following affirmative action necessary to effectuate the policies of the Act:

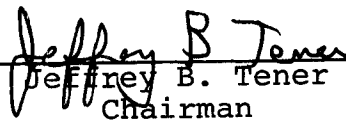
1) Negotiate with the Piscataway Township Education Association to make whole school nurses for additional workload imposed by the replacement of school nurses by health aides.

2) Post at its central office building in Piscataway New Jersey, and at all the schools in the school district copies of the attached notice to public employees. Copies of said notice, on forms provided by the Commission, shall, after being signed by Respondent's representative, be posted by the Respondent immediately upon receipt thereof and maintained by it for a period of at least sixty (60) consecutive days thereafter in conspicuous places where notices to its employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that such notices are not altered, defaced or covered by any other material.

3) Notify the Chairman, in writing, within twenty (20) days from the receipt of this Order what steps have been taken to comply herewith.

IT IS HEREBY ORDERED that so much of the Complaint as alleges a violation of N.J.S.A. 34:13A-5.4(a)(3) is dismissed.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Graves, Hartnett and Parcels voted for this decision. None opposed. Commissioner Schwartz abstained. Commissioner Hipp was not present.

DATED: Trenton, New Jersey
June 30, 1978
ISSUED: July 5, 1978

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 employees in the exercise of rights guaranteed them by the Act by refusing to negotiate in good faith with the Piscataway Township Education Association the decision to replace school nurses with health aides and the impact of that decision or by assigning unit work to non-unit employees without prior negotiations.

WE WILL negotiate with the Piscataway Township Education Association to make whole school nurses for additional workload imposed by the replacement of school nurses by health aides.

Piscataway 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 Jeffrey B. Tener, Chairman, Public Employment Relations Commission, P.O. Box 2209, Trenton, New Jersey 08625 Telephone (609) 292-6780

H.E. No. 78-30

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

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Respondent,

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-and-

Docket No. SN-77-23

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ASSOCIATION,

Employee Representative.

SYNOPSIS

A Commission Hearing Examiner finds that the Piscataway Township Board of Education violated N.J.S.A. 34:13A-5.4(a)(1) and (5) by unilaterally replacing two school nurses with health aides doing work previously performed by nurses. Reliance is placed on the Commission's decision In re Middlesex County College, P.E.R.C. No. 78-13, which held that replacement of unit employees with non-unit personnel is mandatorily negotiable. Also violative of the Act is the Board's refusal to negotiate the impact of the decision.

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.

STATE OF NEW JERSEY
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Appearances:

For the Piscataway Township Board of Education
Rubin, Lerner & Rubin
(Frank J. Rubin, of Counsel)

For the Piscataway Township Education Association
Mandel, Wysoker, Sherman, Glassner & Weingartner
(Jack Wysoker, of Counsel)

HEARING EXAMINER'S RECOMMENDED REPORT AND DECISION

On January 7, 1977, the Piscataway Township Education Association ("Association") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") alleging that the Piscataway Township Board of Education ("Board") had committed unfair practices within the meaning of the New Jersey Employer-Employee Relations Act ("Act"). Specifically, it

was alleged that the Board had violated N.J.S.A. 34:13A-5.4(a)(1), (3) and (5) by refusing to negotiate both a decision to replace two certified school nurses with health aides and the impact of that decision on the remaining school nurses. On January 26, 1977, the Board filed a Petition for Scope of Negotiations Determination as a response to the unfair practice charge seeking a determination as to whether the actions placed in issue by the charge were mandatorily negotiable.

It appearing that the allegations contained in the charge, if true, might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on June 24, 1977, as well as an Order Consolidating the unfair practice case with the scope matter. A hearing was held before the undersigned Commission Hearing Examiner on November 16, 1977 and January 11, 1978, at which both parties had the opportunity to examine and cross-examine witnesses, present evidence and argue orally. Prior to the hearing both parties had submitted briefs on the scope matter, and post-hearing briefs were submitted by March 20, 1978.

Upon the entire record herein, the undersigned finds that:

1. The Board is a public employer and the Association is an employee representative within the meaning of the Act and both are subject to its provisions.
2. An Unfair Practice Charge having been filed alleging that the Board has engaged or is engaging in unfair practices within the meaning of the Act, the matter is properly before the Hearing Examiner for a recommended report and decision.

The Association represents a unit of teachers and various other professional employees including nurses. In the recognition clause of the 1975-1978 contract between the parties, the term "teacher" is indicated to be used generally to refer to all of the personnel in the unit. Prior to the 1976-77 school year, each school had its own nurse. For 1976-77, the Board decided not to replace two nurses who were on leave, but rather assigned two nurses to cover two schools apiece and hired two Health Aides to assist these latter nurses. It is uncontested that the Board never attempted to negotiate this decision with the Association, and at all times denied its negotiability. There is some dispute as to whether the Board ever indicated a willingness to

negotiate the impact of the decision, although its position now is that the impact is not negotiable either.

Legally, the Association asserts that the Board has unilaterally replaced unit members with non-unit personnel doing work that had formerly been performed by the people no longer employed. This Commission has previously ruled on that issue in In re Middlesex County College, P.E.R.C. No. 78-13, 4 NJPER ¶4023 (1977). Therein it was stated--in harmony with the precedent from the National Labor Relations Board and the labor relations agencies of New York, Michigan and Connecticut--that while a reduction in force (RIF) to reduce services was a management prerogative, merely shifting work outside of the unit is mandatorily negotiable. The reasoning behind that decision is the same as used by the United States Supreme Court on the question of subcontracting, Fibreboard Paper Products v. N.L.R.B., 379 U.S. 703 (1964), as adopted by this Commission, In re Twp. of Little Egg Harbor, P.E.R.C. No. 76-15, 2 NJPER 5 (1976).

The Board now argues that N.J.S.A. 18A:28-9 allowing a board freedom to reduce staff for economy or reduction in pupils renders its decision non-negotiable. As already noted, in Middlesex, supra, the Commission acknowledged that a pure RIF would not be mandatorily negotiable. However, assuming arguendo that the allegations made by the Association are true, then to the extent that services previously performed by school nurses are now being performed by health aides, the decision is mandatorily negotiable. The Commissioner of Education decision in Leona Smith v. Bd. of Education of Borough of Caldwell-West Caldwell, 1972 SLP 232 cited by the Board does no more than confirm that there was no initial duty to have hired a nurse for each school. Nevertheless, having once done so, the Board is not free to replace them with non-unit personnel without negotiations. N.J.S.A. 18A:40-6 is a general grant of authority in the area of pupil health and is not a shield against negotiations. In re Local 195 IFPTE and Local 518 SEIU, P.E.R.C. No. 77-57, 3 NJPER 118 (1977) and In re State Supervisory Employees Association CSA/SEA, P.E.R.C. No. 77-67, 3 NJPER 138 (1977), cert. granted as to both cases ___ N.J. ___ (1978).

There remains now to determine whether the Association has met its burden of proof on the facts in the unfair practice aspect of this consolidated

matter. As testified by both the Superintendent of Schools and Assistant Superintendent for Pupil Personnel Services, the health aide position was intended for performance of clerical and first aid duties which had all been previously handled by nurses. The two nurses doing duty at more than one school testified as to substantially greater demands on their time as a result of the change. Other nurses have had impact in the form of changes in the assignments of district-wide duties going beyond servicing of the school to which they are assigned. None of this was challenged by the Board.

What the Board did contest was whether the Association had ever demanded negotiations on the impact of the decision in question. Resolution of that issue comes down to conflicting testimony given by Edward Meidhof, past President of the Association, along with Josephine Giacomarra, the current President, and Carmine Cerasa, now an acting Assistant Superintendent, and at the time of the negotiations in 1976, Director of Personnel. The Association witnesses testified that in sessions beginning September 3, 1976, on proposals regarding the impact of a RIF of some teachers it was stated to Mr. Cerasa representing the Board that they included the nurses' situation, and that the word "teacher" in written proposals was used in the contract sense of all unit personnel. Mr. Meidhof testified that on September 3 he informed Mr. Cerasa that the Association wanted the nursing positions reinstated or some extra compensation. Further proposals were said to have been made on redistribution of duties. The alleged response was that there would be no discussion on this topic, including impact on remaining nurses. Ms. Giacomarra corroborated the Meidhof testimony.

In rebuttal, Mr. Cerasa stated that his notes reflected no meetings prior to September 10, 1976, but on cross-examination admitted that there had been a September 8 meeting. Mr. Cerasa maintained that the first time he knew specifically that the Association wanted to negotiate in regard to the nurses was when the unfair practice charge was filed in January 1977, and that the first time proposals were identified as relating to nurses was in April 1977 after an exploratory conference with a Commission representative.

Given the very positive assertion of recollection of the two Association witnesses, buttressed to some extent by the documentary evidence, and the

consistent pattern of Mr. Cerasa being very unsure of the accuracy of his memory of events, at least as to the dates involved, the undersigned credits Mr. Meidhof and Ms. Giacomarra on this point. The use of the term "teacher" and not "nurse" in the original written proposals was consistent with the 1975-78 contract and in any event as the Hearing Examiner is crediting the testimony that the nurses were orally specified, the written proposals need not stand alone.

Based on the above findings the undersigned concludes that the Board has violated N.J.S.A. 34:13A-5.4(a)(1) and (5) but not (a)(3).

RECOMMENDED ORDER

For the reasons stated above and the entire record herein, IT IS **HEREBY ORDERED** that the Piscataway Township Board of Education shall:

A) Cease and desist from discouraging, interfering with, restraining or coercing its employees in the exercise of rights guaranteed them by the Act by refusing to negotiate in good faith with the Piscataway Township Education Association the decision to replace school nurses with health aides and the impact of said decision or by assigning unit work to non-unit employees without prior negotiations.

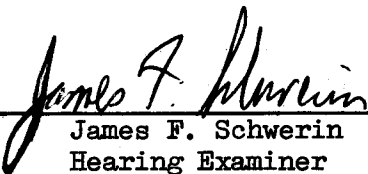
B) Take the following affirmative action necessary to effectuate the policies of the Act:

1) Negotiate with the Piscataway Township Education Association to make whole school nurses for additional workload imposed by the replacement of school nurses by health aides.

2) Post at its central office building in Piscataway, New Jersey, and at all the schools in the school district copies of the attached notice to public employees. Copies of said notice, on forms provided by the Commission, shall, after being signed by Respondent's representative, be posted by the Respondent immediately upon receipt thereof and maintained by it for a period of at least sixty (60) consecutive days thereafter in conspicuous places where notices to its employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that such notices are not altered, defaced or covered by any other material.

3) Notify the Chairman, in writing, within twenty (20) days from the receipt of this Order what steps have been taken to comply herewith.

IT IS HEREBY FURTHER ORDERED that so much of the Complaint as alleges a violation of N.J.S.A. 34:13A-5.4(a)(3) is dismissed.



James F. Schwerin
Hearing Examiner

DATED: Trenton, New Jersey
April 18, 1978

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 discourage, interfere with, restrain or coerce employees in the exercise of rights guaranteed them by the Act by refusing to negotiate in good faith with the Piscataway Township Education Association the decision to replace school nurses with health aides and the impact of that decision or by assigning unit work to non-unit employees without prior negotiations.

WE WILL negotiate with the Piscataway Township Education Association to make whole school nurses for additional workload imposed by the replacement of school nurses by health aides.

PISCATAWAY TOWNSHIP BOARD OF EDUCATION

(Public Employer)

Dated _____

By _____
(Title)

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If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with Jeffrey B. Tener, Chairman, Public Employment Relations Commission, P.O. Box 2209, Trenton, New Jersey 08625 Telephone (609) 292-6780