

H.E. NO. 97-29

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

In the Matter of

STATE OPERATED SCHOOL DISTRICT
OF NEWARK,

Respondent,

-and-

Docket No. CO-H-94-275

NEWARK TEACHERS UNION LOCAL 481,
AFT/AFL-CIO,

Charging Party.

Appearances:

For the Respondent, Sills, Cummis, Zuckerman, Radin,
Tischman, Epstein & Gross, attorneys
(Derlys Maria Gutierrez, of counsel)

For the Charging Party, Eugene G. Liss, attorney

**HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION**

On March 14, 1994, the Newark Teachers Union, Local 481,
AFT/AFL-CIO ("Union" or "Charging Party") filed an unfair practice
charge (C-2)^{1/} with the Public Employment Relations Commission
("Commission") against the State Operated School District of

^{1/} Exhibits received in evidence marked as "C" refer to the
Commission's exhibits, those marked "CP" refer to the Charging
Party's exhibits, and those marked "R" refer to the
Respondent's exhibits. Transcript citation 1T1 refers to the
transcript developed on February 29, 1996, at page 1.
Transcript citations 2T and 3T refer to the transcripts
developed on July 2 and August 30, 1996, respectively.

Newark ("District" or "Respondent"). On March 22, 1994, the Union filed an amended unfair practice charge (C-3). The Union alleges that the District violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically sections 5.4(a)(1), (2) and (5)^{2/} by unilaterally increasing project coordinator workloads and student contact time, and reducing the amount of time devoted to managing the basic skills program. The Union also alleges that the District unilaterally increased the workloads of basic skills clerks.

On July 1, 1994, the Director of Unfair Practices issued a Complaint and Notice of Hearing (C-1). On July 21, 1994, the District filed its Answer (C-4) generally denying the allegations contained in the charge. Hearings were conducted on February 29, July 2, and August 30, 1996, at the Commission's offices in Newark, New Jersey. The parties had the opportunity to examine and cross-examine witnesses, present relevant evidence and argue orally. At the conclusion of the hearing, the parties waived oral argument and established a briefing schedule. Briefs were filed by February 25, 1997.

^{2/} 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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (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."

Upon the entire record, I make the following:

FINDINGS OF FACT

1. The parties stipulated that the District was a public employer and the Union was a public employee representative within the meaning of the Act (1T7).

2. The Chapter 1 Program is an initiative of the federal government designed to improve the educational opportunities of educationally deprived students by helping them succeed in their regular school program, attain grade level proficiency, and improve achievement in basic and more advanced skills (2T12; R-6). More than twenty years ago, the District established the title of basic skills coordinator (CP-1).^{3/} The federal government allocates resources to each school district on the basis of a formula. In New Jersey, the State Department of Education (DOE) serves as custodian of the federal money and monitors each District's use of it. Yearly, each school district files an application with the DOE seeking funds. Based on the information contained in the application, the DOE decides whether to release the money to the school district (2T13).

3. Prior to approximately 1983, certain basic skills coordinators assigned to parochial or special education schools

^{3/} The title basic skills coordinator is interchangeable with project coordinator (1T20; 2T8).

maintained a student teaching load in addition to their administrative responsibilities as coordinator (2T10). Between 1983 and 1985, additional resources were devoted to the basic skills program and paperwork requirements increased for local school districts (2T11). A federal court decision held that public school districts could no longer assign Chapter 1 (basic skills) teachers to non-public schools (2T11). Consequently, Chapter 1 teachers and coordinators who were carrying a teaching load were reassigned to public schools (2T11; 2T30). As of 1985, basic skills coordinators performed solely administrative duties and no longer maintained a student teaching responsibility, with the exception of occasional demonstration lessons performed for the benefit of the basic skills teachers (1T16; 1T20-1T21; 1T42-1T43; 1T62; 1T74; 1T89; 1T107; 2T11; 2T30).

4. Basic skills coordinators are responsible for monitoring the Title 1 Program, meeting with parents and teachers regarding the District's basic skills program, gathering information to ensure that all reports are timely and accurately completed, disseminating information to parents and teachers regarding the Title 1 Program, ensuring that all eligible students participate in the program, and giving workshop and demonstration lessons to basic skills and developmental teachers (1T15; 1T76; 2T29-2T30). In or around December 1993, the District established a new job description entitled "Basic Functions and Responsibilities of the Basic Skills Coordinator/Teacher" (CP-2).

The predecessor job description was entitled "Basic Functions and Responsibilities of the Basic Skills Coordinator" (CP-1). CP-2 somewhat deemphasized the basic skills coordinator's administrative responsibilities and emphasized their teaching responsibilities. For example, CP-1 states that the basic skills coordinator "assists the principal in the total administration of the basic skills program...", whereas CP-2 states that the coordinator/teacher "assists the principal in the total management of the basic skills program..." (emphasis added). CP-1, paragraph 9, states that the coordinator "assumes responsibility in planning and implementing in-service training for basic skills teachers, aides, developmental teachers, and parents; and prepares materials for dissemination." CP-2, paragraph 9, states that the coordinator implements in-service training for basic skills teachers, aides, developmental teachers, and parents; and prepares materials for dissemination. CP-1, paragraph 11, states that the coordinator "assumes responsibility for and helps to assess the priority educational needs of the students, and assists teachers in developing instructional programs that will meet these needs." CP-2, paragraph 11, states "assists the principal in assessing the priority educational needs of the students. CP-1, paragraph 14, states that the coordinator "assists the principal in the coordination of the testing program for determining academic achievement and for the purpose of determining cognitive needs for an individual needs assessment. Under no circumstances is the

coordinator, nor any member of the BSIP program staff, to take full responsibility for the testing program(s)." CP-2 contains no comparable provision. Other differences of a similar nature exist between CP-1 and CP-2.

CP-2, paragraph 21, states:

BASIC SKILLS COORDINATORS ASSIGNED TO ELEMENTARY SCHOOL AND MIDDLE SCHOOLS MUST HAVE SIX (6) PERIOD DAY SCHEDULE. THEY WILL TEACH FIVE (5) OF THOSE PERIODS AND HAVE ONE PERIOD TO MANAGE THE BASIC SKILLS PROGRAM. EACH COORDINATOR MUST ALSO HAVE THREE (3) PREPARATION PERIODS BECAUSE OF THEIR INSTRUCTIONAL ACTIVITIES AND ONE (1) PERIOD PER WEEK FOR ALIGNMENT OF INSTRUCTION. [Capitalized in original.]

By creating CP-2, the District wanted to ensure that coordinators understood that they had to teach five out of six periods (2T10). CP-1 contains no comparable provision concerning a teaching requirement. The inclusion of paragraph 21 in CP-2 represented a significant change from CP-1 (2T31).

5. The daily five period teaching requirement impacted upon the coordinator's school day. Prior to December 1993, coordinators were generally able to complete their assignments during the normal 8:35 a.m. to 2:45 p.m. school day (1T23; 1T76-1T77).^{4/} Prior to December 1993, coordinators rarely needed to use their lunch periods to complete their work responsibilities

^{4/} Before December 1993, there were occasions when coordinators could not complete their work within the normal school day. Those occasions arose when important reports were due, for example, around October 15 of each school year (1T82; 3T37).

(1T23). While coordinators have not been directed by their principals to work through lunch in order to complete their duties, since being assigned teaching duties, coordinators have often used their lunch periods to perform "coordinator" work (1T28-1T30; 1T51; 1T104; 1T109; 1T115-1T116). More often, coordinators have arrived before the start of the regular school day, stayed late and used scheduled preparation time to timely complete their coordinator duties (1T28-1T29; 1T35; 1T66-1T67; 1T78-1T80; 1T84; 1T92; 1T103-1T105; 1T109; 1T112).

6. The collective agreement (CP-3) contains a separate section setting forth basic skills coordinators' salaries. Coordinators, as compared to teachers, received additional compensation (1T18; 1T39). Prior to 1984, coordinators were paid on the basis of the teachers salary scale and received an additional stipend. Around 1985 or 1986, a separate salary scale was negotiated into the collective agreement for basic skills coordinators.^{5/} In 1984, coordinators received a stipend of approximately \$800 per year. Since 1985/1986, coordinators received a premium of approximately \$2,400 per year over the teacher's salary guide (1T40-1T41). After coordinators were assigned teaching responsibilities in December 1993, they continued to be paid in accordance with the separate basic skills coordinator salary guide and suffered no reduction in compensation (1T54; 1T83).

^{5/} The collective agreement shows the salary scale for project coordinators.

7. Basic skills coordinators are evaluated by their building principals (2T32). In December 1993, when coordinators were assigned to teach five periods per day, DelGrasso served as the city-wide shop steward for basic skills coordinators (1T32). Director of Special Projects, Connie Richard, was responsible for overseeing the basic skills program and ensuring that it was implemented in accordance with federal guidelines (2T6-2T7). DelGrasso told Richard that requiring coordinators to teach five periods per day made it impossible for them to accomplish their coordinator responsibilities. DelGrasso indicated that coordinators were generally concerned that they might be unsatisfactorily evaluated for failure to timely submit reports (1T34). With the exception of Thomas Lawton, all coordinators were satisfactorily evaluated by their respective building principals (1T51-1T52; 1T67; 1T81; 1T112). In school year 1993-1994, Lawton was rated unsatisfactory because he did not have enough time to complete the required reports and submit them by the established deadlines (1T91). The reports were submitted up to one week late (1T92). In September 1993, Lawton was transferred to the Flagg School (1T93). For the twenty-two years prior to his transfer, Lawton worked at the Lincoln School (1T100). Lawton had a better relationship with the principal he reported to at the Lincoln School than the principal at the Flagg School (1T100).

8. On July 15, 1993, the District submitted its fiscal year 1994 application for Chapter 1 funding with the DOE (2T19). On

September 8, 1993, the DOE sent the District an "item analysis" letter which included a list of items which must be revised or clarified before the District's fiscal year 1994 Chapter 1 application would be approved and funded (R-1; 2T14). The DOE raised a question concerning high administrative costs and the role of the coordinators in its letter (2T15-2T16; 2T36).

9. The District and the DOE engaged in a dialogue concerning the steps which the District had to take in order to obtain Chapter 1 application approval (2T16). On October 22, 1993, Richard sent a letter to the DOE seeking clarification of the steps the District must implement before its Chapter 1 application would be approved. Richard sought confirmation that the District was required to implement, among other things, the following items:

1. No more than ten percent (10%) of the allocation should be budgeted for administration; the State will delineate what costs are considered administrative; [and]

2. School based project coordinators must teach. [R-2, 2T17]

10. On October 27, 1993, the DOE responded to Richard stating, in relevant part:

1. The Newark School District should budget a maximum of ten percent of the total Chapter 1 allocation for administrative costs.

2. All project coordinators must teach a full schedule with only one period for preparation; same as developmental teachers. [R-3; 2T17]

The DOE reiterated in R-3 that the above-listed items, along with certain other concerns raised in R-1 "...must be addressed before the Chapter 1 application can be approved" (R-3).

11. On November 22, 1993, the DOE sent a follow-up item analysis letter requesting additional clarification of issues related to the District's Chapter 1 program (R-4; 2T19). The DOE asked the District to "...specify in the program description, the grade levels that the project coordinators now listed as teachers, will teach, the model to be used, and the number of periods they will teach each day" (R-4). As of November 22, 1993, the District's Chapter 1 application had not yet been approved (2T20).

12. On December 3, 1993, the District's executive superintendent, Eugene C. Campbell, sent a memorandum to all building principals confirming that:

...as of December 1, 1993, the basic skills coordinators assigned to the elementary schools must have a six (6) period day schedule. They will teach five (5) of those periods and have one period to manage the Basic Skills program. Each coordinator must also have three (3) preparation periods because of their instructional activities and one (1) period per week for alignment of instruction. [R-5]

13. The District had always considered coordinators as teachers and not part of the Chapter 1 Program's administrative costs. However, the DOE disagreed and indicated that personnel who were not teaching constituted part of the program's administration (2T24). Ultimately, the DOE emphatically directed the District to assign coordinators a full teaching schedule with one period per day

for program maintenance (2T25-2T26). With coordinators assigned to teach five periods per day, the DOE acknowledged that the costs ascribed to the coordinators were shifted from administrative to teaching costs (2T22).

14. Richard conducted periodic meetings with the coordinators to keep them apprised of the status of the pending Chapter 1 application. He shared the item analysis letter (R-1) with the coordinators and told them that the DOE was insisting, among other things, that the administrative costs of the basic skills program be limited to ten percent (2T23-2T24; 1T68-1T69; 1T108; 1T115). Rosalie Scara, president of the Coordinators Association, had several meetings with Richard to discuss the proposed change in the coordinator position requiring five teaching periods per day (1T62; 1T72; 1T87; 1T101-1T102; 1T115). While representatives of the charging party, who also happen to be basic skills coordinators, attended the meetings Richard conducted, the District never engaged in formal negotiations with the Union concerning the changes in basic skills coordinators' duties (1T26; 2T34-2T35). There is no evidence that the Union demanded negotiations concerning the changes.

15. Basic skills clerks are assigned to assist basic skills coordinators (3T7). Prior to December 1, 1993, when coordinators were assigned teaching duties, clerks would type memoranda, forms, notices, reports, payroll, requisitions, orders, newsletters and other correspondence prepared by the clerks'

respective coordinator (3T8). In the case of clerk Christine Veliz, the coordinator always prepared a pencil copy of the memorandum given to her to type (3T7; 3T16). After coordinators began teaching, clerks were required to compose some memoranda themselves (3T7). The memoranda were addressed to teachers and, for example, asked them to update a list or advise them that a meeting was being scheduled. The memoranda prepared by the clerks varied in length, however, were typically about one page long consisting of a few paragraphs (3T15-3T16). Often, these memoranda emanated from the central office and required that such information be rewritten and disseminated to the basic skills teachers (3T16). It took Veliz approximately five to ten minutes to prepare such memoranda (3T17). The job description states that the basic skills clerk "types a wide variety of materials, such as correspondence, from pencil copy" (CP-5).

16. Since the coordinator was assigned teaching duties, the clerks were required to collect student information from the teacher and enter data based upon such information into the computer (3T10-3T11; 3T19). While before December 1, 1993, coordinators would physically collect such data, the clerks responsibility to input such data into the computer has remained unchanged (3T11; 3T31). Clerks do not discuss the content of the data collected with the teachers (3T38), nor do they assess tests or exercise their judgment regarding the data contained in the tests (3T44-3T45).

17. Article 8, Section 5C of the July 1, 1991 through June 30, 1994 collective agreement provides as follows:

School clerks shall receive two (2) ten minute breaks each day, one in the morning and one in the afternoon. [CP-3]

Section 5A of the collective agreement provided for clerks to receive a daily lunch period. While clerks continued to receive their breaks and lunch period as prescribed by the collective agreement, after December 1, 1993, clerks often remained in their offices during lunch and breaks to maintain coverage. Lunch and break times were sometimes interrupted (3T12; 3T21). Prior to December 1, 1993, clerks could leave the office during their break and lunch times and thus enjoy those benefits without interruption (3T12). Clerks have never been required to stay in their offices all day. It is the principal's responsibility to decide whether the office should be closed during the clerk's break and lunch periods or whether someone else should be assigned to the office to maintain coverage (3T27-3T28).

18. The clerks' job description (CP-5) requires that they answer the telephone and take accurate messages. Since prior to December 1, 1993, coordinators spent the work day primarily in their offices, clerks merely transferred telephone calls directly to the coordinator (3T18). Since December 1, 1993, clerks have fielded telephone calls by looking up information and conveying substantive answers to the caller or taken some action in response to the call. Clerks have taken calls from parents concerning their child's eligibility for the basic skills program (3T9; 3T18-3T19). However, clerks have maintained the option of taking telephone messages for

the coordinator or referring a call to the building principal (3T30). Clerks were never directed to take action or issue substantive responses to callers (3T28-3T29).

19. Prior to December 1, 1993, clerks had no contact with teachers (3T43). Since December 1, 1993, clerks have delivered and collected test materials and conveyed some information to teachers concerning the testing process (3T42-3T44).

20. Some clerks have worked beyond the end of their regular work day prior and subsequent to December 1, 1993. This typically occurs during certain peak periods throughout the year when reports are due. Working late has never been mandated (3T22-3T23; 3T27).

Article 8, Section 4, Overtime, in the collective agreement states:

School clerks working overtime shall, at the discretion of the executive superintendent, be remunerated at a rate of one and one-half (1 1/2) times the hourly rate or one and one-half (1 1/2) time (sic) the time worked. [CP-3]

ANALYSIS

The Union contends that the District violated the Act by changing the basic skills coordinator's job description to include a teaching component and by assigning coordinators a nearly full teaching load since December 1, 1993. The Union argues that the Board's unilateral action significantly increased the coordinator's work load without prior negotiations. Teacher workload is a mandatorily negotiable subject. Burlington County College Faculty

Association v. Board of Trustees, 64 N.J. 10 (1973). Work load increases have been measured by increases in the length of the work day, the number of teaching periods or pupil contact time. See, e.g., Woodstown-Piles Grove Reg. H.S. Bd. of Ed. v. Woodstown-Piles Grove Reg. Ed. Assn., 81 N.J. 582 (1980) (increase in work day); Hamilton Township Board of Education, P.E.R.C. No. 90-80, 16 NJPER 176 (¶21075 1990), aff'd NJPER Supp.2d 258 (¶214 App. Div. 1991) (increase in pupil contact time); Englewood Board of Education v. Englewood Teachers Association, NJPER Supp.2d 28 (¶18 App. Div. 1974) (increase in number of teaching periods). Remedially, the Union seeks the rescission of the teaching assignment.

In September 1993, the DOE advised the District that it was not operating its Chapter 1 Program in compliance with DOE guidelines. The DOE would not approve the District's Title 1 application and fund its program unless the District modified the manner in which it operated the Title 1 program and complied with DOE mandates.

In reaction to the DOE's directives, the District rewrote the basic skills coordinators' job description requiring coordinators to teach.^{6/} A public employer has the inherent managerial prerogative to create and abolish positions. Ramapo-Indian Hills Education Assn. v. Ramapo-Indian Hills Reg. H.S. District Board of Education, 176 N.J.Super. 35 (1980). The court stated:

^{6/} Additional, less significant changes were also made.

...the basic inquiry must be whether the dominant concern involves an educational goal or the work and welfare of the teachers.

* * *

Where the educational goal is dominant, there is no obligation to negotiate.... [Id. at 43]

The change in the job description effectively created the new position of basic skills coordinator/teacher. The District did not violate the Act when it changed the job description to reflect the teaching duties.

The DOE mandated that the District reduce its administrative costs by assigning coordinators to primarily deliver direct student instruction rather than solely perform administrative duties. The District made the teaching assignments in compliance with the DOE's mandate. The Union asserts that such teaching assignments may not be made without prior negotiations between the parties. I disagree. The District would not be able to provide basic skills instruction without receipt of the funding provided through the DOE. The funding would not be forthcoming unless the District exceeded to the DOE's directives. Requiring it to first negotiate with the Union over whether to comply with DOE's directive would significantly interfere with its ability to carry out its educational policy. IFPTE Local 195, 88 N.J. 393 (1982). Thus, the assignment of teaching duties to the coordinators is a matter of educational policy and, consequently, constitutes an inherent managerial prerogative which is not subject to negotiations.

Mainland Regional Teachers Association v. Mainland Regional School District Board of Education, 176 N.J.Super. 476 (App. Div. 1980), certif. den. 87 N.J. 312 (1981); Ramapo-Indian Hills Ed. Assn.; Burlington County College, P.E.R.C. No. 90-13, 15 NJPER 513 (¶20213 1989); Middletown Township Board of Education, P.E.R.C. No. 88-118, 14 NJPER 357 (¶19138 1988).

Since the District had the managerial prerogative to change the job description and assign teaching duties to coordinators, I find that the District did not violate the Act upon the implementation of such changes. However, the coordinators' teaching assignments changed their workload, implicating a mandatorily negotiable matter. The teaching assignment, coupled with the coordinators' ongoing administrative responsibilities, resulted in a lengthening of the work day and an increase in the number of teaching periods and pupil contact time.^{7/} The Union may demand negotiations over uncompensated increases in workload. Ewing Township Board of Education, P.E.R.C. No. 95-99, 21 NJPER 217 (¶26137 1995). However, since the record does not indicate that a demand to negotiate the severable negotiable issue of compensation was ever made upon the District, no violation of the Act occurred. Trenton Board of Education, P.E.R.C. No. 88-16, 13 NJPER 714 (¶18266

^{7/} The record indicates that some coordinators worked through their duty-free lunch period and/or preparation periods. While coordinators may have felt compelled to work during these times to accomplish their Title 1 administrative responsibilities, they were not directed by superiors to use those time periods.

1987); Monroe Township Board of Education, P.E.R.C. No. 85-35, 10 NJPER 569 (¶15265 1984).

With the coordinators carrying nearly a full teaching load, the basic skills clerks were required to work in a more independent manner. While the clerks may have performed certain duties which they had not previously done, all of their duties continued in the nature of clerical work. Clerks were not directed by their supervisors to perform non-clerical work. Clerks work days were not extended. While clerks' break and lunch periods may have been interrupted at times because they chose to maintain office coverage, they continued to take breaks and lunch, and were never directed by superiors to remain in the office. The District had a managerial right to require clerks to perform additional clerical duties during their regular work day resulting from the impact of the teaching assignment given to the coordinators. See, Irvington Bd. of Ed., P.E.R.C. No. 95-64, 21 NJPER 125 (¶26077 1995). Consequently, I find no change in the clerks' mandatorily negotiable terms and conditions of employment and, thus, no violation of the Act on the part of the District.

I find no facts in support of the Union's contention that the District dominated or interfered with the formation, existence or administration of the employee organization.

Accordingly, based upon the entire record and the analysis, I make the following:

CONCLUSIONS OF LAW

1. The District did not violate Section 5.4(a)(1), (2) or (5) of the Act when it changed the basic skills coordinators' job description and assigned them teaching duties.

2. The District did not change any mandatorily negotiable term and condition of employment for basic skills clerks in violation of the Act.

RECOMMENDATION

I recommend that the Commission **ORDER** that the complaint be dismissed.

Stuart Reichman
Hearing Examiner

Dated: April 30, 1997
Trenton, New Jersey