

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION
LITIGATION ALTERNATIVE PROGRAM

In the Matter of

EWING TOWNSHIP BOARD
OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-91-359

EWING TOWNSHIP
ADMINISTRATORS ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Carroll & Weiss, attorneys
(David W. Carroll, of counsel)

For the Charging Party, Lake and Schwartz, attorneys
(Robert M. Schwartz, of counsel)

DECISION AND ORDER

On June 24, 1991, the Ewing Township Administrators Association filed an unfair practice charge against the Ewing Township Board of Education. The charge alleges that the Board violated subsections 5.4(a)(1), (3) and (5)^{1/} of the New Jersey

^{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", 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.

Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when, in violation of past practice, it placed a high school principal with more than ten years experience on the second step of the salary guide. The charge notes that the parties' contract does not provide for binding arbitration.

On April 8, 1992, a Complaint and Notice of Hearing issued. The Board adopted a previously filed statement of position as its Answer. It asserts that neither contract language nor past practice supports the Association's claim to a higher salary guide step for a high school principal without a doctorate or experience as a high school principal.

On October 15, 1992, the parties submitted signed stipulations. These stipulations are reproduced verbatim:

1. The Association is the duly recognized majority representative for all principals, vice-principals and supervisory coordinators, as well as for the Directors of Adult Education, Federal Funds and Special Services.
2. The unfair practice charge relates solely to the initial placement of Wayne Fuller ("Fuller") on the salary guide for high school principal, effective as of July 1, 1988, and the effect of such placement on his salary for 1989-90 and 1990-91. It is stipulated that Fuller reached the maximum on the guide by 1991-92, and that his salary for subsequent years is accordingly not affected.
3. Attached hereto as Exhibit A is a true copy of the applicable collective negotiations agreement for the period July 1, 1988 through June 30, 1990.
4. Attached hereto as Exhibit B is a true copy of the applicable collective negotiations agreement for the period July 1, 1990 through June 30, 1993.

5. The Ewing Township School District, during the period of time relevant to this dispute, operated four K-6 elementary schools, one junior high school serving grades 7 through 9, and one high school serving grades 10 through 12.
6. Effective April 9, 1991, the Board appointed Wayne Fuller as principal of Ewing High School. The appointment, for salary guide purposes was retroactive to July 1, 1988, based on a court decision that Fuller had a tenure entitlement to the position retroactive to that date.
7. The Board placed Fuller on step 2 of the guide for high school principal for 1988-89 (\$57,710). For 1989-90, he advanced to step 3 (\$64,450). For 1990-91, he advanced to step 4 (\$70,770). For 1991-92, he advanced to the maximum step 5 (\$77,640).
8. None of the Agreements contain any past practice clause.
9. The entire prior history of Board appointments and salary guide placements for high school principals is as follows: [Attached as Appendix to this decision]
10. Fuller grieved his initial placement on step 2 through the Board level, where it was denied.
11. Miller and Crea were hired from outside the district; Bookholdt and Fuller from within.
12. Attached hereto as Exhibit G is a true copy of Miller's 1988 letter of application and resume.
13. Prior to the instant case, there is no record of a grievance ever having been filed challenging the Board's initial placement of an administrator on the salary guide upon their appointment to that position.
14. Bookholdt's salary, prior to the effective date of his appointment as high school principal, had been \$46,970, which was step 5 of the then applicable salary guide for high school vice principal.

15. Fuller's 1987-88 salary as vice principal, prior to the effective date of his appointment as high school principal, was \$53,770, which was the top (sixth) step of the then applicable salary guide for high school vice principal. Exhibit F (attached) is a true copy of the salary guide in effect for 1987-88. Had Fuller remained as vice principal during 1988-89, his salary would have been \$57,710, which is the top (fifth) step on the guide for that year. See Exhibit A.
16. The salaries of Crea and Miller, prior to their respective appointments as high school principal in Ewing, are unknown.
17. (Note: The Board stipulates to the accuracy of the factual statements made in this paragraph 17, but reserves legal objection as to their relevancy in establishing a past practice, since they all concern appointments made after the disputed appointment and guide placement of Fuller, and since none involve appointments to the position of high school principal.)

The Board has made two acting and two regular appointments to the position of high school vice principal during the last 13 months. They are as follows:

(a) John Burd was appointed acting high school vice principal for the period April 22, 1991 through June 18, 1991. He was compensated at the Step 3 on the HSVP guide for 1991-92. His prior experience included over five years experience as a Supervisor Coordinator. His last salary guide placement as Supervisor Coordinator was at Step 5 for Coordinators on the 1990-91 guide.

(b) Pat Wolmesdorf was appointed acting high school vice principal for the 1991-92 school year. She was placed at Step 0 on the HSVP guide for 1991-92. She had no previous experience as an administrator.

(c) Robert Carvale was appointed high school vice principal on May 28, 1991, retroactive to May 14, 1991. He was placed at Step 2 of the 1990-91 guide for HSVP, and he remained at Step 2 on the 1991-92 guide. He had no prior administrative experience, except a short period as acting high school vice principal.

(d) Willie Soloman was appointed high school vice principal in January 1991, effective April 1991. He was placed at Step 4 of the HSVP guide for 1991-92. He came from the Trenton School District where he had previously served as high school assistant principal. His salary in Trenton is not known.

The parties waived a hearing and a recommended decision. The Association acknowledged that the Complaint would be dismissed if the stipulated facts were insufficient to sustain its burden of proof by a preponderance of the evidence and the Board acknowledged that any affirmative defenses would be rejected if the stipulated facts were insufficient to sustain its burden of proof by a preponderance of the evidence. The parties further agreed that this dispute would be decided through the Commission's Litigation Alternative Program and that a decision would be issued by a Commission designee pursuant to N.J.S.A. 34:13A-6(f), subject to appeal pursuant to N.J.S.A. 34:13A-5.4(f).

Initial placement on a salary guide is a mandatorily negotiable term and condition of employment. Belleville Ed. Ass'n v. Belleville Bd. of Ed., 209 N.J. Super. 93 (App. Div. 1986); Stanhope Bor. Bd. of Ed., P.E.R.C. No. 90-81, 16 NJPER 178 (¶21076 1990). The parties' 1988-1990 collective negotiations agreement does not specify a particular salary guide placement for a vice-principal who is promoted to principal. Nor does the contract contain a past practices clause. The Association instead asserts that a binding past practice compelled the Board to place Fuller at step 5 of the principal's salary guide, thus paying him a higher

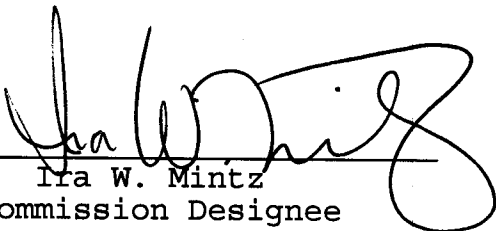
salary for the 1988-1989 school year than he would have been paid if he had remained a vice principal. I disagree.

To prove a binding past practice, the charging party must show that the alleged practice was unequivocal, clearly enunciated and acted upon, and readily ascertainable over a reasonable period of time as a fixed and established practice accepted by both parties. Passaic Cty. Reg. H.S. Dist. No. 1, P.E.R.C. No. 91-11, 16 NJPER 446 (¶21192 1990). See also Hill and Sinicopi, Management Rights, 20-22 (1986); Elkouri and Elkouri, How Arbitration Works, at 439 (4th ed. 1985). Here, there is only one instance of a high school vice-principal being promoted to high school principal -- Dewey Bookholdt. Like Fuller, Bookholdt was an in-district candidate who had no prior experience as a high school principal and no doctorate. While it is true that Bookholdt received more as principal than he would have received as vice-principal, it is also true that both he and Fuller were placed on step 2 of the principal's salary guide and that the only principal (Benjamin Miller) placed at step 5 was an out-of-district candidate who had three years of experience elsewhere as a high school principal and a doctorate. The Bookholdt precedent thus does not prove that the Board was obligated to place Fuller at step 5 of the salary guide. The Association also cites an instance in which a supervisor coordinator, John Burd, was appointed as acting high school vice-principal for two months at the end of the 1990-1991 school year and was paid a higher salary than he had been paid as

supervisor coordinator. This instance does not prove a past practice governing Fuller's placement because it involves a different position, a temporary appointment, and a later placement. Accordingly, I conclude that the Association has not proved a binding past practice and dismiss the Complaint.^{2/}

ORDER

The Complaint is dismissed.


Ira W. Mintz
Commission Designee

DATED: April 1, 1993
Trenton, New Jersey

^{2/} I note, however, that the record does not establish that the Board has an established right to place principals wherever it wants without negotiations. Absent a finding that either the Association or the Board has, by virtue of a past practice, the right to have initial salaries set at a particular point, the setting of initial salaries is left to the collective negotiations process.

APPENDIX (SEE #9 OF STIPULATIONS)

Name of Appointee	Effective Appointment Date	Salary Guide Placement	Prior Experience As H.S. Principal	Other Experience	Doctorate***
John B. Houseman	Early 1960's (prior to advent of collective bargaining)	N.A.	N.A.		No
Clement Crea	July 1, 1984	Between steps 2 & 3 of 84-85 guide (\$46,710 See Exb. C Attached)*	6 years	11 yrs Asst. Principal, Asst. Guidance Dir., Counsellor and Social Social Stud. Teach.	No
Dewey Bookholdt	July 1, 1986	Step 2** (See Exb. D & E)	None	13 hrs. as H.S. vice-principal; 8 yrs. as teacher/and guidance counsellor	No
Benjamin Miller	July 1, 1988	Step 5 (See Exb. A)	3 years	6 yrs. as junior H.S. principal, 4 yrs. as H.S. asst. principal; 7 yrs as teacher	Yes, plus 2nd masters in Public Admin.
Wayne Fuller	July 1, 1988 (Made retroactively in April 1991)	Step 2 (See Exb. A)	None	9 yrs as middle school principal; 1 year as acting J.H. principal; 3 years as J.H.S. vice-principal; 1 year as middle school vice-principal, 7 years as high school vice-principal, 8 years as a teacher****	No

* Exhibit C (attached) is a true copy of the salary guide for the 1984-85 school year.

** Exhibit D (attached) is a true copy of the salary guide in effect for the 1985-86 school year. Exhibit E attached is a true copy of the salary guide in effect for the 1986-87 school year. Bookholdt was initially appointed to step 2 on the 85-86 guide, effective July 1, 1986, pending settlement of negotiations. When settlement was reached in the fall of 1986, he was then moved to step 2 on the 86-87 guide

*** All appointees since 1980 have had a Masters Degree in Education

**** The middle school served grades 6 and 7. For seniority purposes, and as authorized by State regulations, the middle school has been classified as an elementary school. See NJAC 6:3-1.10(m) and 6:27-1.2.