

P.E.R.C. NO. 87-26

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF THE  
TOWN OF HAMMONTON,

Respondent,

-and-

Docket No. CO-85-310-66

HAMMONTON EDUCATION ASSOCIA-  
TION/NJEA,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the Board of Education of the Town of Hammonton violated the New Jersey Employer-Employee Relations Act when it refused to negotiate with the Hammonton Education Association/NJEA over compensation for the two extra evening parent-teacher conferences held during the 1984-85 and 1985-86 school years.

STATE OF NEW JERSEY  
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In the Matter of

BOARD OF EDUCATION OF THE  
TOWN OF HAMMONTON,

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-and-

Docket No. CO-85-310-66

HAMMONTON EDUCATION ASSOCIA-  
TION/NJEA,

Charging Party.

Appearances:

For the Respondent, Donio, Bertman, Johnson, Sahli &  
Greco, Esqs. (Samuel A. Donio, Of Counsel)

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

DECISION AND ORDER

On May 24, 1985, the Hammonton Education Association/NJEA ("Association") filed an unfair practice charge against the Board of Education of the Town of Hammonton ("Board"). The charge alleged that the Board violated subsections 5.4(a)(1), (5) and (6)<sup>1/</sup> of

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<sup>1/</sup> 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."

the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when during the 1984-85 school year it unilaterally required all teachers at Hammonton High School to attend three evening open houses (parent-teacher conferences) instead of the one open house traditionally scheduled each year.<sup>2/</sup>

On October 25, 1985, a Complaint and Notice of Hearing issued. The Board filed an Answer asserting that it had a managerial prerogative to schedule the open houses and that it acted consistently with the parties' past practice and contract.

On January 6, 1986, Hearing Examiner Arnold H. Zudick conducted a hearing. The parties examined witnesses and introduced exhibits. They filed post-hearing briefs by May 12.

On July 29, the Hearing Examiner issued his report and recommended decision. H.E. No. 87-8, 12 NJPER 624 (¶17236 1986) (copy attached). He found that the Board had unilaterally required all high school teachers to attend two extra evening open houses in both the 1984-85 and 1985-86 school years and that no managerial prerogative, contractual right or past practice excused it from failing to negotiate over additional compensation for this extra work. He therefore concluded that the Board had violated subsections 5.4(a)(1) and (5), but not subsection 5.4(a)(6). He recommended an order requiring negotiations over compensation and the posting of a notice.

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<sup>2/</sup> The charge was later amended to allege a similar violation during the 1985-86 school year.

On August 11, the Board filed exceptions. It asserts that it acted consistently with past practice in scheduling parent-teacher functions in the 1984-85 and 1985-86 school years and that the Association waived its right to negotiate over compensation. On August 18, the Association filed a reply.

We have reviewed the record. The Hearing Examiner's findings of fact (pps. 4-8) are accurate. We adopt and incorporate them here.<sup>3/</sup>

We agree with the Hearing Examiner that the Board had a duty to negotiate over compensation for the two extra evening parent-teacher conferences held during both the 1984-85 and 1985-86 school years. Freehold Reg. H.S. Dist. Bd. of Ed., P.E.R.C. No. 84-119, 10 NJPER 265 (¶15129 1984); Mt. Laurel Tp. Bd. of Ed., P.E.R.C. No. 83-8, 8 NJPER 435 (¶13204 1982). Neither the contract nor the parties' past practice authorizes this uncompensated workload increase. In particular, we agree with the Hearing Examiner that there is a difference between parent-teacher conferences which all teachers had to attend and parent-teacher functions which only some teachers had to attend. Finally, we agree with the Hearing Examiner (pp. 13-14, n. 8) that the Association did not waive its right to negotiate over compensation.

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<sup>3/</sup> We make one correction and one addition to finding no. 6. The date referred to in footnote 5 should be February 15, not 16. Also, if parents of elementary school children could not attend afternoon conferences and requested evening conferences, then teachers of their children would be expected to schedule evening conferences.

ORDER

The Public Employment Relations Commission orders the Hammonton Board of Education to:

A. Cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed by the Act by failing to negotiate over compensation for requiring High School teachers to work two additional parent-teacher conferences in 1984-85 and 1985-86.

2. Failing to negotiate in good faith with the Association over compensation prior to implementing any requirement to work additional parent-teachers conference.

B. That the Board take the following affirmative action:

1. Negotiate in good faith with the Association over compensation for High School teachers for requiring them to work two additional parent-teacher conferences in 1984-85 and 1985-86.

2. Negotiate in good faith with the Association over compensation for High School teachers if they are required to work more than one parent-teacher conference in 1986-87.

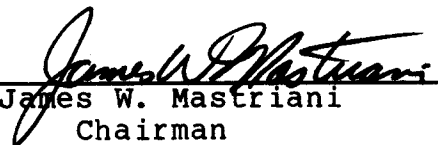
3. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice on forms to be provided by the Commission shall be posted immediately upon receipt thereof and, after being signed by the Respondent's authorized representative, shall be maintained by it for at least sixty (60) consecutive days.

Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

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

The portion of the Complaint alleging a violation of subsection 5.4(a)(6) is dismissed.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

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

DATED: Trenton, New Jersey  
September 25, 1986  
ISSUED: September 26, 1986

# 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 failing to negotiate over compensation for requiring High School teachers to work two additional parent-teacher conferences in 1984-85 and 1985-86.

WE WILL cease and desist from failing to negotiate in good faith with the Association over compensation prior to implementing any requirement to work additional parent-teachers conference.

WE WILL negotiate in good faith with the Association over compensation for High School teachers for requiring them to work two additional parent-teacher conferences in 1984-85 and 1985-86.

WE WILL negotiate in good faith with the Association over compensation for High School teachers if they are required to work more than one parent-teacher conference in 1986-87.

BOARD OF EDUCATION OF THE TOWN OF HAMMONTON

(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, 495 West State Street, Trenton, NJ 08608, (609) 292-9830.

H.E. NO. 87-8

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

In the Matter of

HAMMONTON BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-85-310-66

HAMMONTON EDUCATION ASSOCIATION/NJEA,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission found that the Hammonton Board of Education violated §§5.4(a)(5) and derivately 5.4(a)(1) of the New Jersey Employer-Employee Relations Act when it failed to negotiate over compensation for requiring the High School teachers to attend two parent-teacher conferences beyond the number of conferences determined by the parties established practice. The Hearing Examiner recommended dismissal of §5.4(a)(6) allegation.

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. 87-8

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

In the Matter of

HAMMONTON BOARD OF EDUCATION,

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Docket No. CO-85-310-66

HAMMONTON EDUCATION ASSOCIATION/NJEA,

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Appearances:

For the Respondent

Donio, Bertman, Johnson, Sahli & Greco  
(Samuel A. Donio, of Counsel)

For the Charging Party

Selikoff & Cohen, Esqs.  
(Barbara E. Riefberg, of Counsel)

HEARING EXAMINER'S RECOMMENDED  
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on May 24, 1985 by the Hammonton Education Association/NJEA ("Association") alleging that the Hammonton Board of Education ("Board") engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5 et seq. ("Act"). The Association alleged that the Board violated §§5.4(a)(1), (5) and (6) of the Act by requiring all High School teachers to attend two additional parent-teacher conferences ("open houses") at the High School during

the 1984-85 school year without negotiating compensation for additional hours worked.<sup>1/</sup> Those conferences were held on February 19 and April 25, 1985.

The Director of Unfair Practices issued a Complaint and Notice of Hearing on October 25, 1985. The Board filed an Answer on November 13, 1985 denying any violation and asserting several affirmative defenses. The Board argued that it had complied with the parties' past practice, that the scheduling of parent functions was a managerial prerogative, and that the parties' collective agreement estopped the Association from asserting the instant claim.

A hearing was held in this matter on January 6, 1986 in Trenton, New Jersey, at which the parties were given the opportunity to examine and cross-examine witnesses, present relevant evidence and argue orally. Both parties filed post-hearing briefs the last of which was received on May 12, 1986.

At the hearing on January 6, 1986 the Association moved to amend its Charge (Transcript "T" p. 7) to allege that the Board also intended to require High School teachers to attend two additional

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<sup>1/</sup> 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."

parent-teacher conferences during the 1985-86 school year also without negotiations over additional compensation. The Board raised no objection to the Association's motion (T p. 8), and I permitted the amendment (T pp. 8-11) with the Board's assurances that the additional conferences would be held. The Board did not separately Answer the Amended Charge, but I consider the Board's original Answer to apply to the Amended Charge. At the conclusion of the hearing I requested that a stipulation be sent to me that the additional conferences were in fact held (T pp. 117-118). By letter dated April 11, 1986, however, the Association informed me that a stipulation was not obtained, but that additional parent-teacher conferences were in fact held on February 26 and April 24, 1986.<sup>2/</sup>

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

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<sup>2/</sup> In its post-hearing brief the Board objected to the Association's "attempt to amend its charge" regarding the conferences held in 1985-86, and argued that it was an "undue burden" on the Board presumably because it had no notice prior to the day of hearing regarding the Amendment. That objection is overruled. It is both untimely and inappropriate at this stage of the proceedings. At hearing on January 6 the Board was asked if it had any objection to the Association's Amendment and the Board attorney responded "No. I have no objection." (T p. 8). The Board cannot now assert an objection to the Amendment. In addition, the Board did not demonstrate any "undue burden," nor did it dispute the fact that parent teacher conferences were held on February 26 and April 24, 1986.

Upon the entire record I make the following:

Findings of Fact

1. The Hammonton Board of Education is a public employer within the meaning of the Act.

2. The Hammonton Education Association/NJEA is a public employee representative within the meaning of the Act.

3. The record shows that for many years the Board has held evening events in the High School which involved teachers and parents. The events may be classified into one of two categories. Parent-teacher conferences and parent-teacher functions. Parent-teacher conferences, also referred to as an "open house," is an evening event where all teachers are required to attend for two hours, from 7:00-9:00 or 7:30-9:30, where teachers meet with parents individually for several minutes to discuss student performance (T pp. 19, 45, 64-65)(Exhibit R-1). Parent-teacher functions, also referred to as exhibition nights, are functions involving particular teachers - or a particular department of teachers, but not all High School teachers, who are responsible for presenting exhibits of student work to parents. The exhibits are from special area departments such as industrial arts, home economics, art, music, science and physical education. Only teachers from the department(s) presenting exhibits are expected to attend (T pp. 22, 46)(R-1). In addition, there was at least one parent-teacher function which involved only department chairpersons discussing curriculum with parents (T pp. 78-79).

4. The record shows that in the 1972-73 academic year there were two parent-teacher functions and only one parent-teacher conference in the High School, but in the 1973-74 and 1974-75 academic years there were two parent-teacher conferences and one parent-teacher function in the High School. Nevertheless, the Board's own evidence, R-1, shows that beginning with academic year 1975-76 through 1983-84, no more than one parent-teacher conference was scheduled in the High School in the intervening years. In fact, R-1 shows that during the last five, ten, or even twelve years prior to 1984-85 there was, at the High School, only an average of two evening events per academic year consisting on the average of one parent-teacher conference and one parent-teacher function.<sup>3/</sup>

3/ The information in the chart below was derived from R-1 to determine the averages.

	Number of Events	Conferences	Functions
1972-73	3	1	2
1973-74	3	2	1
1974-75	3	2	1
1975-76	2	1	1
1976-77	1	0	1
1977-78	2	1	1
1978-79	2	1	1
1979-80	3	1	2
1980-81	3	1	2
1981-82	2	1	1
1982-83	1	1	0
1983-84	1	1	0
12 years	26	13	13
last 10 years	20	10	10
last 5 years	10	5	5
12 years =	2.15 events	1.1 events	1.1 events
10 years =	2 events	1 "	1 "
5 years =	2 events	1 "	1 "

Footnote Continued on Next Page

5. In 1984-85 and 1985-86 the Board conducted three parent-teacher conferences but no parent-teacher functions in the High School (R-1).<sup>4/</sup> The Board did not offer to negotiate with the Association over additional compensation for the teachers for requiring them to attend two additional parent-teacher conferences in those academic years (T pp. 16, 18, 44, 54). Similarly, the Association did not demand negotiations over additional compensation after it learned of the Board's unilateral scheduling of the additional conferences (T pp. 21, 41, 55). The Association, however, did demand negotiations over that issue for 1986-87 (T p. 42).

The Board's Superintendent admitted that 1984-85 was the first year that three parent-teacher conferences were scheduled at the High School, and he admitted that conferences and functions were different (T pp. 112-113).

6. The record shows that the Board conducts evening events in the Middle School and Elementary School in addition to the

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3/ Footnote Continued From Previous Page

High School Principal Lukas testified that an additional parent-teacher function was scheduled in 1976-77, 1982-83, and 1983-84 (T p. 70). But that would not significantly change the above averages, nor was there any indication that more conferences were scheduled.

4/ The Board conducted parent-teacher conferences on November 27, 1984, February 19 and April 25, 1985. In 1985-86 the Board conducted parent-teacher conferences on December 5, 1985, and February 26 and April 24, 1986.

High School. Exhibit R-2 shows that from 1975-76 through 1984-85 all Middle School teachers were required to attend two evening events per academic year, and those events appear to be similar to the High School parent-teacher conferences.<sup>5/</sup> Exhibit R-3 shows that from 1979-80 through 1984-85 Elementary School teachers only attended one evening event each year, but also attended two afternoon events each year (but for 1981-82 when there were three afternoon events). Both the evening and afternoon events at the Elementary School were similar to the High School parent-teacher conference. The afternoon events, however, were conducted during the teachers' regular workday. R-1, R-2 and R-3 show that there was no particular coordination between the scheduling of evening events between the Elementary, Middle, and High School. The record does not reveal that there was any change in the scheduling of evening events in the Middle or Elementary Schools for 1984-85 as compared to prior years.

7. The Association did not file any charge regarding the scheduling or conduct of events at the Middle or Elementary School (T pp. 32, 48), nor did its Charge allege any violation regarding the scheduling or conduct of parent-teacher functions at the High School. Additionally, there is no language in the parties' collective agreement, Exhibit J-1, covering the scheduling or compensation for parent-teacher conferences.

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<sup>5/</sup> In 1983-84 the Board held three evening events in the Middle School, but teachers who attended on February 16, 1984 were not required to attend the event the following day.

8. The Association did not demonstrate that the Board refused to reduce a negotiated agreement to writing, or that it refused to sign any agreement.

#### Analysis

The Board violated §§5.4(a)(5) and derivatively 5.4(a)(1) of the Act by conducting two additional parent-teacher conferences at the High School during 1984-85 and 1985-86 without first negotiating over additional compensation with the Association.

#### Established Past Practice

The parties' collective agreement, J-1, does not cover the scheduling of - or compensation for - parent-teacher conferences. The Association argued that the parties' established past practice was for the High School teachers to attend one parent-teacher conference per academic year, and all of those conferences occurred in the Fall. The Association drew a distinction between parent-teacher conferences and parent-teacher functions at the High School, and it did not raise any issue regarding parent-teacher functions.

The Board contended that the parties' past practice supported its actions and it made two arguments interpreting its past practice. First, the Board maintained, particularly in its post-hearing brief, that there was no real difference between



parent-teacher conferences or parent-teacher functions.<sup>6/</sup> The Board apparently believed that it could establish any combination of two or three conferences and/or functions. Conferences and functions, however, do not equate. Functions do not involve all teachers, and there is no indication as to how many hours are involved in the various functions. The Superintendent admitted, in fact, that there was a difference between conferences and functions and that the Board had never scheduled three conferences at the High School before.

Second, the Board argued that the established practice regarding the number and kind of evening events should be determined on a district-wide basis by considering the events in the Elementary, Middle and High Schools, and not just considering the events in the High School alone.

The Board's arguments, however, are without merit. The evidence conclusively established that there was no particular district-wide policy regarding the scheduling of evening events, or the scheduling of conferences as opposed to functions. The Elementary schedule involved afternoon conferences and was not similar to either the Middle or High School. The Middle School had two evening conferences a year, but no functions, and but for

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<sup>6/</sup> In a chart on page 8 of its post-hearing brief, for example, the Board characterized all evening events as "conferences" even though R-1 itself drew a distinction between conferences and functions.

1973-74, 1974-75 which proved to be too old and too isolated to establish a pattern for the 1980's, the High School had only one conference a year plus functions. There was no discernible district-wide policy. Rather, it appears from its own evidence, R-1, R-2, R-3, that the Board has intentionally developed a school-by-school policy regarding evening events.

The record as contained in R-1 shows that the Board has scheduled an average of only two events per year at the High School, one conference and one function. Since the practice at the High School has not been consistent for more than two years in the last ten years, then it is only fair to take an average of those years to determine the parties' past practice. Since the Board conducted more than one conference at the High School in 1984-85 and 1985-86, its actions cannot be protected under the guise of following the parties' past practice. In fact, 1980-81 was the last time (prior to 1984-85) that the Board conducted three events of any kind, and there was only one conference in that year.

#### Duty to Negotiate

The Board correctly argued that it was entitled to schedule additional parent-teacher conferences at the High School since it was a managerial prerogative. The Commission has held that it is a managerial prerogative for a school board to determine that additional parent-teacher conferences are needed to accomplish its educational goals. Freehold Reg. H.S. Dist. Bd./Ed., P.E.R.C. No. 84-119, 10 NJPER 265 (¶15129 1984); Parsippany-Troy Hills Bd./Ed.,

P.E.R.C. No. 77-27, 3 NJPER 17 (1976).<sup>7/</sup> I also believe that the Board had the right, particularly based upon its past practice, to require attendance at the parent-teacher conferences. Ridgefield Bd./Ed., P.E.R.C. No. 80-143, 6 NJPER 297 (¶11140 1980).

The Board was required to negotiate with the Association, however, over compensation for the required increase in the teacher workday, i.e., requiring the teachers to work two hours in addition to the normal workday at two additional parent-teacher conferences in 1984-85 and 1985-86. Freehold Reg., supra; Mt. Laurel Twp. Bd. of Ed., P.E.R.C. No. 83-8, 8 NJPER 435 (¶13204 1982); Parsippany-Troy Hills, supra. The Commission in Freehold Reg., held:

Thus, the Board has a non-negotiable managerial prerogative to determine...that an additional set of parent/teacher conferences was necessary to accomplish its educational goals....It may not, however, unilaterally increase the overall amount of time spent within the workday...attending parent/teacher conferences without triggering its obligation to negotiate over compensation for additional time worked. 10 NJPER at 266.

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<sup>7/</sup> The actual decision in Parsippany-Troy Hills, supra, was that the substitution of an additional parent-teacher conference for a teaching period was not mandatorily negotiable, but was permissively negotiable. In light of the State Supreme Court's decision in Ridgefield Park Bd./Ed. v. Ridgefield Park Ed/Assn, 78 N.J. 144 (1978), declaring that there is no permissive category of negotiations, however, the substitution of a parent-teacher conference for a teaching period is now not negotiable. The Ridgefield Park decision on permissive subjects does not cover police and fire employees, however. Those employees still have the right to negotiate over permissive subjects as defined by the Court in Paterson PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981).

Since the parties' established practice showed that High School teachers had only been required to attend an average of one parent-teacher conference a year, the Board must negotiate over compensation for the two additional parent-teacher conferences in the relevant years.

This legal conclusion is consistent with well settled Commission decisions. An established practice of a term and condition of employment, whether or not it is specifically included in a collective agreement, is a negotiable subject that generally cannot be unilaterally changed by an employer. In New Brunswick Bd. of Ed., P.E.R.C. No. 78-47, 4 NJPER 84 (¶4040 1978), motion for recon. den. P.E.R.C. No. 78-56, 4 NJPER (¶4073 1978), aff'd App. Div. Docket No. A-2450-77 (April 2, 1979), the Commission held that:

Where, during the terms of an agreement a public employer desires to alter an established practice governing working conditions which is not an implied term of the agreement...the employer must first negotiate such proposed change with the employees' representative prior to its implementation. 4 NJPER at 85.

The Commission followed that same rule in Sayreville Bd. of Ed., P.E.R.C. No. 83-105, 9 NJPER 138 (¶ 14066 1985); where it held that:

...[A]n employer violates its duty to negotiate when it unilaterally alters an existing practice or rule governing a term and condition of employment...even though that practice or rule is not specifically set forth in a contract. 9 NJPER at 140.

The above decisions are also consistent with another line of cases where the Commission and the Courts have held that a school

board does not have a managerial prerogative to increase teacher work hours (such as it did here by requiring the teachers to work two additional two hour conferences a year after the end of the normal work day) without negotiating compensation, and that a refusal to negotiate is an unfair practice. See, e.g.

Woodstown-Pilesgrive Reg. Sch. Dist. Bd. of Ed. v. Woodstown-Pilesgrive Ed. Assoc., 81 N.J. 582 (1980); Newark Bd. of Ed., P.E.R.C. No. 79-38, 5 NJPER 41 (¶ 10026 1979), aff'd App. Div. Dkt. No. A-2060-78 (2/26/80); Dover Bd. of Ed., P.E.R.C. No. 81-110, 7 NJPER 161 (¶ 13071 1981), aff'd App. Div. Dkt. No. A-3380-80T2 (3/16/82); Liberty Twp. Bd. of Ed., P.E.R.C. No. 85-37, 10 NJPER 572 (¶ 15267 1984).

Thus, the Board failed to distinguish between its right to determine how many parent-teacher conferences are needed at the High School to accomplish its educational goal, and its duty to negotiate with the Association over compensation for the additional time worked. As a result of the above analysis, the Board must negotiate with the Association over retroactive compensation for the additional work performed in 1984-85, and 1985-86, and negotiate prospectively over compensation if two or more parent-teacher conferences are scheduled for 1986-87.<sup>8/</sup>

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<sup>8/</sup> Although the Board did not argue that the Association waived its right to negotiate over compensation for the additional conferences because it did not demand such negotiations, since there was evidence on the record that the Association made no demand, I believe it is necessary to clarify the

The 5.4(a)(6) Allegation

The Association presented no facts to support a finding that the Board failed to reduce a negotiated agreement to writing or that it failed to sign a negotiated agreement. That allegation must, therefore, be dismissed.

Based upon the entire record I make the following:

CONCLUSIONS OF LAW

1. The Board violated §§5.4(a)(5) and derivatively 5.4(a)(1) of the Act by failing to negotiate over compensation for requiring the High School teachers to work two additional parent-teacher conferences in 1984-85 and 1985-86.
2. The Board did not violate §5.4(a)(6) of the Act by any of its actions.

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8/ Footnote Continued From Previous Page

responsibilities of the parties. Since it was changing an established practice, the Board had the responsibility to ask the Association if it wanted to engage in negotiations over compensation for requiring the High School teachers to attend two additional parent-teacher conferences. The Board's failure to do so was a violation. Once the Board violated the Act, the Association was relieved of any responsibility to demand negotiations over the issue as long as it filed an unfair practice charge. Since the Association filed the Charge and Amended Charge, it was relieved of any responsibility to demand negotiations. Hudson County, P.E.R.C. No. 78-48, 4 NJPER 87, 90 (4041 1978), aff'd App. Div. Dkt. No. A-2444-77 (4/9/79). Had the Board invited the Association to negotiate - and the Association refused or simply failed to accept the Board's invitation to negotiate - then the Association would have waived its right to negotiate. But, in the instant case the Association did not waive its rights by not demanding negotiations.

RECOMMENDED ORDER

I recommend that the Commission ORDER:

A. That the Board cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed by the Act by failing to negotiate over compensation for requiring High School teachers to work two additional parent-teacher conferences in 1984-85 and 1985-86.

2. Failing to negotiate in good faith with the Association over compensation prior to implementing any requirement to work additional parent-teachers conference.

B. That the Board take the following affirmative action:

1. Negotiate in good faith with the Association over compensation for High School teachers for requiring them to work two additional parent-teacher conferences in 1984-85 and 1985-86.

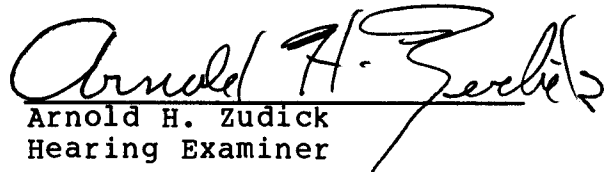
2. Negotiate in good faith with the Association over compensation for High School teachers if they are required to work more than one parent-teacher conference in 1986-87.

3. Post in 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's authorized representative, shall be maintained by it for at least sixty (60) consecutive days.

Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

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

C. That the §5.4(a)(6) allegation be dismissed.

  
Arnold H. Zudick  
Hearing Examiner

DATED: July 29, 1986  
Trenton, New Jersey



# 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 to them by the Act by failing to negotiate over compensation for requiring High School teachers to work two additional parent-teacher conferences in 1984-85 and 1985-86.

WE WILL cease and desist from failing to negotiate in good faith with the Association over compensation for High School teachers prior to implementing any requirement that they work additional parent-teacher conferences.

WE WILL negotiate in good faith with the Association over compensation for High School teachers for requiring them to work two additional parent-teacher conferences in 1984-85 and 1985-86.

WE WILL negotiate in good faith with the Association over compensation for High School teachers if they are required to work more than one parent-teacher conference in 1986-87.

\_\_\_\_\_  
(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 CN-429, 495 W. State Street, Trenton, New Jersey 08625 Telephone (609) 292-6780