P.E.R.C. NO. 86-57

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SUSSEX-WANTAGE REGIONAL
BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-85-112-86

SUSSEX-WANTAGE EDUCATION
ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission holds that the Sussex-Wantage Regional Board of Education did not violate the New Jersey Employer-Employee Relations Act when, pursuant to its contractual rights, it required teachers to report to their home rooms five minutes earlier than they had in previous years. The Commission, however, held illegal a principal's suggestion that teachers would have to stay 20 minutes later if they did not report five minutes earlier.

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SUSSEX-WANTAGE EDUCATION
ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Clark & Leonard, Esqs.
(R. Webb Leonard, of Counsel)

For the Charging Party, Zazzali, Zazzali & Kroll, Esqs
(Paul L. Kleinbaum, of Counsel)

DECISION AND ORDER

On October 25, 1984, the Sussex-Wantage Education Association ("Association") filed an unfair practice charge against the Sussex-Wantage Regional Board of Education ("Board"). The charge first alleges that the Board violated subsections 5.4(a)(1) and (5)[1/] of the New Jersey Employer-Employee Relations Act, as

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; and (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."

amended, N.J.S.A. 34:13A-1 et seq. ("Act"), when it unilaterally increased teachers' pupil contact time by requiring teachers to report to home room five minutes earlier than in previous years. The charge further alleges that the Board violated subsections 5.4(a)(1), (3) and (4)[2/] when a principal allegedly told teachers in a faculty meeting "that if teachers tried to do something to contest this unilateral change, the Board would punish them by making them stay later than they usually do."

On January 29, 1985, a Complaint and Notice of Hearing issued. On April 29, 1985, Hearing Examiner Alan R. Howe conducted a hearing. The parties examined witnesses, introduced exhibits and argued orally. Post-hearing briefs were filed by May 28, 1985.

On June 11, 1985, the Hearing Examiner recommended dismissal of the Complaint. H.E. No. 85-49, 11 NJPER ___ (¶_____ 1985) (copy attached). He first concluded that the Board had a contractual right to increase teacher-pupil contact time by five minutes per day. He further found that the principal's statements made at the faculty meeting did not violate the Act since he was reminding the teachers of the "contractual workday."

2/ These subsections prohibit public employers, their representatives or agents from: "(3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act; and (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act."

On June 21, 1985, the Association filed its exceptions. It excepts to the Hearing Examiner's finding that the Board had the contractual right to require teachers to report to the classroom five minutes earlier at the start of the day. It further excepts to the Hearing Examiner's characterization of the principal's remarks as a reminder that the agreement called for a seven hour and twenty minute workday. It contends that his statements were a threat which had a "chilling effect on the expression of teachers' protected rights."

On June 24, 1985, the Board filed its response. It urges adoption of the Hearing Examiner's recommendation to dismiss the Complaint in its entirety.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 3-7) are accurate. We adopt and incorporate them here.

We first consider whether the Board violated its negotiations obligation when it increased pupil contact time by five minutes at the start of the 1984-1985 school year. The extent of pupil contact time is mandatorily negotiable. See e.g. Burlington County College Faculty Ass'n. v. Bd. of Trustees, 64 N.J. 10 (1973); Maywood Ed. Ass'n., 168 N.J. Super. 45 (App. Div. 1979), certif. den. 81 N.J. 292 (1979); Newark Bd. of Ed., P.E.R.C. No. 79-38, 5 NJPER 41 (¶10026 1979), aff'd App. Div. Docket No. A-2060-78 (decided 2/20/80); Dover Bd. of Ed., P.E.R.C. No. 81-110, 7 NJPER 161 (¶12070 1981), aff'd App. Div. Docket No. A-3380-80T2 (decided

3/16/82); Hopatcong Board of Education, I.R. No. 85-10, 11 NJPER 151 (¶16066 1985). Finding that the increase in pupil contact time was a mandatory subject of negotiations does not, however, compel a finding that the change violated our Act. We have repeatedly held that an employer has met its negotiations obligation when it acts pursuant to its collective negotiations agreement. E.g., Randolph Twp. Board of Ed., P.E.R.C. No. 83-41, 8 NJPER 600 (¶13282 1982); Bound Brook Bd. of Ed., P.E.R.C. No. 83-11, 8 NJPER 439 (¶13207 1982); Pascack Valley Bd. of Ed., P.E.R.C. No. 81-61, 6 NJPER 554, 555 (¶11280 1980).

Under the circumstances of this case, it is clear that the Board had a right, by the contract's express terms, to make the change. In pertinent part, the contract provides:

> The Arrival and Departure times for all teachers shall be designated by the Administration. Their total in-school workday shall consist of (7) Hours and 20 (Twenty) minutes.

Further, there has been no increase in the length of the workday and the Board has continued to allow teachers to leave when their responsibilities are finished. In addition, Article II(E) excludes past practice considerations from affecting express provisions of the contract, including the article just quoted. What we said in Randolph Township School Board, P.E.R.C. No. 81-73, 7 NJPER 23 (¶12009 1980) in dismissing a substantially identical argument is applicable here:

> It is not necessary to address any past practice of working less than that period of time...since the provision of the collective agreement controls over past practices where, as here, the

> mutual intent of the parties concerning work hours "can be discerned with no other guide than a simple reading of the pertinent language." citing New Brunswick Board of Education, 4 NJPER 84 (¶4040 1978), motion for reconsideration denied, 4 NJPER 156 (¶4073 1978).

Accordingly, we hold, in agreement with the Hearing Examiner, that the Board did not violate the Act when it increased pupil contact time by five minutes at the start of the 1984-1985 school year.

We next consider whether the principal's statements at the September 4, 1984 faculty meeting violated the Act. In Black Horse Pike Regional Board of Ed., P.E.R.C. No. 83-19, 7 NJPER 502 (¶12223 1981), we set forth the law governing public employer speech:

> A public employer is within its rights to comment upon those activities or attitudes of an employee representative which it believes are inconsistent with good labor relations, which includes the effective delivery of governmental services, just as the employee representative has the right to criticize those actions of the employer which it believes are inconsistent with that goal. However, as we have held in the past, and as noted by the Hearing Examiner, the employer must be careful to differentiate between the employee's status as the employee representative and the individual's coincidental status as an employee of that employer. See, In re Hamilton Township Board of Education, P.E.R.C. No. 79-59, 5 NJPER 115 (¶10068 1979) and In re City of Hackensack, P.E.R.C. No. 78-30, 4 NJPER 21 (¶14001 1977).
>
> When an employee is engaged in protected activity the employee and the employer are equals advocating respective positions, one is not the subordinate of the other. If either acts in an inappropriate manner or advocates positions which the other finds irresponsible, criticism may be appropriate and even legal action, as threatened here, may be initiated to halt or remedy the other's actions. However, where the employee's conduct as a representative is unrelated to his or her performance as an employee, the employer cannot express its dissatisfaction by exercising its power over the individual's employment. (emphasis added)
> [Id. at 503]

In Commercial Township Board of Education, P.E.R.C. No. 83-25, 8 NJPER 550 (¶13253 1982), aff'd Docket No. A-2642-82T2 (decided December 8, 1983), the Superintendent sent the union president a letter threatening her "job status primarily because of her performance as an Association representative engaging in protected activity and not as a school aide." In finding an unfair practice, we stated:

> The right to deny...a grievance does not carry with it the right to threaten to dismiss an employee for attempting to reprocess the grievance. As Black Horse Pike establishes, the employer must leave an employee's job status out of a dispute over protected activity that has nothing to do with that employee's job performance....
> [Id. at 551]

See also, NLRB v. Gissel Packing Co., 395 U.S. 575, 71 LRRM 2481 (1969).

Further, a statement violates subsection 5.4(a)(1) when it tends to interfere with, restrain or coerce reasonable employees in the exercise of their rights under the Act. The charging party need not prove that the statement was intended as a threat. Gorman, Basic Text on Labor Law, (1976) at 132-133.

Applying these principles to the circumstances of this case, we conclude that the principal's comments tended to interfere with the right of employees to file grievances. The Hearing Examiner found that:

> Lorber stated that if the teachers felt they could not begin to supervise students until 8:25 a.m. then he felt that the entire school day would need to be extended in order to incorporate the seven hours and 20 minutes from a beginning time of 8:25 a.m.
> (Slip opinion at 6)

As the Hearing Examiner also found, the full contractual workday had never been enforced prior to the principal's statement. In fact, at Lawrence teachers leave school anywhere between 3:05 and 3:25 p.m. but under this statement, teachers would be required to stay until 3:45. Thus, as an alternative to the five minute earlier start, the principal suggested that teachers would have to stay at least 20 minutes later. This suggestion was an overreaction to the grievance and tended to interfere with the employee's right to be free from interference in pursuing grievances. We do not believe, however, that the suggestion was meant as a threat. Accordingly, while we find a violation of subsection 5.4(a)(1), we will not order any affirmative relief.

ORDER

The Sussex-Wantage Regional Board of Education is ORDERED to:

Cease and desist from:

Interfering with, restraining or coercing members of the Association in the exercise of the rights guaranteed to them by the Act by stating that if employees could not begin work earlier, the entire school day would be lengthened to the extent permitted by the contract.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Suskin and Wenzler voted in favor of this decision. None opposed. Commissioner Hipp abstained. Commissioner Graves was not present.

DATED: Trenton, New Jersey
October 17, 1985
ISSUED: October 18, 1985

H. E. No. 85-49

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

In the Matter of

SUSSEX-WANTAGE REGIONAL BOARD
OF EDUCATION,

Respondent,

-and- Docket No. CO-85-112-86

SUSSEX-WANTAGE EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent Board did not violate Subsections 5.4(a)(1), (3), (4), and (5) of the New Jersey Employer-Employee Relations Act when, in September 1984, it unilaterally increased pupil-contact time for all teachers by five minutes and, when on September 4, 1984, the principal of the Lawrence School informed his teachers that if they could not adjust to the increase in pupil-contact time then he might have to enforce the contractual provision for the total workday of seven hours and 20 minutes.

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. 85-49

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

In the Matter of

SUSSEX-WANTAGE REGIONAL BOARD
OF EDUCATION,

Respondent,

-and- Docket No. CO-85-112-86

SUSSEX-WANTAGE EDUCATION ASSOCIATION,

Charging Party.

Appearances

For the Respondent, Clark & Leonard, Esqs.
(R. Webb Leonard, Esq.)

For the Charging Party, Zazzali, Zazzali & Kroll, Esqs.
(Paul L. Kleinbaum, Esq.)

HEARING EXAMINER'S
RECOMMENDED REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on October 25, 1984 by the Sussex-Wantage Education Association (hereinafter the "Charging Party" or the "Association") alleging that the Sussex-Wantage Regional Board of Education (hereinafter the "Respondent" or the "Board") has engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (hereinafter the "Act"), in that, contrary to a past practice of at least 15 years wherein teachers were required to be in their classrooms at 8:25 a.m., the time that

students were required to report, the Respondent in September 1984 unilaterally required teachers to report at 8:20 a.m. thereby increasing pupil contact time without collective negotiations and, further, the principal of the Lawrence School threatened teachers in a faculty meeting on September 4, 1984, by stating that if the teachers attempted to contest the foregoing change the Board would punish them by making them remain in school later than had been the practice, i.e., teachers had been permitted to leave their school when their responsibilities were concluded; all of which is alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1), (3), (4) and (5) of the Act.[1/]

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.

(3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act.

(4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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."*

It appearing that the allegations of the Unfair Practice Charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on January 29, 1985. Pursuant to the Complaint and Notice of Hearing, a hearing was held on April 9, 1985 in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Oral argument was waived and the parties filed post-hearing briefs by May 28, 1985.

An Unfair Practice Charge having been filed with the Commission, a question concerning alleged violations of the Act, as amended, exists and, after hearing, and after consideration of the post-hearing briefs of the parties, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

Upon the entire record, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. The Sussex-Wantage Regional Board of Education is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. The Sussex-Wantage Education Association is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

3. The district consists of three schools as follows: Clifton E. Lawrence, housing grades K-2; Wantage, housing

grades 3-5; and Sussex, housing grades 6-8. The principal of the Lawrence School is Charles E. Lorber.

4. The 1980-81 collective negotiations agreement between the parties provided in Article VII, Teaching Hours and Teaching Loads, para. A(1) and (2) that the arrival and departure times for all teachers "shall be designated by the Administration"; that the total in-school workday "shall" consist of seven hours and 20 minutes; and that each teacher shall be required to report for duty in the classroom at 8:25 a.m. and be permitted to leave when responsibilities are finished (R-1, p. 7). In the 1981-82 and 1982-85 collective negotiations agreements the provisions in Article VII, para. A(1) and (2) continued except that the requirement that each teacher be required to report for duty in the classroom at 8:25 a.m. was deleted (J-1, p. 7 and J-2, p. 7). Thus, the parties negotiated the deletion of the 8:25 a.m. reporting requirement.

5. Article II(E) of J-2, supra, provides:

> Except as this Agreement shall hereinafter otherwise provide, all terms and conditions of employment applicable on the effective date of this Agreement to employees covered by this Agreement as established by the rules, regulations and/or policies of the Board in force on said date, shall continue to be so applicable during the term of this Agreement.

6. Prior to September 1984 the practice in each of the three schools was for teachers to sign in at 8:20 a.m. and report to the classroom at 8:25 a.m. Except for the Lawrence School, which has only been in existence for a little over three years, the sign in and reporting practice dated back at least 16 years. During the five minutes between 8:20 a.m. and 8:25 a.m. no students were in the

classroom and teachers were free to perform such tasks as organizing the room for the day. At 8:25 a.m. the students appeared and the normal teaching functions commenced. No instructional function occurred during the foregoing five minutes.

7. Commencing in September 1984 the Administration required teachers in the three schools to report to the classroom at 8:20 a.m., the same time that they sign in, with the students also reporting at 8:20 a.m. instead of 8:25 a.m. The five minutes of preparation that teachers previously had was eliminated and took place, if at all, prior to 8:20 a.m.

8. The Superintendent, Robert Clark, explained the Board's reason for requiring the students to report to the classroom five minutes earlier, commencing in September 1984. He stressed the need for flexibility in solving problems in the delivery of students in the Lake Nepaulen and "Hills" areas, all of which dictated the necessity of delivering students five minutes earlier. The President of the Association, Trudy Bergensten, acknowledged on cross-examination that there had previously been a problem with buses and students. She also stated her belief that the Board has the right to require teachers to report at 8:20 a.m. under the agreement. Finally, Bergensten acknowledged on cross-examination that teachers were not required to report any earlier since September 1984 than prior thereto.

9. On September 4, 1984 Lorber, the Principal of the Lawrence School, conducted a faculty meeting where he reminded the

faculty that the agreement called for a total school workday of seven hours and 20 minutes and that the agreement does not specify when the arrival or departure times for teachers shall be. In a memorandum of this meeting to Superintendent Clark dated October 31, 1984, Lorber stated that if the teachers felt they could not begin to supervise students until 8:25 a.m. then he felt that the entire school day would need to be extended in order to incorporate the seven hours and 20 minutes from a beginning time of 8:25 a.m. (CP-1). The Association has alleged that Lorber's statements at the September 4th meeting constituted a threat. However, the Hearing Examiner, based on the testimony of Lorber, accepts his denial that he told the teachers at the Lawrence School faculty meeting on September 4th that they would all have to work seven hours and 20 minutes. Note is taken of the fact that Lorber also testified that he told teachers that they would have to stay until their duties were completed and that this might entail staying until 3:40 p.m., which would be seven hours and 20 minutes from the starting time of 8:20 a.m.

10. Bergensten on behalf of the Association met with Superintendent Clark on September 18, 1984 and protested the unilateral decision to change the starting time from 8:25 a.m. to 8:20 a.m.

11. Although the Unfair Practice Charge does not complain of any changes regarding dismissal times there was credible testimony that the dismissal times have not changed and remain the same as prior to September 1984. The seven hours and 20 minutes

workday has apparently never been enforced with the practice as follows: at all three schools the teachers leave after the students leave by bus; at Lawrence the teachers leave between 3:05 p.m. and 3:25 p.m.; at Sussex the teachers leave shortly after 3:00 p.m. unless they are detained to 3:20 p.m. to 3:25 p.m.; and at Wantage the teachers leave between 3:02 p.m. and 3:25 p.m. Since the full contractual workday would entail departure at either 3:40 p.m. or 3:45 p.m. it is a fact that the full workday has never been enforced.

DISCUSSION AND ANALYSIS

The Respondent Board Did Not Violate Subsections (a)(1) And (5) Of The Act When In September 1984 It Unilaterally Increased Teacher-Pupil Contact Time By Five Minutes Per Day.[2/]

In finding that the Respondent Board has not violated Subsections (a)(1) and (5) of the Act the Hearing Examiner is fully aware of the extensive Commission and court precedent that an increase in teacher-pupil contact time is mandatorily negotiable: Middlesex County College, P.E.R.C. No. 78-13, 4 NJPER 47, 50 (1977); Dover Board of Education, P.E.R.C. No. 81-110, 7 NJPER 161 (1981); Maywood Board of Education, P.E.R.C. No. 85-36, 10 NJPER 571 (1984); Byram Township Board of Education, 152 N.J.Super. 12, 25, 26 (App.

2/ The Charging Party failed to adduce any evidence that the Board violated Subsection (a)(4) of the Act by its conduct herein and, thus, the Hearing Examiner will recommend dismissal of this allegation. Cf. Randolph Twp. Board of Education, P.E.R.C. No. 82-119, 8 NJPER 365, 367 (1982).

Div. 1977); and Maywood Board of Education, 168 N.J. Super. 45, 59 (App. Div. 1979).

However, the mere fact that there exists the above legal proposition that an increase in pupil-contact time is mandatorily negotiable does not dispose of the case at hand. Thus, the Charging Party points to a longstanding practice of many years wherein teachers signed in at 8:20 a.m. but did not report to the classroom and make contact with students until 8:25 a.m. It was this practice that was unilaterally changed by the Board in September 1984 when teachers were required in the three schools to report to the classroom at 8:20 a.m., the same time that they signed in, with students also reporting at 8:20 a.m. Thus, five minutes of preparation that the teachers previously had was eliminated and took place, if at all, prior to 8:20 a.m. See Findings of Fact Nos. 6 & 7, supra.

The Charging Party also points to Article II(E) of the current agreement which provides that "Except as this Agreement shall hereinafter otherwise provide..." all terms and conditions of employment "as established by the rules, regulations and/or policies of the Board..." shall continue during the term of the Agreement (see Finding of Fact No. 5, supra). This provision of J-2 is urged as the "past practice" clause, which allegedly prevents the Board from unilaterally increasing pupil-contact time during the term of the agreement. However, the Association overlooks a well-settled principle in weighing a past practice, past practice clauses and express provisions of a contract. The Commission early decided in

New Brunswick Board of Education, P.E.R.C. No. 78-47, 4 NJPER 84 (1977) that where there is a clear and unambiguous contract provision granting a benefit to employees, but through past practice the employer has granted a more generous benefit, the contract provision takes precedence over the past practice. "...The employer can only be held to the obligation he contracted for and, therefore, he may unilaterally return to the lesser benefits..." (4 NJPER at 85).

The Hearing Examiner is persuaded that the instant case is governed by two decisions of the Commission involving Randolph Township Board of Education, P.E.R.C. No. 81-73, 7 NJPER 23 (1980) [Randolph I] and P.E.R.C. No. 83-41, 8 NJPER 600 (1982) [Randolph II]. In both Randolph I and Randolph II the agreement provided in part that the total workday would not exceed seven hours and 30 minutes. In Randolph I a speech correction specialist had been required to be present in school until 3:15 p.m. as had all other teachers by custom for approximately nine years. The Board unilaterally changed the schedule of the speech correction specialist by extending her work time from 3:15 p.m. to 3:30 p.m. twice a week. The Hearing Examiner found that the subject of the change was a mandatorily negotiable term and condition of employment but concluded that there was no violation of the Act since the change in schedule was within the contractual limitations, which took precedence over any past practice. The Commission cited the Appellate Division decision in Maywood Board of Education, supra, in affirming the Hearing Examiner's decision that the Board did not

violate the Act, affirming that past practice should not control where the mutual intent of the parties concerning work hours "...can be discerned with no further guide than a simple reading of the pertinent language..." (7 NJPER at 24).

In Randolph II the agreement provided that teachers would receive one preparation period per day but did not specify the total amount of preparation time to which they were entitled. When the Board unilaterally reduced the preparation time from 200 minutes to 150 minutes a week, the Association asserted a violation of past practice, relying upon a contract clause to that effect. The Association did not complain that the teaching load was increased nor that the workday was lengthened. The Hearing Examiner cited New Brunswick, supra, and Randolph I, supra, in concluding that the 50-minute decrease in preparation time and a corresponding 50-minute increase in teaching load was permissible under the terms of the agreement. He stated that the legal theory advanced by the Association would permit an express term of the contract to be negated through the assertion of a past practice, contrary to the decisions of the Commission and the courts (8 NJPER at 503). The Commission affirmed the Hearing Examiner essentially for the reasons cited by him and dismissed the Complaint (8 NJPER 600, 601).

The Hearing Examiner also notes two additional decisions of the Commission which dismissed Complaints on the ground that an increase in classroom time was permitted by the terms of the collective negotiations agreement, in that in neither case was the contractual workday exceeded: Pascack Valley Reg. H.S. Board of

Education, P.E.R.C. No. 81-61, 6 NJPER 554 (1980) and Bound Brook Board of Education, P.E.R.C. No. 83-11, 8 NJPER 439 (1982).

In conclusion several additional points are noted, namely, Article II(E) of J-2, supra, specifically excludes from past practice considerations express provisions of the agreement such as the length of the teacher workday in Article VII, which provides that it shall be of seven hours and 20 minutes duration. There has been no increase in the length of the workday beyond that limit and, in fact, the Board has continued to permit teachers to leave when their responsibilities are finished which, again, has not resulted in a workday in excess of seven hours and 20 minutes. It is also noted that Article VII has always provided that arrival and departure times for teachers "...shall be designated by the Administration...," a provision which clearly entitled the Board to adjust arrival and departure times within the context of the seven hours and 20 minutes workday. Finally, the Hearing Examiner has in no way based his determination that the Board did not violate the Act upon a finding that the change herein was de minimis.

The Respondent Board Did Not Violate Subsections (a)(1) And (3) Of The Act By The Conduct Of Its Principal At The Lawrence School On September 4, 1984.

Suffice it to say that if the Hearing Examiner had been persuaded that the Board violated Subsections (a)(1) and (5) of the Act when it unilaterally increased pupil contact time, supra, the Board may well have been found to have also violated Subsections

(a)(1) and (3) by the conduct of Lorber on September 4, 1984. However, Lorber in his statement to his teachers on September 4, 1984 was doing nothing more than reminding them that the contractual workday was seven hours and 20 minutes and that if need be the workday could be extended to that limitation if the teachers felt they could not adjust to the five-minute change in pupil contact time. To enforce the contract by its literal terms does not appear to the Hearing Examiner to afford a basis for finding a violation of the Act.

Accordingly, the Hearing Examiner will recommend dismissal of the allegations that the Board violated Subsections (a)(1) and (3) of the Act by the conduct of Lorber on September 4, 1984.

* * * *

Upon the foregoing, and upon the entire record in this case, the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

1. The Respondent Board did not violate N.J.S.A. 34:13A-5.4(a)(1) and (5) when it unilaterally increased pupil-contact time by five minutes in September 1984.

2. The Respondent Board did not violate N.J.S.A. 34:13A-5.4(a)(1) and (3) when the principal of the Lawrence School threatened to enforce the full workday of seven hours and 20 minutes at a meeting of the faculty on September 4, 1984.

3. The Respondent Board did not violate N.J.S.A. 34:13A-5.4(a)(4) by its conduct herein.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER that the Complaint be dismissed in its entirety.

Alan R. Howe
Hearing Examiner

Dated: June 11, 1985
Trenton, New Jersey