

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

IRVINGTON BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-94-122

IRVINGTON ADMINISTRATORS'  
ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge filed by the Irvington Administrators' Association against the Irvington Board of Education. The charge alleges that the employer violated the New Jersey Employer-Employee Relations Act by unilaterally requiring two assistant principals to split the administration of the high school summer school program without additional compensation. The Commission agrees with the Hearing Examiner that the Board had a managerial prerogative to assign summer school duties to twelve month assistant principals. In addition the Commission cannot find that the Board refused to negotiate in good faith over compensation for assistant principals assigned those duties.

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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Charging Party.

Appearances:

For the Respondent, Schwartz Simon Edelstein Celso &  
Kessler, attorneys (Nicholas Celso, III, of counsel)

For the Charging Party, Wayne J. Oppito, attorney

DECISION AND ORDER

On October 21, 1993, the Irvington Administrators'  
Association filed an unfair practice charge against the Irvington  
Board of Education. The charge alleges that the employer violated  
the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1  
et seq., specifically subsection 5.4(a)(1), (5) and (7), <sup>1/</sup> by  
unilaterally requiring two assistant principals to split the

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<sup>1/</sup> 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."

administration of the high school summer school program without additional compensation.

On March 1, 1994, a Complaint and Notice of Hearing issued. On March 10, the Board filed its Answer. The Board asserts that it had a managerial prerogative to assign staff; the Association failed to request negotiations, and the Association's claim is de minimis.

On April 21, 1994, Hearing Examiner Arnold H. Zudick conducted a hearing. The parties examined witnesses and introduced exhibits. They waived oral argument but filed post-hearing briefs.

On September 1, 1994, the Hearing Examiner recommended dismissing the Complaint. H.E. No. 95-9, 20 NJPER 369 (125186 1994). He found that the assignments resulted from a reduction in force and that any resulting workload increase was not significant enough to obligate the Board to negotiate over compensation.

On September 29, 1994, the Association filed exceptions. It claims that under the Act's 1990 amendments, N.J.S.A. 34:13A-22 and 23, the position of summer school principal is an extracurricular position and that all aspects of assignment to and compensation for the position are thus mandatorily negotiable. It seeks negotiations over future assignments and retroactive compensation.

On October 12, 1994, the Board filed an answering brief. It asserts that the charging party's exceptions improperly raise

factual allegations and legal arguments not raised before the Hearing Examiner. Nevertheless, the Board responds that the position of summer school principal is not an extracurricular activity under the 1990 amendments.

We have reviewed the record. We incorporate the Hearing Examiner's undisputed findings of fact (H.E. at 3-22).

The Hearing Examiner found that the Board had a managerial prerogative to assign summer school duties to twelve month assistant principals. He reached this conclusion whether or not the assignments resulted from a reduction in force. See Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Ass'n, 78 N.J. 144, 156 (1978); In re Maywood Bd. of Ed., 168 N.J. Super. 45 (App. Div. 1979), certif. den. 81 N.J. 792 (1979). We agree with his legal conclusion.

N.J.S.A. 34:13A-22 defines extracurricular activities to:

include those activities or assignments not specified as part of the teaching and duty assignments scheduled in the regular work day, work week, or work year.

Beginning with the summer of 1993, the Board assigned principal duties at the high school's summer school to twelve month assistant principals as part of their regular duties during their regular work year. While the duties might have been extracurricular in previous years, they could no longer be viewed as such once they were incorporated into the regular duties of the

year-round assistant principals. See Ramapo-Indian Hills Ed. Ass'n v. Ramapo-Indian Hills H.S. Dist Bd. of Ed, 176 N.J. Super. 35 (App. Div. 1980).

We next consider whether the Board violated the Act by refusing to negotiate over compensation for assistant principals assigned the summer school duties. We conclude that it did not.

In June 1993, the assistant superintendent notified the Association's president that an assistant principal would be assigned the summer school duties. The president did not ask the assistant superintendent about negotiating additional compensation. The Association later filed a grievance. Negotiations over compensation was one of the Association's requests at the first step grievance meeting with the superintendent. The superintendent responded that there would be no compensation, but the Association's president could not recall the superintendent's exact words. The Association pursued the grievance to the Board, but the only response was from the superintendent. The Association's president then informed the New Jersey Principals and Supervisors Association of the status of the grievance. The president testified that he did not believe that the Association tried to arbitrate the grievance. Meanwhile, during June 1993, when assistant principals were first assigned the summer school duties, the parties were engaged in negotiations for a successor contract. Neither party raised the assignment of summer school duties or compensation for those duties. Given all


these facts, we cannot find that the Board refused to negotiate in good faith over compensation for assistant principals assigned high school summer school duties. We therefore dismiss the subsection 5.4(a)(1) and (5) allegations.<sup>2/</sup>

Absent any supporting facts, we also dismiss the subsection 5.4(a)(7) allegation.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Buchanan, Finn, Klagholz and Ricci voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration. Commissioner Wenzler was not present.

DATED: February 28, 1995  
Trenton, New Jersey  
ISSUED: March 1, 1995

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<sup>2/</sup> The Hearing Examiner found that the assignment of new duties had flowed from a reduction in force and that any workload increase was not significant and measurable. He therefore concluded that compensation was not a severable issue requiring negotiations. On this sketchy record, we cannot determine whether or not the two assistant principals had their workload increased or what impact the assignment had on their hours or vacation time. Accordingly, we need not determine whether the assignment flowed from a reduction in force.

H.E. NO. 95-9

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

In the Matter of

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Respondent,

-and-

Docket No. CO-H-94-122

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Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission found that the Irvington Board of Education did not violate the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., by unilaterally assigning summer school duties to 12-month assistant principals and refusing to negotiate over additional compensation. The Hearing Examiner found that in accordance with Maywood Bd. of Ed., 168 N.J. Super. 45 (App. Div. 1979), the assignment was made as a result of a reduction-in-force and the resulting workload increase was not significant enough to obligate the Board to negotiate over compensation.

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. 95-9

STATE OF NEW JERSEY  
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Appearances:

For the Respondent,  
Schwartz Simon Edelstein Celso & Kessler, attorneys  
(Nicholas Celso, III, of counsel)

For the Charging Party,  
Wayne J. Oppito, Esq.

HEARING EXAMINER'S RECOMMENDED  
REPORT AND DECISION

On October 21, 1993, the Irvington Administrators Association ("Association") filed an unfair practice charge with the New Jersey Public Employment Relations Commission ("Commission") alleging that the Irvington Board of Education ("Board") violated subsections 5.4(a)(1), (5) and (7) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.<sup>1/</sup> The

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<sup>1/</sup> 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



Association alleged that the Board unilaterally changed terms and conditions of employment when, in June 1993, it directed two regular assistant principals to split the administration of the high school summer school program during the summer of 1993 without additional compensation, and without negotiations with the Association.

A Complaint and Notice of Hearing was issued on March 1, 1994. The Board filed an Answer with affirmative defenses (C-2) on March 10, 1994. The Board admitted certain basic facts, but specifically denied that in June 1993 it directed two assistant principals to administer the summer school program during the summer of 1993 without additional compensation, and denied that it unilaterally changed terms and conditions of employment. As affirmative defenses, the Board argued that it had only exercised its managerial prerogative to assign staff; that the Association had failed to request negotiations thereby waiving its rights; and, that the Association's claim was de minimus.

A hearing was held on April 21, 1994 in Newark, New Jersey.<sup>2/</sup> Both parties filed post-hearing briefs by July 11, 1994.

Based upon the entire record I make the following:

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1/ Footnote Continued From Previous Page

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/ The transcript will be referred to as "T".

FINDINGS OF FACT

1. The Association is the majority representative of all Principals, Vice-Principals, Assistant Principals, Supervisors and Directors employed by the Board (J-1). The Association has never represented or negotiated for the position of Summer School Principal, whether in the high school or any other school (T20). Only one time, approximately 1980, has an employee regularly holding a title represented by the Association served as high school summer school principal. That employee, Fred Manuel, performed his regular assistant principal duties and received his regular salary, but he also volunteered to give up his vacation time to do the summer school principal job for which he received additional compensation (T18). The Association did not negotiate the stipend he received for the summer school work (T37). From that time thru 1992 all of the high school summer school principals were employees not regularly holding titles represented by the Association, and who received a stipend for their summer school work (T17-T21).

2. Prior to 1978, a teacher, Richard Hughes, was the high school summer school principal (T19). Subsequently, Fred Manuel was high school summer school principal for at least two successive years beginning in 1979 or 1980. The first year he performed those duties he was a ten month guidance counselor, not part of the Association's unit, and received his regular salary and an additional stipend for the summer school work (T17-T18). Following his first year of summer school, Manuel became a 12 month Assistant

Principal (T17, T36). He applied to be high school summer school principal for the following year and was allowed to take the position by giving up his vacation time in exchange for receiving additional compensation (T17-T18, T36, T101-T102). The Association did not demand negotiations for Manuel that second year because he had volunteered for the summer job and received additional compensation (T37).

Following Manuel as high school summer school principal was Harry Donovan, for a year or two, then Guy Ferry from 1983 through 1986. Both Donovan and Ferry were ten month principals at that time, they voluntarily applied for the summer school position, and they both received additional compensation for the summer work (T19, T112-T118).

From 1986 - 1992, Frank Korn, regularly the ten month Foreign Language Department Chairperson, was the high school summer school principal and received additional compensation for that work (T19, T118-T119). Korn received a \$5,000.00 stipend for performing the high school summer school principal duties in the summer of 1992 (T20, T115). Neither the Administrator's Association (the charging party here), nor the Education Association (the majority representative of teachers and other ten month employees) ever negotiated a stipend for the high school summer school principal duties (T20).

3. In the late 1980's, Guy Ferry became an Assistant Superintendent (T101). In early June 1993, Ferry, and apparently

the Superintendent, recommended to the Board's Personnel Committee that Korn be reappointed high school summer school principal for the summer of 1993 for a salary of \$5,000.00. The Personnel Committee, however, rejected that recommendation (T123, CP-3).<sup>3/</sup> The Board did not abolish, but decided not to fill, the high school summer school principal position because of budget cuts (T102-T103). Instead, it decided that if summer school was being held in a particular school the regular principal of that school, and Ferry, would be responsible for making certain that the summer school duties were performed. Ferry was directed to use all available personnel resources to accomplish that goal (T103, T123-T124).

The Board adopted the following language (CP-3):

8. High School Summer Appointments

The Committee decided that since Frank H. Morrell High School has a Principal and 6 Assistant and Vice Principals, who are all twelve month employees, one of these administrators should be responsible for Summer School. It was emphasized that the administrator selected to be in charge of Summer School be alleviated of his other responsibilities. The Summer School Administrator's duties should be reassigned to the other administrators at the High School.

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<sup>3/</sup> CP-3 was the relevant part of the Board Personnel Committee agenda for June 9, 1993 (T9). That agenda document was written with two recommendations for High School Summer Appointments. Section 8(a) on the first page of the exhibit included the recommendation to approve Korn as high school summer school principal for 1993 at \$5,000.00. Section 8 on the second and third pages of that exhibit, however, is the recommendation to use assistant principals to perform the duties of the high school summer school principal. The Board rejected the first recommendation but adopted the second recommendation (T125-T126).

Mr. Walton said that it is up to the Superintendent to tell his administrators that vacations will not be taken during a certain time. Then the Superintendent will inform the administrators that the Summer School Principal position will be rotated from year to year.

The Committee instructed that a meeting be held with the administrators at the High School to inform them of this decision and see which ones have not scheduled their vacations. The person who takes the Summer School position this year will not be responsible for it for another 5 years, since the position will be rotated every year.

Dr. Celso explained that there will be no vacation time taken away from the administrator in charge of Summer School. The person is being told that they have to re-schedule their vacation time. He said it is important that the person be informed, in writing, that they are being alleviated from their regular assignments.

In its post-hearing brief (at p. 3), the Board, citing CP-3, argued that it had adopted a recommendation that the regular high school principal "be assigned to manage and administer the districts summer school program". That statement is inaccurate and misleading. There is no such language in CP-3. What the language in CP-3 says is that one of the (seven) administrators at the high school should be "responsible" for summer school. It does not say that the principal is obligated to "manage and administer" the program. In fact, Ferry testified that he told the Board he thought it was unreasonable to take the position that the principal be in charge of summer school (T103). He further testified that the Board told him that "the person", presumably the person selected to be responsible for summer school, is the person responsible (and not

necessarily the principal) and that he (Ferry) needed to use whatever personnel resources within his authority to make sure that someone was responsible for the summer school program (T103). I credit that testimony and, therefore, find that the burden was on Ferry, and not the high school principal, to make certain the Board's directive in CP-3 was implemented (T107, T124).

4. Subsequent to the Board action, but still in early June, Ferry notified the then regular High School Principal, Anthony Pilone, who was also the Association's President, that one of the regular high school assistant principals was going to run the six week high school summer school program, and Ferry wanted to know who would perform that role (T23). Pilone responded that he preferred to have six people -- presumably a mixture of his assistant principals and vice principals -- perform the summer school duties each for one week, but Ferry rejected that suggestion saying that method would not be approved by the County Superintendent (T23, T48). Since Ferry would not approve Pilone's first suggestion on how to handle the high school summer school principal duties, Pilone recommended that the freshman administrator be assigned to perform those duties because those duties rotated from year to year and because they involved a little less scheduling than the duties for upper class students (T23, T26, T105).

Pilone and Ferry had discussed the work of the different high school administrators and Pilone recommended that Assistant Principal Vincent Smith be given the high school summer school

duties for 1993 because he was becoming the freshman administrator (T23, T26, T48, T105). Pilone and Ferry had, apparently, also discussed that Assistant Principal Richard Graves might be the next most likely administrator to perform the summer school duties (T106).

Ferry directed Pilone to notify Smith about the summer school work, but Ferry also decided to have Smith talk to him directly about the summer school assignment and whether it would impact his vacation plans (T105). Ferry did not testify that he directed Pilone to discuss with Smith how his (Smith's) other responsibilities might be alleviated to allow him to perform the summer school duties.

5. Pilone met with Smith in early June. He told Smith that an assistant principal would be performing the summer school work, and that he (Pilone) had recommended him (T24, T60). Smith told Pilone the problem he had with that assignment, but they did not discuss ways of alleviating Smith's other responsibilities (T60, T82).

In mid-June, Smith went to Ferry's office to discuss the summer school assignment. Pilone was not present (T67). Ferry told Smith about the Board's decision to have an assistant principal perform the summer school work and that Pilone had recommended him for that summer. Smith informed Ferry that he had a conflict performing the summer school duties because of his vacation schedule, and he also asked Ferry about compensation. Ferry told him there would be no compensation for the summer work because the

Board believed assistant principals should assume those duties, but he was willing to make arrangements to allow Smith to use his vacation time. Smith did not lose any vacation time that summer. Ferry and Smith discussed that Graves might be able to assume some of the summer school duties, and Graves was eventually assigned to work the first, fifth and sixth weeks and Smith the second, third and fourth weeks of the summer program. But Ferry never discussed with Smith that his other duties would be rearranged or that he would be relieved of his other duties in order to perform his summer school duties (T61, T68-T70, T76). During the three weeks he performed summer school duties Smith never asked Ferry to relieve him of his other duties, but he did ask Assistant Superintendent Silver, about being relieved of other duties, but no such action was taken (T81, T82).

There was no evidence that Pilone discussed the summer program with Graves. Ferry, however, met with Graves after meeting with Smith. He told Graves that Smith could not do the full six weeks summer school program and asked Graves to do the first, fifth and sixth weeks. Graves told Ferry it would be a hardship for him, there wasn't enough time, and the only way he could do it would be to give up some of his 22 vacation days (T89).

Prior to being assigned the summer school duties, Graves had planned to take his full 22 vacation days during July and all but the last two weeks of August simply by circling 22 days on a calendar anywhere from two to five days a week until his vacation



days were used. That would have left him 18 days to do the summer interviewing work he needed to do to start regular school in the fall (T97-T98).

After Graves told Ferry it would be a hardship for him to do summer school, Ferry said he would ask the Superintendent if Graves could take some of his vacation during the fall (T89). There was no discussion, however, about Graves receiving additional compensation or being relieved of his normal duties (T90). Before Ferry reported back to Graves regarding the use of his vacation time, Graves decided he had to sacrifice his vacation time, take what he could in the summer, and not take any vacation in the fall because he did not want to be away from his regular students (T89-T90). Since Graves had planned to take 22 days during the summer, but now had to work 15 days for summer school, he could use only 7 vacation days that summer. Since Graves was required to perform the summer school duties, he could not schedule the vacation time during the summer because the summer school program duties did not give him the ability to use his vacation time (T99-T100).<sup>4/</sup>

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<sup>4/</sup> In its post-hearing brief (at p. 6), the Board said "...Graves chose to take vacation time during the school year, stating that he 'made a commitment to perform the summer duties'. Graves also conceded that he was not denied any vacation days as a result of his participation in summer school." It cited to (T99) for support. Those statements in the brief are inaccurate. At (T100) Graves did respond positively to a question that he made a commitment to perform the summer duties, but at (T99) he responded "yes" to the question "You

As a result of his meetings with Smith and Graves, Ferry (and not Pilone), by late June 1993, had assigned to them, without additional compensation, the responsibility of performing the high school summer school principal duties which they involuntarily assumed (T50, T61, T89). Prior to 1993, the high school summer school principal duties had never been assigned on an involuntary basis (T50, T116).<sup>5/</sup>

6. The resolution the Board adopted on June 9, 1993 concerning summer appointments -- CP-3 -- included several specific requirements. The Superintendent was directed to inform administrators that the summer school duties would be rotated from year to year. The Board's Personnel Committee then instructed that

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4/ Footnote Continued From Previous Page

chose to make the commitment not to take the vacation time during the school year" (emphasis added). In addition, there is no language on (T99) to support the Board's contention that Graves "conceded" that he was not denied any vacation days due to summer school. In fact, from a review of (T99-T100), I infer that Graves said he did lose vacation time (at least during the summer) because of being assigned summer school duties.

5/ In note 4 of its post-hearing (at p. 11), the Board said that Pilone "opted" to assign the summer school duties to "one assistant" and cited (T34-T35) for support. That statement is inaccurate and there is no language in (T34-T35) to support it. Pilone did not opt to assign the summer school duties to one assistant principal. As I discussed above, Pilone wanted to spread the summer school duties among six assistants, one week each, but Ferry rejected that recommendation and Pilone was directed to recommend one assistant principal to perform the work (T23, T48). It was Ferry who formally directed Smith to perform half the summer duties, and it was Ferry who decided to assign Graves to perform the other half.

a meeting be held with high school administrators to inform them of the summer duties and to see which administrators had not scheduled vacations. CP-3 did not say the principal was so instructed. I infer it had to be the Superintendent. CP-3 further provided that no vacation time would be taken away from the administrator in charge of summer school, that person would be told to reschedule vacation time, and most important, CP-3 required that the person assigned to perform the summer school duties be informed in writing that they were being relieved of their regular assignments.

Despite CP-3's apparent clear language, there is no evidence that any of its requirements were carried out. There was no evidence that the Superintendent (or even the Assistant Superintendent) met with all administrators to discuss the summer school duties, Graves could not reschedule vacation time because of his summer school duties and because he still had to perform his regular duties, and there is no evidence that either Smith or Graves were informed orally -- or in writing -- that they were being relieved of their regular assignments. In fact, they were not relieved of their regular duties.

In note 5 of its post-hearing brief (p. 11), the Board stated that Pilone failed to implement the Board's directive CP-3. That statement is both misleading and unsupported by the evidence. For reasons discussed above, here, and later, Ferry and/or Assistant Superintendent Silver (T81, T82, T94), was responsible for implementing CP-3, not Pilone. Other than being required to

recommend the assistant principals who actually performed the summer school work, the evidence does not show that Pilone was specifically directed to carry out the requirements of CP-3. In fact, the evidence shows that Pilone was only the high school principal until June 30, 1993 after which he was transferred and became principal of a middle school effective July 1, 1993 (T15, T27-T28). Since the 1993 high school summer school program did not begin until late June or early July and took place mostly in July and early August 1993 (T107), Pilone could not have been responsible for implementing CP-3 during the summer program.

7. Prior to June 1993 the Association never demanded negotiations over the performance of high school summer school duties (T20, T102). In June 1993, at the time Ferry informed Pilone that an assistant principal would be assigned to perform the high school summer school principal duties, Ferry did not indicate to Pilone that the Board was willing to negotiate with the Association over additional compensation for any assistant principal performing summer school work (T27). Pilone took Ferry's remarks as a directive, and he did not ask Ferry about negotiating additional compensation for the summer school work.<sup>6/</sup> In fact, during June 1993, the parties were actively negotiating over a new collective

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<sup>6/</sup> Pilone was asked on direct examination whether he asked Ferry about compensation at that time. He responded, "I don't recall" (T27). Since Pilone could not recall, and since Ferry testified that Pilone never questioned him about additional compensation (T112), I find that Pilone did not raise the compensation issue with Ferry.

agreement but during those negotiations the Board did not indicate that they wanted an assistant principal to perform summer school duties (T124-T125), and the Association did not discuss summer school duties during those negotiations (T48).

Just after Pilone's meeting with Ferry in June 1993 regarding summer school, the Association filed a grievance regarding the assistant principals performance of summer school duties. At the first step meeting with the Superintendent which took place prior to June 30, 1993, Pilone requested negotiations over additional compensation for assistant principals assigned to perform the high school summer school principal duties. Pilone was told there would be no additional compensation for the performance of the summer school work (T27, T46).<sup>7/</sup> The Association pursued the

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<sup>7/</sup> Pilone had testified on direct examination that he made the request for negotiations over compensation for the summer school duties to the Superintendent at the first grievance step in June (T27). On cross-examination, Pilone was asked to explain when the Association made the demand to negotiate over compensation for the summer school duties. He responded:

Once Mr. Ferry had come to say that one of our--that the assistant principal was now going to have to be the summer school principal (T35).

He also responded "yes" to the question that it was in June 1993.

Later on cross-examination, however, after responding "yes" to being approached by Ferry in June 1993, Pilone was asked:

At that time your testimony was that you demanded negotiations as to compensation for this position?

grievance up to the Board level, but received no response other than the response already given by the Superintendent (T48-T49).

8. There are five assistant principals employed at the high school. They are employed on a 12 month basis and receive 22 vacation days per year (T25, T31, J-1 Art. 13(c)). The principal, vice principals and assistant principals normally take their vacation time during the summer, but while Pilone was principal they could not take vacation time the last two weeks before the start of school (T30, T31).

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7/ Footnote Continued From Previous Page

He responded:

No. After we filed a grievance.

Then the Board's counsel posed the following question:

Well I'm a little confused. First you said he approached you in 1993 and it was at that time that you demanded negotiation on compensation.

He responded:

No, I said---

and he was cut off (T46).

I find no inconsistency with Pilone's testimony on direct and cross-examination. When he first responded to Board' counsel's question about when he demanded negotiations Pilone did not say he made the demand of Ferry. I infer from Pilone's testimony that "Once Ferry had come" meant that he (Pilone) made the demand after Ferry had come to tell him about the summer school duties.

The more important fact here is that the Board did not offer the Superintendents testimony to rebutt Pilone. Thus, there was no evidence contradicting Pilone's testimony that he made a demand to negotiate over compensation and the Superintendent refused. I credit Pilone's testimony and find that the demand was made.

The assistant principals report directly to the vice principals even regarding regular work they perform in the summer (T32). Four of the assistant principals work during the regular high school day program, and one Assistant Principal, Richard Graves, is in charge of the "alternative school" which operates evenings during the regular school year from approximately 3:00 p.m. to 8:00 p.m. (T31).

During the summer months Smith's work hours regarding his regular work were generally 8:30 a.m. to 3:30 p.m., and Graves were from 8:00 a.m. to 3:30 p.m. because the alternative school was not operating in the summer (T56, T86-T87). The four daytime assistant principals were rotated through being a class administrator, one for each class level, i.e., freshman, sophomore, junior and senior (T26, T78). Smith also spent a majority of his time during the regular school year dealing with discipline problems (T70). During the 1992-93 school year, Smith was senior class administrator, and for the 1993-94 school year Smith was scheduled to be the freshman class administrator (T23, T26, T105).

In addition to the class administrator functions, the assistant principal job description also includes the following duties:

The Assistant Principal is responsible for, but not limited to the following duties:

1. Assist the Principal in the overall administration of the school
2. Assist the Principal in determining the updating curriculum, including

- a) Participation in the T & E process
  - b) Requisitioning of supplies, materials and textbooks
  - c) Distribution of building supplies and textbooks to appropriate staff members
3. Supervise conduct within the school, oversee all disciplinary and attendance matters
  4. Provide orientation to new teachers
  5. Advise substitute teachers of building procedures and programs
  6. Attend school functions, PTA programs, parent-teacher, student-teacher and student-teacher-parent conferences, when assigned.
  7. Coordinate all co-curricular and extra-curricular activities
  8. Serve in a liaison capacity to the RITE program
  9. Assist with Magnet, Federal and State programs where appropriate
  10. Serve in a liaison capacity to Special Services
  11. Assist the Principal in orientation programs and in-service training workshops
  12. Supervise such school operations as fire drills and assembly programs
  13. Assist the Principal in pupil and teacher scheduling
  14. Serve as Acting Principal in the absence of the Principal (elementary schools only)
9. Smith's regular summer duties included several functions. First he, like the other class administrators, had to finish closing out the prior year. Since he had been senior



administrator he had to inventory the caps and gowns, repack and send them back, and receive credit for the senior class account. He had to close out other senior class financial matters, distribute diplomas to those students who did not receive them, and he continued to assist some students who were still attempting to get into college. In addition, Smith was also responsible for changing over the files from one year to the next for both the students and teachers and departments he was responsible for. He had to reorganize files and place them in storage; collect books and distribute them to the correct departments; review, rewrite and update manuals and performance procedures; determine teacher parking lot assignments; and reorganizing their seniority. He also assisted in student and teacher scheduling; checked report cards of continuing students for accuracy; and prepared for the next school year by assisting the principal and vice principals and conducting parent conferences (T57-T59).

Graves' regular summer duties primarily involve interviewing all of the prospective students for the alternative school and their parents. He carries 90 students in his program but interviews approximately 120 during the summer. He normally schedules interviews every 15 minutes beginning around 8:00 a.m., but sometimes double schedules because people fail to show for their conference. The conferences run 15 to 20 minutes and he sometimes gets backed-up. In addition to the interview conferences, Graves regular summer duties also include reviewing student transcripts to

determine their eligibility for his program; class scheduling for the students, teachers and guidance counselor attached to his program; assisting in the interviewing of teachers for his program; and making certain enough books and supplies are available for the new school year (T86-T88, T91, T98-T99).

10. The official summer school principal duties as listed in the Board job description (CP-2) include:

The summer school principal is responsible for, but not limited to the following duties:

1. Establish selected summer school courses for selected grade levels after consultation with the Superintendent of Schools.
2. Assist in appointment of personnel including substitutes when necessary.
3. Prepare the summer school schedule and implement registration and assignment of students.
4. Prepare and oversee dissemination of publicity and information concerning summer school course offerings.
5. Assumes responsibility for attendance taking and concomitant enrollment and attendance reports.
6. Prepares and maintains required records to be submitted to county and/or state office.
7. Reports and certifies, to proper authorities, the grade(s) achieved by summer school students.
8. Makes classroom visits for administrative and supervisory purposes.
9. Requisitions classroom equipment, supplies and textbooks.
10. Prepares and administers the summer school operating budget.
11. Makes an end of school report to the Superintendent of Schools.

CP-2 also provides that the summer school principal is responsible to the Superintendent, but in the summer of 1993 the Superintendent's authority was delegated to Assistant Superintendent Silver (T94).<sup>8/</sup>

Ferry performed some of the summer school principal duties himself prior to the start of the summer school program. He determined the number of English, history and science sections that would be needed and posted that information to attract staff, and he prepared the necessary reports required by the County and State. But he acknowledged that Smith and Graves requisitioned the needed supplies and equipment and took care of replenishing the consumable supplies that were used (T107-T110).

There were approximately 400 students attending summer school in 1993 (T64). Summer school began at 7:45 a.m. for the students and teachers, but ended at 12:00 p.m. for the students and 12:15 p.m. or 12:30 p.m. for the teachers. When Smith performed the summer school duties he arrived at the high school by 7:30 a.m., but did not leave at 12:30 p.m. (T62).

In addition to performing their regular duties during the summer which were not taken away from them, Smith and Graves summer

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<sup>8/</sup> Although CP-2 is the job description for the title "Summer School Principal", as Ferry already testified, the Board chose not to fill that position at the high school in 1993 (T102-T103). Rather, the Board chose to assign the duties of that job to the high school assistant principals. Thus, it was not the position or job title of "summer school principal" that was assigned to Smith and Graves, it was just the duties of that position which were assigned to them.

school duties generally included supervision of the summer school program, the students, teachers, course of instruction, student discipline, conduct of parent conferences, and reporting to Dr. Silver. They were specifically responsible for the gathering, accuracy and reporting of student attendance; they had to verify teacher attendance and prepare teacher payroll reports; they had to monitor grades and behaviorial problems; they had to deal with student discipline, and hold parental conferences concerning discipline, attendance and academic matters; they were responsible for issuing summer school report cards; and they had to make frequent written and oral reports to Dr. Silver regarding student and teacher attendance and student academic progress, all of which were done on a weekly basis with reports submitted to Dr. Silver by 2:00 p.m. on Fridays (T63-T66, T92-T94).

As a result of being involuntarily assigned to perform the summer school duties in addition to his regular summer duties, Graves' workday was extended everyday he was responsible for summer school. Due to his summer school duties which required supervision of the morning summer school program, Graves could not schedule any student/parent conferences between at least 8:00 a.m. and 12:30 p.m. for the alternative school program he supervised during the regular school year. During the three weeks he was responsible for summer school, Graves was required to conduct the alternative school conferences between 1:00 p.m. to at least 4:30 p.m. (T90-T91). But Graves also admitted that even in the weeks he was not responsible

for summer school, at times he still had to stay late and schedule appointments until 4:30 p.m. because of the number of people he had to see (T91-T92).

#### ANALYSIS

Although compensation and employee workload are generally mandatorily negotiable terms and conditions of employment, Local 195, IFPTE v. State, 88 N.J. 393, 403 (1982); Woodstown-Pilesgrove Reg. Schl. Dist. Bd. of Ed. v. Woodstown-Pilesgrove Ed. Ass'n, 81 N.J. 582, 589 (1980); Burlington Cty. Coll. Fac. Ass'n v. Bd. of Trustees, 64 N.J. 10 (1973); Piscataway Tp. Bd. of Ed. v. Piscataway Tp. Principals Ass'n, 164 N.J. Super. 98 (App. Div. 1978); In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12 (App. Div. 1977); Monroe Tp. Bd. of Ed., P.E.R.C. No. 86-56, 11 NJPER 709 (¶16246 1985); Buena Reg. Schl. Dist., P.E.R.C. No. 86-3, 11 NJPER 444 (¶16154 1985), workload increases and related demands to negotiate over additional compensation that result from an employer's exercise of its managerial prerogative to reduce its work force are non-negotiable particularly when there is not a significant workload increase. In re Maywood Bd. of Ed., 168 N.J. Super. 45 (App. Div. 1979), cert. den. 81 N.J. 792 (1979). Old Bridge Bd. of Ed., P.E.R.C. No. 86-113, 12 NJPER 360 (¶17136 1986), aff'd App. Div. Dkt. No. A-4429-85T6 (3/25/87), cert. den. 108 N.J. 665 (1987); North Bergen Bd. of Ed., P.E.R.C. No. 82-109, 8 NJPER 317 (¶13143 1982); Kingwood Tp. Bd. of Ed., P.E.R.C. No. 82-31, 7 NJPER 584 (¶12262 1981). Where the workload increase has been significant and

measurable, however, the Commission has severed the compensation demand from the workload increase and permitted negotiations or arbitration on the compensation issue. Bloomfield Bd. of Ed., P.E.R.C. No. 93-95, 19 NJPER 242 (¶24119 1993), aff'd App. Div. Dkt. No. A-4673-92T3 (7/20/94); Teaneck Bd. of Ed., P.E.R.C. No. 92-19, 17 NJPER 415 (¶22199 1991); Rahway Bd. of Ed., P.E.R.C. No. 88-29, 13 NJPER 757 (¶18286 1987).

Here, the Association seems to challenge both the workload increase, i.e., the assignment of the summer school duties to Smith and Graves, and the Board's refusal to negotiate over additional compensation. In its Answer, the Board, in part, denied that it directed assistant principals to administer the summer school program without additional compensation. While the record shows that the Board did, in fact, require assistant principals to administer the summer school program, in its post-hearing brief the Board stated several legal defenses to support its action. It primarily argued under the Maywood line of cases that by exercising its managerial prerogative not to fill the high school summer school principal position, it had reduced its work force and has redistributed the work to employees certified to perform such work. It argued, therefore, that it was not obligated to negotiate over the resulting workload change or additional compensation. The Board further argued that even if there were some workload increase, it was not a significant or measurable increase which would justify severing the compensation issue for negotiations.

Notwithstanding the reason for assigning the summer school duties to Smith and Graves (the Board's decision not to fill the summer principal position), the mere assignment of duties is a managerial prerogative and therefore, not negotiable. Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Ass'n, 78 N.J. 144, 156 (1978); Local 195, IFPTE at 407, 413-419; Byram; but compensation may be negotiable. See Ramapo-Indian Hills Ed. Ass'n v. Ramapo-Indian Hills H.S. Dist. Bd. of Ed., P.E.R.C. No. 80-9, 5 NJPER 302 (¶10163 1979), aff'd 176 N.J. Super. 35 (App. Div. 1980). Thus, aside from the workload issue, the Board had the right to assign summer school duties to the assistant principals.

To the extent that an assignment of duties creates a workload increase - other than an increase resulting from a reduction-in-force - the teachers' workload increase is negotiable. See Local 195, IFPTE; et al. cited above. However, where, as here, the workload increase resulted from the Board's decision not to fill the summer school principal position, the workload increase was not negotiable, and negotiations over compensation would only be appropriate if the Association made a demand to negotiate compensation, and if the increase was significant and measurable.

The record shows that Pilone made a demand to the Superintendent to negotiate compensation. Although the Board argued that no demand was made based upon its analysis of what it believed was confusion in Pilone's testimony, I found Pilone made such a demand, and that the Board did not present any contradictory

evidence. This case then rests upon whether the workload increase was significant and measurable.

The Board's assertion that there was no workload increase lacks merit. Despite the Board's best intentions as stated in CP-3, neither Smith nor Graves had their regular summer work taken away to allow them to more easily perform the summer school duties. Since they had to perform both their regular summer duties and their summer school duties, their workload inevitably increased.

Smith's workload increase cannot be considered significant. For the most part, he managed to do his summer duties within his regular work day, he did not lose vacation time, and although he occasionally worked a longer day, the evidence does not show that his hours were regularly increased.

The summer school duties, however, had greater impact on Grave's overall workload than it did on Smith's. But that was because Graves' regular summer duties were more extensive and time consuming than Smith's. Graves had less flexibility in his regular summer schedule because he had to complete the interviews for his regular school program. As a result, when he was assigned the summer school duties he found it impossible to perform his regular and summer school duties and still take all 22 vacation days before the last two weeks of August. Consequently, he was unable to use all of his vacation time that summer. While I inferred that he lost vacation time - at least during the summer - the record does not show whether he was credited with that time, used it during the



regular school year, filed a grievance over it, or whether he voluntarily waived it. During the three weeks he performed summer school duties, Graves scheduled interviews through 4:30 p.m., but he often did that anyway to accommodate all the people he needed to see. The record does not show that there was a significant change in his hours.

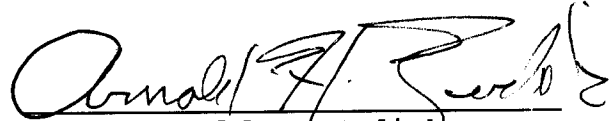
Had the Board carried out its intent in CP-3 to remove regular work, Graves' ability to use all of his vacation time that summer would not have been adversely affected. But that fact was not the issue in the charge and does not convert the Board's exercise of its managerial prerogative into a negotiable right. Since there was no appreciable difference between the summer duties assigned to Smith and Graves, and since it appears that Graves was able to perform his regular and summer school duties within the range of a normal summer workday, I cannot find that the summer duties alone constituted a significant workload increase.

Consequently, in accordance with Maywood; et al. as cited above, I find that the Board was not obligated to negotiate over the increased workload or compensation for the assignment of summer school duties to assistant principals.

Accordingly, based upon the above facts and analysis, I make the following:

RECOMMENDATION

I recommend the complaint be dismissed.<sup>9/</sup>



Arnold H. Zudick  
Hearing Examiner

DATED: September 1, 1994  
Trenton, New Jersey

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<sup>9/</sup> As a remedy, the Association sought an order requiring the Board to pay Smith and Graves \$2,500 each. Even if the workload increase had been significant justifying negotiations over compensation, the Association's proposed remedy is inappropriate. The Association would only have been entitled to negotiate over salary, nothing more.