H.E NO. 2004-3

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

In the Matter of

PEMBERTON BOROUGH BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-H-2002-110

PEMBERTON BOROUGH EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Pemberton Borough Board of Education did not violate N.J.S.A. 34:13-5.4a(1) or (5) when it unilaterally instituted a new work schedule for teachers, resulting in a 10 minute increase in pupil contact time. The hearing examiner found that the Board had a managerial prerogative to institute the change to ensure the safety, security, and well-being of its students. Moreover, the Board did not refuse to negotiate since the parties apparently reached a tentative agreement on the issue, despite the fact that such agreement was not ultimately finalized.

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. If no exceptions are filed, the recommended decision shall become a final decision unless the Chair or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

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Appearances:

For the Respondent,
Barry J. Wendt, attorney

For the Charging Party,
Zeller & Bryant, attorneys
(Allen S. Zeller & Richard E. Golden, of counsel)

HEARING EXAMINER'S REPORT AND RECOMMENDED DECISION

On October 29, 2001 and March 22, 2002, the Pemberton Borough Education Association (Association) filed an unfair practice charge and amendment, respectively (C-1).[1/] against the Pemberton Borough Board of Education (Board or District). The charge and amended charge allege that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

1/ "C" refers to Commission exhibits received into evidence at the hearing in the instant matter. "CP" and "R" refers to Charging Party's exhibits and Respondent's exhibits, respectively received into evidence at the hearing. The transcript of the hearing is referred to as "T."

(Act); specifically, 5.4a(1) and (5)[2/] when it unilaterally instituted a new work schedule for unit members which resulted in a 10 minute increase in pupil contact time. The Association alleged that the Board violated the Act when it refused to negotiate over the new schedule, as well as compensation for the resultant increase in pupil contact time.

On May 30, 2002, a Complaint and Notice of Hearing issued (C-1). On June 13, 2002, the Board filed its Answer, denying it violated the Act. The Board claims it did not change the work schedule for teaching staff (C-2). A Hearing was held on August 28, 2002. Post-hearing briefs were received by November 12, 2002 and both were considered. Based on the entire record, I make the following:

FINDINGS OF FACT

1. The Borough is an elementary single school district with approximately 130 students. The District complex consists of two school buildings and the Municipal Building which houses the

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2/ These provisions 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."

administration offices. One school building contains the gym/auditorium and one seventh and one eighth grade classroom. The other building contains the kindergarten through sixth grade classrooms (T28-T29, T101, T159; J-9A).

2. The Association is the majority representative of a unit of approximately 17 teachers and instructional aides. The parties' most recent agreement was effective from July 1, 1998 - June 30, 2001 (J-1). The parties are in negotiations for a successor agreement (T114-T115, T154; C-1).

Article VII A of J-1 provides in relevant part:

> All personnel covered by this Agreement shall be required to be on school property no later than 8:30 a.m. and to be at their assigned classroom or teaching station not later than 8:40 a.m. . . .

This same wording has been contained in each of the parties' agreements since 1976 through J-1 (T110-T113, T136, T157-T158; J-1, J-12, J-13).

3. Parent-Student Handbooks address the morning period for students, that is, the period from 8:30 a.m. - 8:40 a.m. The 2001-2002 Handbook (J-4) states "For safety purposes, students should time their arrival between the first bell (8:30 a.m.) and the arrival bell (8:40 a.m.). School personnel are not available to supervise children until 8:30 a.m. Students will not be permitted on the playground until 8:30 a.m.". The 2000-2001 Handbook (J-5) simply indicated that "the morning session begins

at 8:40 a.m." (T114-T115; J-5). The Parent-Student Handbook applies only to parents and students, not teachers (T27, T68, T114, T174; J-4, J-5).

4. Students who arrive on school grounds before 8:30 a.m. stand on the sidewalk next to the administration office. Specifically, they congregate on Ebgert Street and in front of the Municipal Building. They wait there until the gate, that is adjacent to the gym and seventh grade classroom, is opened at 8:30 a.m., when the bell rings for entrance onto school property (T27, T35, T90, T130, T148; J-10B).

Children are not permitted on school property before 8:30 a.m. because of safety reasons; there is no supervision for them, prior to that time (T30, T72, T130-T131; J-4). Historically, students were not required to report to their classrooms until 8:40 a.m. (T30-T31, T72).

The 8:30 a.m. - 8:40 a.m. period prior to September 2001

5. During school years prior to September 2001, when students entered school grounds at 8:30 a.m., they would report to the blacktop area between the two school buildings. They were not permitted on the field or the playground equipment. The seventh and eighth grade students would stay on the blacktop area outside of their respective classrooms. The kindergarten and first grade students stayed on the patio area outside of their

classroom door, which has an overhang. The other students milled around in the rest of the blacktop area (T32-T33, T35, T37, T52, T90, T92-T93, T130, T164-T166; J-9B, J-10A, J-10C). Not every student would be on this blacktop area during this 8:30 a.m. - 8:40 a.m. time frame; rather, only those students who arrived prior to their required 8:40 a.m. reporting time would be there (T33).

When it was time to line up to go inside, kindergarten and first grade students lined up under the patio area. Second, third and fourth grade students lined up adjacent to their classroom building and fifth and sixth grade students lined up perpendicular to them. Finally, seventh and eighth grade students lined up along the wall of their classroom building by their classroom door (T33-T34, T52-T56, T93, T165-T166; J-9A, J-10A, J-10C).

6. Doreen Matt served as full-time morning playground aide from September 1996 through September 2001 (T89-T107). Matt supervised the children as they entered school properly at 8:30 a.m. until 8:40 a.m., when they reported to their classrooms. Basic Skills Aide Lou Anne Hynes helped Matt supervise students on Monday, Wednesday and Friday mornings, and Physical Education Teacher Leann Wood helped supervise on Tuesday and Thursday mornings during these years (T31-T32, T48-T49, T89-T91, T98-T99). Hynes and Woods, however, were not required to be there at 8:30

a.m. to assist Matt. Based upon J-1, their pupil contact time did not begin until 8:40 a.m. However, for these several years, they volunteered to help Matt before 8:40 a.m. (T99, T139). Finally, the Superintendent, then Patricia Doloughty, also assisted Matt then, if she was available (T49).

Matt, and the people who assisted her, would attempt to observe all of the children in the blacktop area by positioning themselves strategically. One aide would be stationed on the patio with the younger students, while the other would be stationed with the second through sixth grade students. Since the area was not that large, they could observe most, but not all, of the children, because of how the seventh and eighth grade students were positioned (T34, T90, T94, T102, T166). When an aide would speak to a child during this time, if that aide stayed positioned correctly, she could still observe the rest of the children (T34).

When a child had a problem during this 8:30 - 8:40 a.m. period and approached an aide for help, that aide would be devoted to the child's needs, which could leave the other aide alone to supervise the other approximately 130 children (T58-T59).

Matt acknowledged there were a few problems among the students during this morning gathering time while she served as the morning playground aide. She worried about leaving the other

13 students unattended in the event she had to handle a problem with a student. Consequently, in August 2000, Matt wrote to the Board requesting that another aide be assigned to help her during this morning period. In October 2000, another aide was, in fact, hired to assist Matt (T91, T98-T99, T101-T102).

7. During inclement weather, students would come into the building during this 10 minute morning period. The seventh and eighth graders would line up in the gym with one aide supervising. The approximately 115 kindergarten through sixth grade students would line up in the hallway outside of their classrooms in their separate building; the other aide would be with them. If needed, a janitor or any teacher who was available at the time would help supervise the students (T40-T41, T59, T105, T140). Teachers would work as a team, but they did not necessarily help every time students were inside due to inclement weather (T141). The area where kindergarten through sixth grade students congregated was narrow and noisy.

Doloughty believed this inclement weather situation was far from ideal, but there had been no major problems (T40-T41, T60-T61).

8. It was not unusual for students to see the nurse during this 8:30 a.m. - 8:40 a.m. period for various reasons; sometimes because they had not been feeling well before arriving

at school, other times due to injuries that occurred on the blacktop during the 8:30 a.m. - 8:40 a.m. period (T57).

School Nurse Marie Strumfels prepared a record of health office visits that occurred from 8:30 a.m. - 8:40 a.m. for school years 1997-1998, 1998-1999, 1999-2000, and 2000-2001 (T70-T73, J-8). Exhibit J-8 contains a record of 56 office visits; some specified they were due to falls and scrapes that occurred during the 8:30 a.m. - 8:40 a.m. blacktop period. Some of Strumfels' entries do not specify where the injuries occurred; but some of them occurred on the blacktop (T83-T85). Nevertheless, Strumfels was not concerned about safety during this period (T86).

The Board Changes The 8:30 a.m. - 8:40 a.m. Period

9. At an early 2000 Board meeting, a discussion arose about possibly having students report directly to their classrooms at 8:30 a.m., rather than gathering on the blacktop area from 8:30 a.m. - 8:40 a.m. At the meeting, a Board member explained that the Board intended to make that proposal during negotiations, but believed it could not make that change without negotiations. Accordingly, during the subsequent school year beginning September 2000, the 8:30 a.m. - 8:40 a.m. period remained the same, with teachers and students continuing to be required to be in their classrooms by 8:40 a.m. (T124-T125).

10. In April 2001, the Board and the Association began negotiations for a successor agreement. The Association

negotiations team included Association President Nancy Burkley. Current Superintendent Dr. Charles Smith also sat in on negotiations as an advisor to the Board, although he was not formally on the Board's negotiations team (T115, T185).

At the outset of negotiations in April 2001, the Board presented their original proposals; included was a change in the 8:30 a.m. - 8:40 a.m. period. The Board proposed that Association members arrive on school property at 8:20 a.m. and be at their teaching stations no later than 8:30 a.m. The Board wanted to negotiate over this 10 minute period from the start of negotiations, but never advised the Association of its reason for the proposed change (T115-T120, T137).

The first item the parties agreed to were the ground rules for negotiations (T115-T116; J-2). Negotiation sessions were thereafter held over the next several months. When the parties would reach a tentative agreement or "TOK" on a certain item that would eventually be part of the final agreement. Pursuant to the ground rules each party would sign off on the "TOK" (T116-T118, T137, T185-T186).

From April 2001 through the following months, there were proposals back and forth on the Board's proposed change in the 10 minute morning period (T186).

During that time, the Board, at its own meetings, had voiced health and safety concerns for students regarding the

morning gathering time (T163-T164). At a policy committee meeting held prior to August 2001, some Board members expressed safety concerns about the 8:30 a.m. - 8:40 a.m. period, particularly concerns that Megan's law sexual offenders and other predators, could have access to students while on the blacktop area. The policy committee, which consists of some Board members, then made a recommendation at the August 2001 Board meeting to make the change in the 8:30 a.m. - 8:40 a.m. period (T163, T178-T179, T181). At that time, the Board directed Dr. Smith to require students to report directly to their classrooms at 8:30 a.m. rather than gather on the blacktop area (T178).

11. Dr. Smith was never asked to investigate the safety concerns regarding this 8:30 a.m. - 8:40 a.m. period before making the change; nor did he ever indicate to the Board that safety was a concern regarding this morning period (T184-T185).

Neither former Superintendent Doloughty, school nurse Strumfels nor morning playground supervisor Matt thought there was an overriding safety concern for students during the 8:30 a.m. - 8:40 a.m. period. None of them received any complaints or safety concerns from parents or teachers about the 8:30 - 8:40 a.m. period (T40, T47, T67, T86, T94-T95). Nor did they discuss any safety concerns regarding this period with the Board (T78-T79, T82, T86, T94, T100, T185).

Neither Doloughty nor Strumfels ever recommended a change or increased supervision for the 8:30 a.m. - 8:40 a.m. period. However, Doloughty expressed concern over the 8:30 a.m. - 8:40 a.m. period. She said, "Anytime when you have what we consider unstructured time we always have a concern" (T40). There has been a heightened awareness of student safety since Doloughty became Superintendent (T49). Doloughty found there was an educational benefit in having students report to their classrooms at 8:30 a.m. instead of 8:40 a.m., because students would then be settled and ready to learn immediately at 8:40 a.m. when classes begin (T65).

12. While the Association did not specifically express any safety concerns regarding the 8:30 a.m. - 8:40 a.m. period, the Association, through its President, did express safety concerns about Play Day, which is a day of outside activities for students (T45-T46, T64-T65, T134, T142-T144; J-9D). During the course of Play Day in June 2001, students spread out all over school grounds; they did not remain with their respective teachers. As a result, teachers walked with students that they did not know. Association President Burkley raised a safety concern about this; she did not feel comfortable having about 18 third and fourth grade students she did not know included in her group which consisted of the fifth grade class she taught (T134-T136, T142, T144). However, administrators did not agree

with Burkley's safety concern (T136, T145-T146). Dr. Smith explained that there are approximately 15 staff members, including the nurse, outside supervising students during Play Day (T170).

The staff also expressed safety concerns about the Halloween parade; the Board did address these concerns and made changes to the parade (T171-T172).

On August 16, 2001, and at a subsequent date in August 2001, the Association, realizing that the Board's proposed change would affect the school year which was about to begin, indicated to the Board that it was willing to discuss and negotiate over that proposal. The Board, however, wanted to discuss other proposals at those meetings (T119-T120).

In September 2001, at a teacher orientation meeting held shortly before the start of the school year, Burkley raised the 8:30 a.m. - 8:40 a.m. period with Dr. Smith. Dr. Smith then informed Burkley that the Board was going to issue a directive requiring teachers to be in their classrooms by 8:30 a.m., as the Board was going to have students report directly to their classrooms in the 2001-2002 school year (T121).

13. Effective September 4, 2001, the Board instructed all students in the District to report directly to their classrooms at 8:30 a.m., instead of the previous time of

8:40 a.m. All employees were still required to report to the school at 8:30 a.m., per the parties' agreement (T158, T172-T173; CP-2).

The change in the morning period, however, resulted in teachers having contact with students 10 minutes earlier than in prior school years, since students now reported directly to their classrooms at 8:30 a.m. for supervision by their teachers then. The Association had not agreed to the additional contact time and the Board had not proposed to compensate teachers for that increased time (T121-T122, T158).

Smith had advised the Board to negotiate over the issue; nevertheless, the Board decided on the directive. Smith, referring to the Board, commented, "their actions speak for what they did. They were aware of the contract, they were aware that there was a negotiated issue and they were aware of the student contact time" (T187).

14. The Board did not explain the reason for the change in the 8:30 a.m. - 8:40 a.m. period at the time the directive was issued (T121-T122). In his testimony, however, Superintendent Smith explained the reason for the change: "The Board had concerns about safety, the health and safety of the children . . ., and they directed me to have the children enter the building at 8:30 a.m., have the teachers supervise the children at 8:30 a.m., and the school day would start at 8:40 a.m." Also,

out of a concern for safety, the Board changed the entrance students used to enter school property (T158-T159). I credit that testimony.

15. When the Board made the change in the 8:30 a.m. - 8:40 a.m. period in September 2001, Matt's morning aide position, as well as the other one, were eliminated (T106-T107, T172, T184). Matt was not told initially why this position was eliminated; she later heard at a Board meeting that it was eliminated because of a safety issue (T107-T108).

16. After the Board imposed the change in the 8:30 a.m. - 8:40 a.m. period, the issue became a major focus of negotiations (T186).

On September 5, 2001, the Association sent the Board a letter asking it to rescind the directive and honor the present agreement. The Association also asked the Board President to further discuss the issue at an upcoming September 10 meeting between the parties (T122-T123; J-6).

The Board refused to rescind the directive and did not offer to pay any renumeration to teachers for the increase in pupil contact time (T122-T124). Thereafter, by letter of September 17, 2001, the Association again asked the Board to rescind the directive and honor the expired agreement. The Board refused (T123-T124; J-7).

During negotiations, Dr. Smith asked the Association to propose alternative ways of supervising students during this morning period. The Association calculated what the extra 10 minutes of pupil contact time and the resultant loss of preparation time was worth to Association members and demanded additional compensation. The Board, however, refused the demand; the Board believed teachers already received 50 minutes more preparation time per week than they are entitled to under the agreement (T126-T130, T177-T178; J-1). Between September 2001 - March 2002, the Association made several proposals and counterproposals regarding the 8:30 a.m. - 8:40 a.m. period; the Board rejected all of them (T129-T130).

The parties eventually reached an impasse in negotiations and a mediator began to assist the parties. Three mediation sessions were held without an agreement being reached. The case then moved to fact finding where two sessions were held. At the end of the second fact finding session on July 11, 2002, a tentative agreement was reached. It included an agreement on the 10 minute morning period; the record does not reveal the substance of that agreement (T118-T119, T126-T127, T138). Per the ground rules, the tentative agreement was subject to ratification by each side (T117-T118; J-2).[3/]

3/ No sworn evidence or documents were presented to show whether the parties' agreement had been ratified, but in

(continued...)

ANALYSIS

The Board has a duty to ensure the safety and well-being of its students. The Commission has held that the ". . . safety and well-being of the student-body and the correlative maintenance of order and efficiency are matters of major educational policy which are management's exclusive prerogative." Bayonne Bd. of Ed., P.E.R.C. No. 80-58, 5 NJPER 499 (¶10255 1979), aff'd NJPER Supp. 2d 86 (¶68 App. Div. 1980), certif. den. 87 N.J. 310 (1980), citing In re Byram Tp. Bd. of Ed., P.E.R.C. No. 76-27, 2 NJPER 143 (1976), aff'd 152 N.J. Super. 12 (App. Div. 1977); Hoboken Bd. of Ed., P.E.R.C. No. 93-14, 18 NJPER 444 (¶23199 1992); Salem City Bd. of Ed., P.E.R.C. No. 82-115, 8 NJPER 355 (¶13163 1982); Wanaque Bd. of Ed., P.E.R.C. No. 80-13, 5 NJPER 414 (¶10216 1979).

Here, the Board, in the interest of student safety, security and well-being, issued a directive changing the 8:30 a.m. - 8:40 a.m. student reporting time by requiring students to report directly to their classrooms at 8:30 a.m., rather than to the blacktop area. Those students require supervision. As a result, teachers now have contact with students from 8:30 a.m., rather than 8:40 a.m.

3/ (...continued)
opening remarks, counsel for both parties indicated it had not.

The Board argued it had the managerial prerogative to unilaterally issue this directive. The Association disagreed. It claims the Board's alleged reasons for the directive - student safety, security and well-being - are merely pretextual. The Association asserts that the Board failed to demonstrate any legitimate safety reason for its action and thus the Board's action amounts to an unlawful unilateral change in its members' terms and conditions of employment.

I find that the Board had the managerial prerogative to issue the directive, and that its reasons were not pretextual. In re Byram Twp. Bd. of Ed.

The Board issued the directive because of legitimate concerns it had for student safety, security and well-being. The Board was worried about having approximately 130 students being supervised by only 2 full-time aides. As the record revealed, it was virtually impossible for the aides to observe all students at all times. (See Finding No. 6.) Further, as the Association acknowledges, if one aide had to attend to a problem with a student during this time, the other aide is left in the untenable situation of having to supervise the remaining 130 students. Under these circumstances, the Board was legitimately concerned that sexual offenders or other predators could harm students during this time of little supervision. Further, with such

minimal supervision, students could be injured; in fact, several injuries did occur (See J-8).

Moreover, during inclement weather, students would report inside and stand in crowded hallways under chaotic circumstances. As the former superintendent acknowledged, this was far from an ideal situation. (See Finding No. 7.)

Indeed, the need for increased supervision from 8:30 a.m. - 8:40 a.m. was evidenced by the fact that Doreen Matt, the former full-time morning supervisor, felt she needed more assistance during this time and so requested such assistance from the Board. (See Finding No. 6.)

The Association, however, points out that neither the former superintendent, present Superintendent Dr. Smith, the school nurse nor Matt expressed safety concerns regarding this 8:30 a.m. - 8:40 a.m. period. The Association notes that the Board's alleged safety concerns were not discussed at any Board meeting and were not contained in any Board minutes; moreover, Dr. Smith was never asked to investigate the safety issue. The Association claims that these factors demonstrate that the Board's alleged safety concerns are unsubstantiated and thus not legitimate.

I, however, disagree. These factors do not affect the validity of the Board's safety concerns or mean the concerns were any less significant. As Dr. Smith testified, the Board was

concerned that sexual offenders and predators could approach students during this 8:30 a.m. - 8:40 a.m. period when students had minimal supervision. Such safety concerns about this morning period were specifically raised by Board members at a Policy Committee Meeting. The Board then determined that it would be in the best interest of student safety, security and well-being for students to report directly to their classrooms at 8:30 a.m. and be supervised by their teachers; rather than report to the minimally supervised playground area. Thus, the Board issued the directive making the change. (See Finding No. 13.)

I find that the Board acted within its managerial prerogative. There is no evidence that the Board was motivated by anything other than legitimate safety and security concerns for its students. As the Commission held in Bayonne, "The Commission is cognizant of the Board's perceived need to provide for additional security measures prior to the start of home room period." Bayonne Bd. of Ed., 5 NJPER at 500.

While the Board's unilateral change in the 8:30 a.m. - 8:40 a.m. period for reasons of student safety, security, and well-being constitutes a non-negotiable managerial prerogative, the resultant 10 minute increase in pupil contact time involves a mandatorily negotiable term and condition of employment; that is, the issue of increased workload. Bridgewater-Raritan Reg. Bd. of Ed., P.E.R.C. No. 81-35, 6 NJPER 449 (¶11230 1980). This is so

despite the Board's claim that there was no increase in work hours since teachers continue to report at 8:30 a.m., and its claim that teachers still receive more preparation time than the agreement requires. Galloway Tp. Bd. of Ed. v. Galloway Tp. Ass'n of Ed. Secys., 78 N.J. 1 (1978).

According to the Association, the Board failed to negotiate over this mandatorily negotiable issue. The Association explains that it demanded that the Board pay teachers additional compensation for the increase in pupil contact time, but the Board refused. I find, however, that the Board did satisfy its negotiations obligation with respect to the increase in pupil contact time that resulted from the change.

At the first negotiations session for a successor agreement in April 2001, the Board proposed a change in the 8:30 a.m. - 8:40 a.m. period, which would result in teachers having contact with students 10 minutes earlier. The parties thereafter engaged in negotiations over the next several months, which included this issue. Then in September 2001, the Board issued the directive, and the issue became a major focus of negotiations. Thereafter, by letters of September 5 and September 17, 2001, the Association demanded to negotiate the issue and during the next several months, the parties continued to negotiate over that issue. The Association proposed alternatives to the Board's directive and also proposed a pay

increase for the increase in pupil contact time. Proposals and counterproposals went back and forth, with no agreement being reached; the parties eventually reached impasse. The parties then engaged the assistance of a mediator and 3 mediation sessions were held. Still unable to reach an agreement, the parties called in a fact finder and two fact finding sessions were held. At the second session on July 11, 2002, a tentative agreement was finally reached which included agreement on the issue of the 8:30 a.m. - 8:40 a.m. period, and specifically, the resultant 10 minute increase in pupil contact time. (See Finding Nos. 10 and 16.) Apparently, the parties did not ratify that tentative agreement.

The burden of proof here was on the Association to prove that the Board failed or refused to negotiate through the Commission's impasse procedures. But under these circumstances, I cannot find that the Board refused to negotiate over the impact of its decision to change the 8:30 a.m. - 8:40 a.m. morning period, specifically the resultant 10 minute increase in pupil contact time for teachers. As the Association acknowledged, a tentative agreement was reached on this issue; said agreement was obviously the product of negotiations. The Board had the right to unilaterally implement the change and it negotiated over an agreement regarding the 10 minute change. While that agreement may not have been finalized, the Association did not prove that

the Board failed to negotiate in good faith. (See Finding No. 16.)

Accordingly, based on the above findings and analysis, I make the following:

CONCLUSIONS OF LAW

The Board did not violate 5.4a(1) or a(5) of the Act.

RECOMMENDATION

I recommend that the charge be dismissed.

Patricia Taylor Todd
Hearing Examiner

Dated: July 9, 2003
Trenton, New Jersey