

P.E.R.C. NO. 86-3

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSOIN

In the Matter of

BUENA REGIONAL SCHOOL DISTRICT,

Respondent,

-and-

Docket No. CO-85-50-75

BUENA REGIONAL EDUCATIONAL
ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission holds that the Buena Regional School District violated the New Jersey Employer-Employee Relations Act when it unilaterally increased teacher workload by requiring teachers to teach an extra, uncompensated period per day.

STATE OF NEW JERSEY
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BUENA REGIONAL EDUCATIONAL
ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Capizola & Fineman, Esqs.
(Robert J. Pryor, of Counsel)

For the Charging Party, Selikoff & Cohen, Esqs.
(Barbara Riefberg, of Counsel)

DECISION AND ORDER

On August 28, 1984, the Buena Regional Education Association ("Association") filed an unfair practice charge against the Buena Regional School District ("District") with the Public Employment Relations Commission. The charge alleges that the District violated subsections 5.4(a)(1), (5) and (6)^{1/} of the New

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative; and (6) refusing to reduce a negotiated agreement to writing and to sign such agreement.

Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") when it unilaterally and without additional compensation increased the workload of nine high school teachers by requiring them to teach an extra period each day.

On December 7, 1984, a Complaint and Notice of Hearing was issued. The District then filed an Answer in which it admitted assigning an extra, uncompensated period of teaching each day to these teachers, but denied that it did so unilaterally. It also alleged that it had a managerial prerogative and contractual right to require this extra, uncompensated period of teaching and that the Association waived its right to file this charge by instead electing to file a grievance.

On January 28, 1985, Commission Hearing Examiner Nathaniel L. Fulk conducted a hearing. The parties examined witnesses, introduced exhibits and argued orally. They filed post-hearing briefs by March 21, 1985.

On March 27, 1985, the Hearing Examiner issued his report and recommended decision. H.E. No. 85-35, 11 NJPER ____ (¶ ____ 1985) (copy attached). He concluded that the District violated subsections 5.4(a)(5) and derivatively (a)(1) when it unilaterally required the nine employees to teach an extra, uncompensated period each day. The Hearing Examiner recommended an order requiring the District to restore the previous workload of the nine teachers and to pay each of these teachers \$11.00 per class taught plus 12% simple interest.

On April 9, 1985, the District filed exceptions. It asserts that the Hearing Examiner failed to consider its contract defense; the parties' past practice did not prohibit assignment of additional, uncompensated teaching periods, and the Association waived its right to file an unfair practice charge when it signed the parties' collective negotiations agreement.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 3-12) are thorough and accurate. We adopt and incorporate them here.

Based on these findings of fact, we hold that the District violated subsection 5.4(a)(5) and derivatively (a)(1) when it failed to negotiate with the Association before requiring the nine teachers to teach an extra, uncompensated period each day.^{2/} In sum, the District unilaterally changed a term and condition of employment and did not have a managerial prerogative or contractual right to do so.

N.J.S.A. 34:13A-5.3 provides, in part:

Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established.

The District has indisputably increased the workload of these nine teachers by requiring them to teach a sixth period each day. That requirement departed from the previous practice of requiring

^{2/} We dismiss the allegations concerning subsection 5.4(a)(6) as unsubstantiated.

teachers to teach only five periods a day and of paying volunteers to teach a sixth period when necessary. This increase in teacher workload involved a mandatorily negotiable term and condition of employment. See Burlington County College Faculty Ass'n v. Bd. of Trustees, 64 N.J. 10 (1973) and the cases collected and discussed at pp. 12-14 of the Hearing Examiner's report. The District did not negotiate before changing this term and condition of employment since the only meeting concerning the new schedule was not a negotiations session and proceeded on the assumption that teachers would not be required to teach a sixth period. Accordingly, the District has violated subsection 5.4(a)(5) unless we find that the District had either a managerial prerogative or a contractual right to make this uncompensated change without negotiations.

Under the circumstances of this case, we conclude that the District did not have either a managerial prerogative or contractual right to make this change without negotiations. We agree with the Hearing Examiner that our previous decision in Buena Reg. Bd. of Ed., P.E.R.C. No. 79-63, 5 NJPER 123 (¶10071 1979) and the other cases he cited (pp. 12-13) answer the District's managerial prerogative claim. We also agree with the Hearing Examiner that the parties' collective negotiations agreement does not empower the District to require employees to teach extra periods without compensation and without negotiations. No contractual clause explicitly authorizes this action, and we do not agree with the

District that we should infer such authorization, by negative implication, from a clause guaranteeing a duty free lunch period and preparation period. In this regard, we note that the contract contains a clause preserving the parties' past practices, presumably including teacher workload, and does not include a management rights clause addressing this issue.^{3/} Moreover, the testimony of the Board's president as well as the Association's witnesses makes clear that at the time the parties entered the contract, they did not contemplate teachers would be required to teach a sixth period and that the issue of what amount volunteers would be paid above the status quo was dropped rather than settled in favor of no payment. Under these circumstances, this contract does not clearly and unequivocally authorize this unilateral, uncompensated workload increase. Sayreville Bd. of Ed., P.E.R.C. No. 83-105, 9 NJPER 138 (¶14066 1983); North Brunswick Twp. Bd. of Ed., P.E.R.C. No. 79-14, 4 NJPER 451 (¶4205 1978).^{4/} Accordingly, we hold that the

^{3/} We reject the Board's reliance on Bound Brook Bd. of Ed., P.E.R.C. No. 83-11, 8 NJPER 439 (¶13207 1982) and other cases cited at p. 2 of its brief since those cases expressly authorized the workload increases in dispute.

^{4/} We also reject the Board's corollary argument that the Association waived its right to file this charge by signing the collective negotiations agreement after the new schedule was first promulgated. As the president of the District's board of education and the principal of its high school testified, the parties did not initially contemplate that this new schedule would necessitate employees having to teach a sixth period. Nor did the Association waive its unfair practice charge by first
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District violated subsections 5.4(a)(5) and derivatively (a)(1) when it unilaterally and without compensation increased the workload of these nine teachers.

Finally, we adopt the Hearing Examiner's recommended remedy. We trust that the parties will be able to resolve this matter through negotiations before the 1985-1986 school year starts.

ORDER

The Buena Regional School District is ordered to:

A. Cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed by the Act by unilaterally increasing teacher workload by assigning an extra, uncompensated teaching period to high school teachers.

2. Refusing to negotiate in good faith with the Association by unilaterally altering terms and conditions of employment of employees represented by the Association by unilaterally assigning an extra, uncompensated teaching period to high school teachers.

B. Take the following affirmative action:

1. Restore the workload level of high school teachers in effect before the teaching schedule changes made by the Board in

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filing a grievance. We are finding a violation of a statutory right independent of any contractual claim the Association may have had.

the 1984-85 school year and negotiate in good faith with the Association over any future changes.

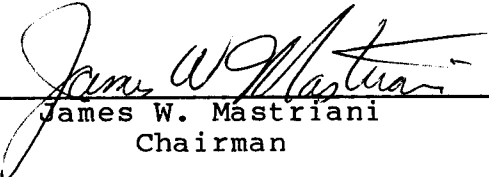
2. Compensate those teachers so affected at the rate of \$11.00 per extra class taught plus 12% interest.

3. Post in all places where notices to employees are customarily posted copies of the attached Notice marked as Appendix "A." Copies of such notices, on forms to be provided by the Commission, shall be posted immediately upon receipt thereof, and, after being signed by the District's authorized representative, shall be maintained by it for a period of at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the District to ensure that such notices are not altered, defaced, or covered by other material.

4. Notify the Chairman of the Commission within twenty (20) days of receipt what steps it has taken to comply herewith.

Those portions of the Complaint which allege a violation of subsection 5.4(a)(6) of the Act are dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Wenzler and Suskin voted for this decision. Commissioner Hipp abstained. None opposed. Commissioner Graves did not participate.

DATED: Trenton, New Jersey
July 1, 1985
ISSUED: July 2, 1985

APPENDIX "A"
NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed by the Act by unilaterally increasing teacher workload by assigning an extra, uncompensated teaching period to high school teachers.

WE WILL cease and desist from refusing to negotiate in good faith with the Association by unilaterally altering terms and conditions of employment of employees represented by the Association by unilaterally assigning an extra, uncompensated teaching period to high school teachers.

WE WILL restore the workload level of high school teachers in effect before the teaching schedule changes made by the Board in the 1984-85 school year and negotiate in good faith with the Association over any future changes.

WE WILL compensate those teachers so affected at the rate of \$11.00 per extra class taught plus 12% interest.

BUENA REGIONAL SCHOOL DISTRICT

(Public Employer)

Dated _____

By _____

(Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission,
429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.

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

In the matter of

BUENA REGIONAL SCHOOL DISTRICT,

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-and-

Docket No. CO-85-50-75

BUENA REGIONAL EDUCATIONAL ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent Board did violate subsections 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act when it unilaterally increased the workload of at least nine high school teachers by assigning them to teach one extra class per day beyond the normal teaching load of five classes. The Hearing Examiner concluded that the fact that the Board relieved those teachers assigned to a sixth class from a duty period did not relieve the Board of its obligation to negotiate the increase in workload.

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.

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Appearances:

For the Respondent, Capizola & Fineman, Esqs.
(Robert J. Pryor, of Counsel)

For the Charging Party, Selikoff & Cohen, Esqs.
(Barbara Riefberg, of Counsel)

HEARING EXAMINER'S
RECOMMENDED REPORT AND DECISION

On August 28, 1984, the Buena Regional Education Association ("Association") filed an unfair practice charge with the Public Employment Relations Commission alleging that the Buena Regional School District ("Board") had engaged in unfair practices within the meaning of the Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). The charge specifically states that the District violated subsections 5.4(a)(1), (5) and (6) when in August of 1984, it unilaterally increased the workload of at least nine teachers in the high school by assigning them an additional teaching

period per day with no additional compensation.^{1/}

It appearing that the allegations of the unfair practice charge may constitute an unfair practice within the meaning of the Act, a Complaint and Notice of Hearing was issued on December 7, 1984. On December 27, 1984, the District filed an Answer in which it denied having committed an unfair practice. It stated that even though it had the managerial prerogative to assign its teachers to their duties, the question of assigning additional teaching periods was fully and completely negotiated by the parties during the most recent contract negotiation sessions. It finally stated that the Association was precluded from filing the instant charge since it had previously filed a grievance through the parties' grievance procedure in the contract.

A hearing was held on January 28, 1985, in Trenton, New Jersey, at which time the parties had the opportunity to examine and cross-examine witnesses, present relevant evidence, and argue orally. Post-hearing briefs were filed by March 21, 1985.

An Unfair Practice Charge having been filed with the Commission demonstrating that a question concerning alleged

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (5) Refusing to negotiate in good faith with a majority representative of employees in an
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violations of the Act exist, and after a hearing and consideration of the post-hearing briefs, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

Upon the entire record I making the following:

FINDINGS OF FACT

1. The Buena Regional School District is a public employer within the meaning of the Act and is subject to its provisions.

2. The Buena Regional Educational Association is a public employee representative within the meaning of the Act and is subject to its provisions.

3. The Buena Regional High School opened up approximately ten (10) years ago, and from that time until the 1983-84 school year, the teachers' schedule consisted of five (5) teaching periods, one (1) preparation period, one-half (1/2) lunch and one-half (1/2) duty period (T 14, 48, 89, 104).^{2/} Prior to the 1983-84 school year, each period was forty-three (43) minutes long and the entire school day was three hundred and one (301) minutes (T 56). Very few

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appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative; (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

^{2/} All transcript citations will be noted by a T and then followed by the appropriate pages in the transcript.

teachers taught a sixth period prior to 1983-84 and those who did so, did it voluntarily. Teachers who taught a sixth period either had to give up a preparation period, or a lunch/duty period, or teach the class after the regular school hours (T 15, 36, 79, 83).^{3/} They were always compensated for teaching this extra class at the rate agreed to by the parties in their collective agreement (T 15, 60, 67, 144, 146). A full teaching load is considered to be five (5) classes (T 82, 105, 119).

The parties' current contract covering the period of July 1, 1983 through June 30, 1986, contains the following language:

Article XII 12-8

Teachers who serve as a substitute teacher during their regular preparation period or lunch period shall receive \$11.00 for each full period as a substitute. (C-2 in evidence)^{4/}

Both parties agree that this clause is the same as the clause in the previous contract and that it has been utilized to compensate those teachers who voluntarily agree to teach a sixth period (T 43, 116, 118, 144).

^{3/} The Board contends that only those teachers who gave up a preparation or lunch period were compensated for teaching a sixth class. Two Association witnesses stated that the parties' contract allows for compensation only when a teacher gives up those two periods and that in the schedule prior to 1983-84, the only time teachers could have taught an additional period was during their preparation period since lunch periods were one-half periods (T 43, 79, 83).

^{4/} Commission exhibits are designated with a "C," Charging Party exhibits with a "CP," and Respondent exhibits with an "R."

4. In 1983-84, a new schedule was instituted at the high school. It created a seven and one-half (7 1/2) period day consisting of five (5) teaching periods, one (1) preparation period, one (1) duty period, and one-half (1/2) lunch period (T 36, 48, 106, 107). This new schedule afforded the Board a greater flexibility in scheduling, provided for a greater variety of classes, and allowed for a more extensive use of the high school library (T 107). Under this new schedule, each period is 41 minutes and the length of the day is virtually the same (T 56). The Association did not object to the new schedule (T 37), and those teachers teaching five (5) periods a day had their actual teaching time cut from 215 minutes per day to 205 minutes (T 56).

5. Prior to the implementation of this schedule, it was discussed in a meeting at the Board attorney's office. Present at this meeting were members of the Association's negotiation team as well as Michael Capizola, Board attorney, Kenneth Soboloski, high school principal, and an assistant to Mr. Soboloski. Mr. Soboloski attended this meeting at the request of the Superintendent to explain the new schedule to the Association (T 20, 80, 81, 110). Although this meeting occurred during the time the parties were negotiating a new agreement, it was not a negotiations session. It grew out of those sessions however and the members of the Association's team believed that the new schedule might have a bearing on the new contract and thus desired a further explanation

(T 80, 86, 130, 138).^{5/}

At this meeting the Association asked if the new schedule meant that the teachers would be required to teach a sixth class and were told by the principal that it was not his intent to require the teachers to teach six (6) periods and that he was not in favor of it (T 23, 82, 83, 84, 112, 115).^{6/}

6. Prior to the implementation of this schedule the parties were engaged in contractual negotiations for a successor agreement. During these negotiations, the Association offered a proposal which increased the rate of compensation for those teachers

^{5/} The Board claimed that this meeting was in fact a negotiations session, however I cannot classify it as such. While it grew out of the negotiations, and the information received by the Association may have affected their future negotiations, it was merely designed to afford the Association the opportunity to question the principal on the impact the new schedule would have on its unit members.

The Board's own witness, Mr. Soboloski, testified that it was his impression before attending the meeting that it was not to be a negotiations session and that in fact it was not (T 129, 130). He also stated that he had no doubt that the meeting was related to the ongoing negotiations and that the teachers were interested in obtaining information about the effect the new schedule would have on them (T 138). This meeting was conducted therefore for purely informational reasons and simply because the Association may have used this information during the negotiations does not elevate it to negotiation status.

^{6/} Mr. Soboloski testified that it was possible during this meeting that he gave the teachers the impression that no one would be teaching a sixth period (T 139). Mr. John Zucal, Board President, also testified that when the new schedule was discussed with the Board, that no one conceived that the teachers would be teaching six (6) periods (T 153).

who served as substitutes either during their regular preparation period or lunch period, from \$11.00 per period to \$15.00. It also proposed an additional clause which stated:

In the event of an emergency, teachers may voluntarily accept a teaching assignment above their normal workload. Any teacher who voluntarily agrees to accept an extra teaching assignment shall be paid 20% above their regular annual salary.^{7/} CP-1 in evidence, T 17, 71).

The Board submitted a counterproposal which stated that:

Teachers may voluntarily accept an additional permanent teaching period above the regular workload either after school or in lieu of a planning period and shall receive a 15% increase in their regular salary for each full teaching period, prorated. Payment shall be made as a part of the regular salary and not on a per diem basis. (CP-2, R-2, T 19, 75)

The parties were unable to agree on these proposals and at the last negotiations session, the parties agreed to withdraw this matter and continue with the status quo (T 20, 75).^{8/}

^{7/} Vito Paladino, Chairman of the Association's negotiation committee, testified that the purpose of this proposal was merely to change the rate of compensation for teaching a sixth class either as a substitute or on a regular basis and that it was his understanding that the practice was to compensate a teacher for teaching a sixth class regardless of whether a preparation, lunch or duty period had to be given up to do so (T 73, 74).

^{8/} There is some confusion as to what the parties believed the status quo to be. Both Mr. Baker and Mr. Paladino testified that the status quo meant that any teacher teaching a sixth class at any time would be compensated, and that the teaching of a sixth class was voluntary (T 15, 73). Mr. Zucal, testified
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however that the status quo was that a teacher was compensated only if a preparation period or lunch period was given up (T 144, 146, 149). The plain language in the parties' contract supports Mr. Zucal's interpretation as do the admissions of two of the Association's witnesses who testified that prior to the schedule change the only way a teacher could have taught a sixth class would be to give up a preparation period or work after school. In both instances teachers received additional compensation.

In any event it is readily apparent that the parties did not have a mutual understanding as to what it was they were agreeing to when they withdrew those clauses from the table.

The parties did not even understand the proposals and counterproposals that were exchanged concerning the teaching of an additional class. The Association stated that its proposal was merely intended to increase the rate of compensation for those teachers teaching a sixth class. Mr. Zucal however stated that the proposal only covered teachers acting as substitutes and who gave up their preparation or lunch period (T 152). He also stated that the Association made a proposal which would have required the Board to pay for a sixth period and that it refused (T 153). He stated that negotiations broke down over that issue and that it was left out of the contract. He also stated that the scheduling of teachers to a sixth teaching period was not anticipated during the negotiations (T 154, 155) but then he stated that it was negotiated between the parties during the meeting at Mr. Capizola's office and that the Board took the position that it would pay for a sixth period only if the teachers had to give up a "benefit" (T 155).

Mr. Zucal was questioned as to why the Board did not seek negotiations when it became clear that teachers would be assigned a sixth class and he responded that during the negotiations for the current contract the parties could reach no agreement and nothing concerning this issue was included in the contract when it was signed (T 156). He was then asked if the issue about how to pay for a sixth period was considered and he responded in the affirmative. He indicated that he felt that the Board's obligation to teachers who were teaching a sixth period was fixed in the contract by the clause concerning the rate of pay for substitute teachers (T 157, 158).

It is evident from the above, that both the Association and the Board had differing views as to what subjects were treated in the contract and how they were interpreting the status quo. Mr. Zucal claims that the matter of compensation for a sixth period was negotiated at the meeting in Mr. Capizola's office

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7. During the 1983-84 year only two teachers taught a sixth period. One teacher, Mrs. Cubano, taught a Spanish class for three (3) to four (4) weeks, because of an emergency, and she had to give up a preparation period to do so. She was compensated for teaching this extra class (T 117, 118). The other teacher, Mr. Kenneth Nelson, a history teacher, taught a sixth class for half of the year. This came about when students, from a vocational school, returned to the high school for the second half of the year and had to take a history class. The only period available for this class

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that the Board told the Association that it would not pay for a sixth period, that the matter was dropped, and finally, that the current contract set the Board's obligation to pay when a sixth period was taught.

The Association claims that the meeting in Mr. Capizola's office was strictly informational, that it attempted to raise the rate of compensation for any teacher teaching a sixth class during negotiations, that the parties could not agree on these proposals, and that they agreed to allow the status quo to continue which permitted compensation for any teacher teaching a sixth period.

I have already determined the status quo to be that teachers were paid for teaching a sixth class only when they had to give up a preparation or lunch period, or taught the class after school. This however is not determinative of the issue before me. It concerns whether the parties engaged in negotiations over the subject of compensation when a sixth class is assigned to be taught during a teacher's duty period. While there was discussion, the subject was ultimately dropped at the table and the parties apparently agreed to allow the status quo to continue. As has already been explained the parties were not in agreement as to the status quo and were not made aware of this fact until long after the contract had been executed.

was the seventh period, a duty period for Mr. Nelson. The principal, Mr. Soboloski, asked Mr. Nelson to teach this extra class and told him that the only way he could get paid for it would be to exchange his duty period with his preparation period. Mr. Nelson then made the seventh period, his preparation period, and taught the class during that time (T 24, 25, 43, 52, 115, 116).

8. On August 1, 1984, the Board sent to the high school teachers and to the Association, class schedules for the 1984-85 school year. The majority of the teachers' schedules consisted of five (5) teaching periods, one (1) preparation period, one (1) duty period, and one-half (1/2) lunch period. Nine (9) teachers however were assigned to teach six (6) classes, with one (1) preparation period and one-half (1/2) lunch period (T 26, 49, 119).^{9/} Those teachers who were assigned to teach the sixth period were relieved of their duty period and did not have a homeroom assignment (T 55, 120, 125). Those teachers teaching a sixth class increased their teaching time by forty-one (41) minutes per day over those teachers teaching only five (5) classes (T 52, 56).^{10/} These assignments

^{9/} There were three (3) teachers in the English Department, three (3) in Special Education, and one (1) each in Art, History, and Math who were assigned to teach a sixth period (T 119).

^{10/} Alma McCarville, an English teacher assigned to a sixth class, testified credibly that the additional class resulted in a large increase in her daily workload. In addition to the greater number of students she teaches in a day, she must also prepare for the extra class and grade more papers and tests. She also testified that the work she does at home has also increased by one-half (1/2) to one (1) hour a night because of the sixth class (T 50, 52).

were made without first asking for volunteers, as had been done in the past (T 128), and without first discussing this matter with the Association (T 134, 136). None of the teachers assigned to a sixth class have received additional compensation.

The assignment of the sixth class was made by the high school principal based upon need and the least senior members in each department were chosen (T 119, 120, 134).

9. On August 27, 1984, the Association instituted a grievance with the high school principal. The grievance stated in part:

At least nine teachers have been assigned an additional sixth teaching period. This is a contractual violation...for the following reasons:

- 1) This is a non-negotiated change in terms and conditions of employment.
- 2) This is an increase in the teachers' workload without equivalent compensation.
- 3) This violates all district past practices. Previously, any assignment of an additional class beyond the normal has been voluntary. Teachers have been compensated at a rate equal to that paid for loss of preparation time, even if the class was at some other time than a preparation period. (CP-4 in evidence).

On September 5, 1984, this grievance was denied by the principal (CP-5) and on September 12, 1984, the Association filed it with the superintendent (CP-6). On September 21, 1984, the superintendent denied the grievance (CP-7). On September 25, 1984, the grievance was filed with the Board (CP-8). On November 20, 1984, the Board issued its denial. The Board stated that the parties' contract allowed for compensation to teachers teaching a

sixth period only when a lunch or preparation period was taken away and that under the schedule established in 1983-84, the teachers assigned a sixth class only gave up a duty period and thus were not entitled to additional pay. The Board also stated that the parties' collective agreement had been reached after extensive negotiations and that there was no clause in the contract which prohibited the assignment of six (6) teaching periods (CP-9).

Analysis

The crux of this dispute is the Association's allegation that the Board unilaterally increased the workload of nine (9) teachers at the high school by assigning them to teach a sixth class. The Association argues as well that it makes no difference that the teachers assigned the sixth period were relieved from a duty period instead of a preparation period in that there is a substantial difference between the work required for teaching a class and the work required for non-teaching duties. The Board admits that it made such assignments however states that it had a managerial right to do so and further that the issue of assigning additional classes was fully negotiated by the parties and the results of these negotiations were embodied in the parties' current agreement.

It is well established that an increase in teacher workload is mandatorily negotiable. See Burlington County College Faculty Ass'n v. Bd. of Trustees, 64 N.J. 10 (1973); Red Bank Bd. of Ed. v. Warrington, 138 N.J. Super. 564 (App. Div. 1976); In re Byram Twp. Bd. of Ed., 152 N.J. Super. 12 (App. Div. 1977); Maywood Ed. Assn.,

168 N.J. Super. 45 (App. Div. 1979), pet. for certif. den. 81 N.J. 292 (1979); In re City of Bayonne Bd. of Ed., P.E.R.C. No. 80-58, 5 NJPER 499 (para. 10255 1979), aff'd App. Div. A-954-79 (1980), pet. for certif. den. 87 N.J. 310 (1981); In re Newark Bd. of Ed., P.E.R.C. No. 79-38, 5 NJPER 41 (para. 10026 1979), aff'd App. Div. Dkt. No. A-2060-78 (2/20/80); In re Dover Bd. of Ed., P.E.R.C. No. 81-110, 7 NJPER 161 (para. 12071 1981) aff'd App. Div. Dkt. No. A-3380-80T2 (3/16/82); In re Wanaque Borough Dist. Bd. of Ed., P.E.R.C. No. 80-13, 5 NJPER 414 (para. 10216 1979); In re Wanaque Borough Dist. Bd. of Ed., P.E.R.C. No. 82-54, 8 NJPER 26 (para. 13011 1981); In re Wharton Bd. of Ed., P.E.R.C. No. 83-85, 8 NJPER 570 (para. 13262 1982); In re East Newark Bd. of Ed., P.E.R.C. No. 83-123, 8 NJPER 373 (para. 13171 1982); In re Bridgewater-Raritan Reg. Bd. of Ed., P.E.R.C. No. 83-102, 9 NJPER 104 (para. 13057 1982); In re Lindoln Park Bd. of Ed., P.E.R.C. No. 85-54, 10 NJPER 647 (para. 15312 1984).

Further, the Commission has specifically addressed the circumstance of whether a change of a duty period to an additional teaching period is a mandatory subject. in In re Buena Reg. Bd. of Ed., P.E.R.C. No. 79-63, 5 NJPER 123 (para. 10071 1979), the Commission stated:

Whether the change is from a non-teaching, supervisory duty period or a preparation period, there is still a net increase in the number of teaching periods per day. The Commission doubts that the Board would seriously contest that a teaching period, in itself, requires more work than either a preparation period or a non-teaching supervisory duty period. The additional teaching period, unlike the other types of duty, generates further precedent and subsequent work in terms of additional class preparation, correction

of tests and homework, preparation of report cards, other administrative paper work, etc. Accordingly, the Commission concludes that any decision which would result in a change in the number of classroom teaching periods per day must be negotiated as it directly relates to workload. Buena at p. 124.

The Board first argues that its assignment of teachers during teaching and/or duty periods is within its managerial prerogative. The Commission treated this argument in the Buena decision. It stated:

The Commission, in response to the Board's argument that the instant matter is a managerial prerogative involving basic educational policy, notes that the present decision does not interfere with the Board's right to decide to increase pupil instructional time. However, once the Board decides to implement this decision by increasing the number of classroom teaching periods per day there is a change in workload which is mandatorily negotiable. The crucial point is that the Board still retains the ability to accomplish its objective of increasing pupil instructional time through numerous other methods, including the hiring of additional teachers, which do not affect the working conditions (i.e. workload) of its employees. The Board also is free to propose as a mandatorily negotiable subject of change from a duty period to an additional teaching period in negotiations for a successor agreement and has no obligation to give in on this point. Buena at p. 124.

In this matter, the Board determined that it was necessary to provide additional classes for its students and then assigned these additional classes to a number of its teachers. This the Board admits, resulted in assigning a sixth teaching class to some of its teachers when five (5) teaching classes a day is the normal workload. This sixth class resulted in an increase in the teachers' workload and Association testimony to that effect was uncontradicted by the Board.

Given the above, I must now turn to whether the Board negotiated this increase in workload with the Association. I do not believe that it did.

In 1983, the parties began negotiations for a successor agreement. These negotiations culminated in a contract covering the period of July 1, 1983 to June 30, 1986. During these negotiations the Board announced that it was revamping the high school schedule from seven (7) periods to seven and one-half (7 1/2) periods per day. When this announcement was made members of the Association's negotiation team met in the Board attorney's office to question the high school principal about this change. The high school principal testified that the meeting was not a negotiations meeting, however it arose out of the negotiations that were going on at the time. The Association questioned the possibility of teachers teaching a sixth class under the new schedule and were told that it was not the principal's intent, when devising the new schedule, to have teachers teach a sixth class and that he was not in favor of the idea. The principal stated at the hearing that the discussion centered around the voluntary nature of teaching a sixth class rather than its assignment.

I have already determined that this meeting was not a negotiations session but rather an opportunity for the Association to question the Board about the schedule change and determine if the information received might be useful in its negotiations.

The Association proposed, during the negotiations, that the rate of compensation for teachers who substituted, be increased. There was another proposal which stated that:

In the event of an emergency, teachers may voluntarily accept a teaching assignment above their normal workload. Any teacher who voluntarily agrees to accept an extra teaching assignment shall be paid 20% above their regular annual salary.

The Board countered with a proposal of its own which allowed for the Board to assign a sixth teaching period to up to 12% of the staff, for a certain sum. It also proposed a clause in which teachers could volunteer to teach an additional period in lieu of their preparation period and be compensated at a 15% increase in their regular salary.

The parties could not reach an agreement on any of these proposals and agreed that the status quo would remain. This status quo was embodied in the clause already found in their earlier agreement and this clause was carried over into the new contract. The clause reads:

Teachers who serve as a substitute teacher during their regular preparation period or lunch period shall receive \$11.00 for each full period as a substitute.

This clause has consistently been interpreted by both parties to include those teachers who volunteer to teach a sixth class on more than just a substitute basis.

The parties however do not agree on whether this clause also includes teachers who give up a duty period to teach a sixth class. The Association insists that it does and the Board claims that it does not. Neither party was aware of this disagreement however when the new contract was executed. As I have stated earlier, I believe the Association was incorrect in believing that

the clause covered those teachers who gave up a duty period, however I do not agree with the Board either which alleges that this issue was fully negotiated and that since the contractual clause does not create any obligations for the Board when assigning a sixth class to a teacher who gives up a duty period, it was free to act on its own.^{11/}

11/ Mr. Zucal was questioned concerning this matter and it was stated:

Q Isn't it true in looking at those documents that you have in front of you [the Association and Board proposals concerning compensation for a sixth class] that various proposals were exchanged between the Board of Education and the Teachers Association about how to pay for a sixth period if it had to be taught?

A Yes.

Q So it was considered during the negotiations?

A Yes.

Q And you felt that the contract that was finally signed fixed the Board's obligations for teaching a sixth period, if the sixth period had to be taught, the contract fixed the Board's obligation?

A Yes.

Mr. Zucal was also asked on cross-examination:

Q Did the contract as far as you were concerned say anything about what would happen if a teacher gave up a duty period?

A No.

(T 157, 158, 159)

When the parties agreed to drop their proposals, all negotiations on those matters ceased. Instead the parties agreed to continue with the previously mentioned clause. That clause contains no mention of whether teachers can be assigned to teach an extra class or whether they can be compensated for giving up a duty period. Those issues were dropped. The Board then unilaterally assigned a sixth class to nine (9) teachers and then refused to compensate them for this increased workload because only duty periods were given up.

The Commission cases establish that an increase in workload is negotiable and that the substitution of a teaching period for a duty period represents an increase in workload. Having found that the Board did not negotiate with the Association when it assigned these sixth classes, I find that it violated subsection 5.4(a)(5) and derivatively 5.4(a)(1) when it did so.^{12/} While the Board has the managerial right to increase pupil instructional time, it does not have the right to increase the workload of its teachers without negotiations.

I now turn to the remedy. In addition to a cease and desist order refraining the Board from unilaterally increasing the workload of its teachers by assigning them to a sixth class, and ordering the Board to restore the workload level those teachers enjoyed before their assignment to a sixth class, it is also necessary to address the subject of compensation. All nine (9) of them have been teaching a sixth class during the 1984-85 school

^{12/} No evidence was adduced in the record that the Board violated 5.4(a)(6).

year. Rather than ordering the Board to negotiate a rate of compensation for those sixth classes, I believe that it is only equitable to permit compensation at the rate already agreed upon by the parties when a teacher must give up a preparation or lunch period to teach a sixth class--\$11.00 per class, plus 12% interest.

Recommended Order

Accordingly, for the reasons set forth above, IT IS HEREBY ORDERED:

(A) that the Respondent, Buena Regional Board of Education, shall cease and desist from:

(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed by the Act by unilaterally increasing teacher workload by assigning six teaching periods to teachers in the high school for both semesters of the school year.

(2) Refusing to negotiate in good faith with the Association by unilaterally altering terms and conditions of employment of employees represented by the Association by unilaterally assigning six periods to teachers in the high school for both semesters of the school year.

(B) That the Respondent, Buena Regional Board of Education, take the following affirmative action:

(1) Restore the workload level of the teachers in the high school to that which was extant prior to the teaching schedule changes made by the Board in the 1984-85 school year.

(2) Compensate those teachers so affected at the rate of \$11.00 per class plus 12% interest.

(3) Post at all places where notices to employees are customarily posted copies of the attached Notice marked as Appendix "A." Copies of such notice, on forms to be provided by the Commission, shall be posted immediately upon receipt thereof, and, after being signed by the Respondent Board's authorized representative, shall be maintained by it for a period of at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondent Board to ensure that such notices are not altered, defaced or covered by other material.

(4) Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent Board has taken to comply herewith.

It is hereby further ORDERED that those portions of the Complaint which allege violations of subsection 5.4(a)(6) of the Act be dismissed.


Nathaniel L. Fulk
Hearing Examiner

Dated: March 27, 1985
Trenton, New Jersey

Appendix A

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL NOT interfere with, restrain or coerce our employees in the exercise of the rights guaranteed by the Act by unilaterally increasing teacher workload by assigning six teaching periods to teachers in the high school for both semesters of the school year.

WE WILL NOT refuse to negotiate in good faith with the Association by unilaterally altering terms and conditions of employment of our employees represented by the Association by unilaterally assigning six periods to teachers in the high school for both semesters of the school year.

WE WILL restore the workload level of the teachers in the high school to that which was extant prior to the teaching schedule changes made by the Board in the 1984-85 school year.

WE WILL compensate those teachers so affected at the rate of \$11.00 per class plus 12% interest.

BUENA REGIONAL SCHOOL DISTRICT

(Public Employer)

Dated _____

By _____

(Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with James Mastriani, Chairman, Public Employment Relations Commission, State State Street, Trenton, New Jersey Telephone (609) 292-9830.