P.E.R.C. NO. 81-122

STATE OF NEW JERSEY BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BARRINGTON BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-80-335-110

BARRINGTON EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

In an unfair practice decision, the Commission finds that the Barrington Board of Education did not engage in an unfair practice when it refused to negotiate with the Barrington Education Association regarding compensation for Barrington teachers who were assigned to staff an outdoor camping and education trip. The Commission determines that the Barrington Board had no obligation to negotiate compensation during the life of its collective agreement with the Association inasmuch as an established practice was found to govern continued uncompensated attendance during the life of the contract. The Commission, reversing the recommended report and decision of its Hearing Examiner, orders that the unfair practice complaint be dismissed in its entirety.

STATE OF NEW JERSEY BEFORE THE PUBLIC EMPLOYMENT RELATIONS

In the Matter of

BARRINGTON BOARD OF EDUCATION,

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-and

Docket No. CO-80-335-110

BARRINGTON EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Davis & Reberkenny, Esqs. (Robert F. Blomquist, of Counsel)

For the Charging Party, Selikoff & Cohen, P.A. (John E. Collins, of Counsel)

DECISION AND ORDER

On May 16, 1980, the Barrington Education Association (the "Association") filed an Unfair Practice Charge against the Barrington Board of Education (the "Board"). The Charge alleged that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), specifically subsections 5.4(a)(1) and (5), when without prior negotiations it ordered three teachers to attend an outdoor education trip (the "trip") starting the morning of May 20, 1980 and ending the

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.

afternoon of May 23, 1981. $\frac{2}{}$

On May 27, 1980, the Director of Unfair Practices issued a Complaint and Notice of Hearing. On July 21 and 22, 1980, Hearing Examiner Edmund G. Gerber conducted a hearing. At that time, he afforded the parties an opportunity to examine witnesses, present relevant evidence, and argue orally. Both parties filed post-hearing briefs.

Oral argument has been requested by the Board. Having reviewed the entire record, including the transcript of argument before the Hearing Examiner, we do not find it necessary to grant this request.

The Association simulatneously submitted a motion for interim relief requesting that we restrain the Board from assigning non-volunteering teachers to continuous 24 hour duty on the trip. On May 16, 1980, the Special Assistant to the Chairman conducted a hearing. At its conclusion, he denied the motion.

filed a response to these exceptions.

While the Hearing Examiner made findings of fact and conclusions of law relating to the negotiability of the hours and/or compensation of the trip, we do not find it necessary to rule on these elements of the recommended decision as we find established practice relating to these issues to be dispositive of this case. We disagree with the Hearing Examiner's finding as to the nature of the established practice which did exist.

After considering the Board's arguments on the nature of the established practice, the Hearing Examiner rejected it on the basis that the trip as originally conceived was voluntary and that attendance had never been required until the spring of 1980. In the spring of 1980, the three teachers, who had performed in this capacity without compensation in the past, one since its inception in 1965, refused to attend after the Board denied their request for compensation Their attendance was then required by the The Hearing Examiner found the Board's requirement that Board. they attend constitute a unilateral change in the teachers' terms and conditions of employment. The Hearing Examiner found that in the absence of a history wherein the Board required attendance, the voluntary practice existed and the Board's change created a negotiations obligation as to the terms and conditions of employment.

Contrary to the findings of the Hearing Examiner and after careful review of the entire record of this proceeding, we cannot conclude that the Board's conduct amounted to an unfair practice. It is not in dispute that the trip originated through teacher initiative in 1965 and has since been held annually. The circumstances which surround the planning, recruitment, annual

budgeting and content of the trip are of longstanding duration, and have been routinely consistent since that time through the events of 1980 when this dispute arose.

The facts establish that the three individuals play an integral role in the planning and administration of this trip.

Even in the year in which the instant dispute developed, the teachers acknowledged the existence of the trip and anticipated that they would continue in this capacity. It is significant that the germination of the mandatory/voluntary attendance issue issue only arose when the Board refused a written request made by the three teachers' to compensate them for attendance on the trip in the Spring of 1980, the year in dispute. The question of whether they were required to participate had never arisen in the past. The trip had been a teacher initiated event.

The teachers, considering themselves volunteers in the past, withdrew their anticipated voluntary attendance whereupon the Board required their attendance. While the Hearing Examiner found no established practice by the Board requiring attendance, what he failed to weigh was the fact that the change to required attendance arose after the refusal of the teachers to staff the trip which they originally anticipated attending subsequent to the failure of the Board to provide compensation. There is ample record evidence that the parties were mutually aware of the existence of the status quo of this longstanding arrangement which we find led to a reasonable expectation by all parties herein that the trip would be staffed through volunteers without additional compensation.

By demanding compensation in the mid-term of

^{4/} Of particular significance in this regard is the February 20, 1980 letter written by Richard Langford, one of the three teachers who have served in a full time capacity in the past. (Respondent's Exhibit #6) (Continued)

the agreement in exchange for anticipated service, and subsequently withdrawing service after being denied a concession on compensation, the Board's response of requiring attendance cannot be interpreted as a unilateral change but rather, a direction to preserve the status quo of voluntary, non-compensated participation. Under these circumstances, we cannot find the action of the Board to have illegally altered the terms and conditions of employment of the three teachers.

Additionally, the labor agreement is silent with respect to the existence of the trip, its attendance and compensation. The record does indicate that during at least two prior sets of negotiations, the issue of compensated attendance was raised in written demands by the Association and rejected by the Board. The continued silence of the agreement in conjunction with the continued non-compensated participation of the three teachers is significant in finding that a continued mutual expectation of attendance existed.

Our findings should not be interpreted to have weighed the reasonableness of this longstanding practice, the reasonableness of the teacher's proposal, nor are we holding the subject

^{4/ (}Continued) The letter is, in effect, the demand for compensation. Langford eloquently pleads for compensation on the basis of equity and comparability. His letter confirms the contention of the Board that a reasonable expectation of continued participation to exist. The letter is signed by Langford as "camp co-ordinator on behalf of full-time staff." The second teacher of the "full-time staff", L.J. McPhee, in a memo to the Superintendent dated January 5, 1978, requested a professional day to attend an Environmental Education Workshop. He stated, in part, in support of his request, "I also feel that I may get some information that will be of value in the camping trip." (Respondent's Exhibit #5). McPhee, additionally in 1978, was offered and accepted the position of "Outdoor Education Co-ordinator".

of compensation herein to be a non-mandatory subject of negotiation. Our findings are based upon the respective negotiations obligation of the parties during the life of the contract and not with respect to their future obligations to negotiate over terms and conditions of employment to be set for future contracts. See Manchester Education Assn. v. Manchester H.S. Dist. Bd. of Ed., App. Div. Docket No. A-3808-79, decided 3/23/81, affmg and modfng P.E.R.C. No. 80-136, 6 NJPER 245 (¶11119 1980).

ORDER

The Complaint in this matter is hereby dismissed in its entirety.

BY ORDER OF THE COMMISSION

ames W. Mastriani Chairman

Chairman Mastriani, Commissioners Hartnett, Parcells and Suskin voted in favor of this decision. Commissioners Graves voted against the decision. Commissioners Hipp and Newbaker abstained.

DATED: Trenton, New Jersey

April 16, 1981 ISSUED: April 20, 1981

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

In the Matter of

BARRINGTON BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-80-335-110

BARRINGTON EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission (Commission) found that the Barrington Board of Education committed an unfair practice when it ordered three teachers to attend a four-day outdoor education camping trip on a 24-hour basis without negotiating hours of work.

In reaching this decision the Hearing Examiner applied a balancing test, weighing a school board's right of assignment of teachers against an employee's right to negotiate changes in hours of work. It was held that the compulsory attendance at the camp imposed a burden on the teachers that went significantly beyond the burdens of traditional and customary extracurricular activity and created disruptions to private and family life that were not within the normal expectations of teachers. Therefore, it was recommended that the Commission find that here hours of work is the predominant issue and the Board's failure to negotiate hours of work constitute a violation of the Public Employer-Employee Relations Act.

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.

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

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Docket No. CO-80-335-110

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Appearances:

For the Barrington Board of Education Davis & Reberkenny, Esqs. (Robert F. Blomquist, Esq.)

For the Barrington Education Association Selikoff & Cohen, P.A. (John E. Collins, Esq.)

HEARING EXAMINER'S RECOMMENDED REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (Commission) on May 16, 1980, by the Barrington Education Association (Association or Charging Party) alleging that the Barrington Board of Education (Board or Respondent) had 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. (the Act) in that the Respondent issued directives to Richard Langford, Lawrence McPhee, and David Scott, teachers and members of the Charging Party, to attend, on a 24-hour basis, a four-day fifth grade outdoor education camping trip.

It was alleged that the Respondent refused to negotiate

over the increased workload it unilaterally imposed upon Longford, McPhee and Scott in violation of N.J.S.A. 34:13A-5.4(a)(1) and (5) of the Act. $\frac{1}{2}$

It appearing that the allegations of the charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on May 27, 1980. 2/ Pursuant to the Notice of Hearing, a hearing was held on July 21 and 22, 1980, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Both parties filed briefs which were received on September 9, 1980.

Findings of Fact

Every spring, the fifth graders in the Barrington school district go on a four-day Outdoor Education Camping Trip at a "Y" Camp ten miles from Barrington. The teachers who accompany the students on the trip have never received reimbursement. In the spring of 1980 several of the teachers who, in the past, assumed a major role in the conduct of the trip including Scott and Langford approached Richard E. Deane, the superintendent of schools and asked him if the Board would be willing to compensate those teachers who attended the trip full time. Deane agreed to recommend to the Board that they pay all full-time staff \$50 and pay the program director \$75. Deane made this request at a meeting on April 14, 1980. The Board declined to

These subsections prohibit 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."

^{2/} The Charging Party also submitted a motion for interim relief with their charge. On May 16, 1980, the return date of the motion, Stephen Hunter, Special Assistant to the Chairman, denied that motion.

act on this request. Maryanna Peters, the President of the Board testified that the Board declined to act on Dean's recommendation because the teachers had attended the trip a number of years and they had never been paid before and through "past precedent" they had no obligation to negotiate. They felt this was an item that more properly should be taken up in regular contract negotiations. Peters testified that the Board members were not fully aware of the administrative practice of recruiting teachers for the trip nor were they aware of any monies being asked for previously. The Board saw no change in the terms and conditions of employment.

On April 23, 1980, Richard Kell, principal of the Woodland School and coordinator of the camping trip, conducted a meeting concerning the trip at which time he gave out forms to the teachers in attendance. These forms asked for volunteers to act as members of the staff of the camping trip. Scott and McPhee had been full-time teachers on the trip since they were first hired and Langford had been a full-time teacher on every trip since the trips began. All three refused to volunteer for full-time participation. They did however agree to participate in the trip during regular school hours.

On May 12, Deane explained to the Board that he had a problem getting experienced people to staff the trip. The Board passed a resolution directing Deane, as Superintendent, to take appropriate action to make sure that sufficient qualified personnel will be in attendance on a 24-hour basis at the camp trip. Deane then went to Scott, McPhee and Langford individually and asked them to reconsider and volunteer for the trip. In each case the teacher re-

fused to volunteer and in each case Deane ordered the teacher to attend the trip. The Association thereupon brought the instant action claiming that the trip was voluntary in nature and, therefore, when these teachers were ordered to attend the camping trip the Board unilaterally altered the terms and conditions of employment without negotiations in violation of the Act.

The Board argues that these teachers had always participated in the trip without compensation and a past practice has arisen which gave the Board the right to expect that these teachers would continue to attend without compensation. Further, the trip constituted an extracurricular activity and was therefore not negotiable.

There is no clear reference to the trip in the contract. 3/
The current contract provides that classes will normally start after
8:30 and end no later than 3:30 p.m. There is a provision that
"Nothing contained herein prohibits or limits the right of the Board
to assign the extra duties normally associated with the profession."

In New Brunswick Board of Education v. New Brunswick Education Association, P.E.R.C. No. 78-46, 4 NJPER 84 (¶4073, 1978), the Commission held that where a contract is not clear as to an issue, past practice may be examined to try to determine if a contractual obligation arose through the conduct of the parties.

In order to determine if an obligation to participate in the trip without compensation has arisen, it is necessary to review the history of the trip.

^{3/} See discussion below and footnote .

The trip originated in 1965 when a fifth grade teacher asked the Board for permission to take his class on a two-day overnight trip to Camp Matollinequay, a "Y" camp in Medford Lakes. The Board gave its approval for the trip provided all fifth graders could attend. Volunteers to run the trip were solicited and the trip was held. The trip has been held every year since. The length of the trip gradually increased to four days.

No one has ever received compensation for attending the trip, but in the negotiations for the '75-76 and '76-78 contract, the Association introduced a proposal to provide compensation for all those attending the trip. This proposal was rejected by the Board. William Marly, the Board's Secretary and school administrator, testified that he was in attendance at all negotiation sessions and took minutes of those sessions, although he no longer has any recollection of negotiations concerning compensation for the trip. His minutes reflect that the Association's chief negotiator, Thomas Dyl, in arguing for compensation for the trip, argued that the teachers should be paid since the trip is compulsory. Dyl did not testify at the hearing, but David Scott, who was president of the Association in 1975, testified that Dyl told him the Board's response to Dyl's argument was that the trip was voluntary and if the teachers didn't like not being paid they didn't have to go.

It is undisputed that the trip originated as a purely voluntary endeavor. No teacher was ever ordered to participate in the

Hearsay evidence is admissible in administrative hearings provided such evidence does not violate residuum rule, i.e., the findings of a case may not turn on such hearsay evidence.

N.J.A.C. 1:1-15.9.

trip although a nurse was once told that attendance at the trip was part of her responsibilities. Langford, Scott and McPhee each testified that every year they were asked if they would volunteer for the trip. Langford, who has been on every trip since they started in 1965, testified that volunteers were always solicited. The forms that Kell passed around at the April 23 meeting state:

As in the past we need to draw upon teachers to volunteer to act as members of our staff in order to make our camping trip a successful one.

The form goes on to list four levels in which to volunteer:

- Attend full-time (day and night) and become a member of the staff which includes coun seling and teaching.
- Part time (day) which means teaching camprelated subjects.
- Part time (night) staying with cabins of boys/girls.
- 4. Selected days one 24-hour period or more.

There is nothing in the record which would demonstrate the teachers knew or should have known that teacher attendance was required. $\frac{5}{}$ Nothing indicates that any teachers were aware that the nurse was told her attendance was part of her responsibilities. $\frac{6}{}$ Every year the teachers were asked to volunteer.

No contractual obligation arose here. It is clear that the trip began as a voluntary one. It was initiated by the teachers.

The attorney for the Board argued that the language "become a member of the staff" reflected a special status for those who regularly attended the trip. Such a reading is overly technical, given the nature of the form and circumstance in general.

If the Association knew of this statement, and failed to act, then the Assocition's inaction might be telling. But the Association cannot be bound by acts of which it had no knowledge. Since the trip was on balance voluntary and in reaching that decision I have taken into account this very statement, Deane's statement to the nurse was improper.

No action was taken by the Board which would reasonably put the teachers on notice that their voluntary acts were somehow transformed into an obligation. Nor was any notice, verbal or written, ever made prior to Dean's ordering Scott's, McPhee's and Langford's attendance which would apprise the teachers that their attendance on the trip was mandatory. In this regard it is significant that even though Deane told the nurse she was expected to attend, he did not take any actions on his own in ordering the teachers to attend. Rather, he first went to the Board and asked that body for authority to deal with the teachers who declined to volunteer. If there was not a question in his own mind as to the voluntary nature of the trip, why go to the Board for authority to order attendance? Further, as testified to by Peters, the Board President, the Board acted without being fully aware of the administrative practices of recruiting for the trip. It is apparent that there was no clear past practice. Neither the Board members nor the Superintendent had a clear concept of the trip.

The parties argued at length in their briefs, and introduced a great deal of testimony, over the question of whether the trip was curricular or extracurricular in nature. There is a contractual provision governing extracurricular trips. The Association's witness testified that the trip was curricular. Deane, testifying on behalf of the Board, stated that although there was a dual nature to the trip, the essence of the trip was curricular, since so much of the fifth grade curriculum revolved around it. Accordingly, I find the trip was curricular. However whether the trip was curricular

or extracurricular makes little difference. The Commission has, on numerous occasions, stated that the assignment of extracurricular duties is a non-negotiable obligation. Manchester Regional Education Association and Manchester Regional High School District Board of Education, P.E.R.C. No. 80-136, 6 NJPER 245 at 246 (¶11119, 1980). See also In re Board of Education Mainland Regional High School District, P.E.R.C. No. 80-8, 5 NJPER 301 (¶10162, 1979), affirmed App. Div. Docket No. A-4566-78; In re Ramapo-Indian Hills High School District Board of Education, P.E.R.C. No. 80-9, 5 NJPER 302 (¶10163, 1979), appeal pending App. Div. Docket No. A-4613-78; In re Montvale Board of Education, P.E.R.C. No. 80-63, 5 NJPER 535 (¶10275, 1979); In re Northvale Board of Education, P.E.R.C. No. 80-79, 6 NJPER 13 (¶11007, 1980), appeal pending App. Div. Docket No. A-1580-79; and In re Marlboro Board of Education, P.E.R.C. No. 80-128, 6 NJPER 215 (¶11106, 1980). These decisions of the Commission were based on Ridgefield Park, 78 N.J. 144, wherein the Supreme Court held that transfers and reassignments were not negotiable. The Commission reasoned that the assignment of extracurricular activities are transfers within the meaning of Ridgefield Park and therefore non-negotiable.

The reasons for finding the assignment of an extracurricular activity non-negotiable can only be even stronger for finding the assignment of a curricular activity non-negotiable. If participation in a play or athletic team has legitimate educational objectives, then most certainly the assignment of work involving the curriculum itself has such educational objectives.

It is recognized that when a school board orders teachers

to perform such duties there is an inevitable conflict between the Board's managerial prerogative to make assignments and the teachers' terms and conditions of employment, that is, hours of work.

There are numerous cases which hold that changes in hours of work are mandatorily negotiable. See <u>Board of Education of Engle-wood v. Englewood Teachers Association</u>, 64 N.J. 1 at 6-7 (1973);

Weehawken Board of Education, P.E.R.C. No. 81-67, 6 NJPER 391 (¶11202, 1980); City of Bayonne Board of Education and Bayonne Teachers Association, P.E.R.C. No. 80-58, 5 NJPER 499 (¶10255, 1979), affirmed App. Div. Docket No. A-954-79 (Nov. 3, 1980).

In <u>Woodstown-Pilesgrove Regional School District v. Woodstown-Pilesgrove Regional Education Association</u>, 81 N.J. 582 (1980), the Supreme Court held that in order to resolve conflicting principles such as these, a balancing test should be used to determine whether the educational goals of the Board or the terms and conditions of employment of the teachers is the dominant issue.

In the Commission's "extracurricular" cases the teachers were ordered to perform such traditional and customary functions as coaching athletic teams and producing school plays. These activities normally take place after school, although they may, on occasion, require working evenings and/or on weekends. In these cases the predominant issue is educational policy.

In the instant case, compulsory attendance at the camp means that the teachers had to spend four days away from home. This imposes a burden on the teachers that goes significantly beyond the

burdens of traditional and customary extracurricular activity. 7/
ordering teachers to spend four days away from home creates disruptions to private and family life that are not within the normal expectations of teachers. Such an unusual burden on the teachers shifts
the balance and, in the instant case, terms and conditions of employment, i.e., hours of work becomes the predominant issue.

Admittedly, the teachers involved in the instant matter have always performed this task before when attendance was voluntary (but it must not be forgotten that the trip was first initiated by the teachers). The teachers always had the right to refuse to go on the camping trip, if it would be too disruptive. The Board had to negotiate with the teachers such a drastic change in hours before they could order teachers attendance on the trip. When the Board failed to negotiate this change in hours it violated §5.4(a)(1) and (5) of the Act.

Recommended Order

It is recommended that the Commission ORDER that the Board of Education

- (1) negotiate in good faith with the Association for compensation for McPhee, Langford and Scott for their participation in the May 1980 fifth grade camping trip.
- (2) Restore the status quo as to the voluntary nature of the fifth grade camping trip (as long as the trip is voluntary the Board does not have to negotiate compensation).

^{7/} For that reason the contract provision concerning extra duties normally associated with the profession does not govern in this instance.

- If the Board decides to make teacher attendance on the trip compulsory, it must negotiate with the Association any change in the hours of teachers as well as compensation.
- (4) Post at all places where notices to employees are customarily posted copies of the attached notice, marked as Appendix "A." Copies of such notice on forms to be provided by the Commission shall be posted immediately upon receipt thereof and after being signed by the Respondent's authorized representative, shall be maintained by the Respondent for a period of at least sixty consecutive days thereafter. Reasonable steps shall be taken by the Respondent to ensure that such notices are not altered, defaced or covered by any other material. The Respondent shall notify the Chairman of the Commission within twenty days of the receipt of notice what steps the Respondent has taken to comply thereto.

Hearing Examiner

DATED: November 26, 1980 Trenton, New Jersey RECOMMENDED POSTING

Appendix "A"

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL negotiate in good faith with the Barrington Education Association for compensation for Lawrence McPhee, Richard Langford and David Scott for their participation in the May 1980 fifth grade camping trip.

WE WILL restore the status quo as to the voluntary nature of the fifth grade camping trip (as long as the trip is voluntary the Board does not have to negotiate compensation).

If the Board decides to make teacher attendance on the trip compulsory, WE WILL negotiate with the Association any change in the hours of teachers as well as compensation.

		BARRINGTON	BOARD	OF E	EDUCATIO N	ſ	
	(Public Employer)						
Dated	Ву						
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This Notice must remain posted for 60 consecutive days from the date of pasting, 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 Jeffrey B. Tener, Chairman, Public Employment Relations Commission, 429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.