

P.E.R.C. NO. 87-18

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HAMILTON TOWNSHIP BOARD
OF EDUCATION,

Respondent,

-and-

Docket No. CO-85-166-130

HAMILTON TOWNSHIP ADMINISTRATORS
AND SUPERVISORS ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission holds that the Hamilton Township Board of Education violated the New Jersey Employer-Employee Relations Act when it did not negotiate to impasse with the Hamilton Township Administrators and Supervisors Association over possible additional compensation for a temporary teaching assignment.

STATE OF NEW JERSEY
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HAMILTON TOWNSHIP ADMINISTRATORS
AND SUPERVISORS ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Aron, Salsberg & Rosen, Esqs.
(Louis C. Rosen, of Counsel)

For the Charging Party, Robert M. Schwartz, Esq.

DECISION AND ORDER

On January 8, 1985, the Hamilton Township Administrators and Supervisors Association ("Association") filed an unfair practice charge against the Hamilton Township Board of Education ("Board"). The charge alleged that the Board violated subsections 5.4(a)(1),(3) and (5)^{1/} of the New Jersey Employer-Employee Relations Act,

^{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; (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning

N.J.S.A. 34:13A-1 et seq. ("Act"), when it refused to negotiate with the Association over possible additional compensation for a curriculum assistant assigned to teach an industrial arts class at Hamilton High School West from November 26 through December 21, 1984.

On May 10, 1985, a Complaint and Notice of Hearing issued. The Board filed an Answer admitting the assignment, but denying that this assignment increased the curriculum assistant's workload. It also asserted that it had a managerial prerogative to make the assignment and that it had negotiated with the Association over the impact of this decision.

On August 28 and October 2, 1985, Hearing Examiner Judith Mollinger conducted a hearing. The parties examined witnesses and introduced exhibits. They filed post-hearing briefs by December 10, 1985. Subsequently, Hearing Examiner Mollinger resigned from the Commission's staff and Susan A. Weinberg was designated pursuant to N.J.A.C. 19:14-6.4 to issue a report in her stead.

On May 23, 1986, Hearing Examiner Weinberg issued her report. H.E. No. 86-57, 12 NJPER 466 (¶17176 1986) (copy attached). She concluded that the Board had an obligation to negotiate over possible compensation for the teaching assignment and that it failed to discharge this obligation, thus violating

1/ Footnote Continued From Previous Page

terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

subsections 5.4(a)(5) and, derivatively, (a)(1).^{2/} She recommended an order requiring the Board to negotiate over possible compensation and to post a notice.

On July 7, after receiving an extension of time, the Board filed exceptions. It asserts that the Hearing Examiner erred in: (1) ruling that the Board was obligated to negotiate over the change in working assignment; (2) finding that teaching was not within the curriculum assistant's job description; (3) not finding a past practice of assigning administrators to teach in emergencies, without negotiations or additional compensation; and (4) finding that the Board did not negotiate in good faith over compensation.

On July 18, the Association filed a letter supporting the Hearing Examiner's conclusions.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 3-11) are generally accurate. We adopt and incorporate them with these changes and additions.

We add to finding no. 3 that under paragraph 26 of the job description, the curriculum assistant for industrial arts "assists the elementary and secondary directors in matters relating to staff, administrative procedures and policies as requested."

^{2/} The Hearing Examiner made no findings with respect to the alleged violation of subsection 5.4(a)(3), perhaps because the Association did not pursue that allegation at the hearing. In any event, nothing in the record supports such an allegation.

We add to finding no. 8 that a curriculum assistant once scheduled driver education classes following the illness of a physical education teacher responsible for that scheduling. This curriculum assistant did not teach any classes. We also add that the superintendent testified that occasionally administrators, especially in elementary schools, would take over a class if a teacher became ill or did not show up.

We supplement finding no. 9 by quoting the questions of the Board's attorney and the answers of the superintendent concerning the November 30 meeting:

- Q. What was the position of the administration in that meeting?
- A. Our position was that it would not be an expansion of duties that it was an emergency situation and that no compensation, either extra sick day benefits, vacation day benefits or salary remuneration would be considered.
- Q. Were all of those discussed during this period?
- A. Yes.
- Q. Sick day, additional sick day. Was comp time discussed?
- A. When you say comp time --
- Q. Time off for doing the teaching duties?
- A. I don't think there was time off discussed. It was extra for the period of days, the hour extra per day amounting to a cumulative amount of days and a proportionate amount of time given to sick or vacation days or salary.
- Q. Would you characterize this as a negotiations session?

A. Well, negotiations I don't know what a negotiations session is in terms of this situation. I think it was asked of us and it could be termed negotiations. I didn't think it was. I thought it was a request.

Q. Was there a proposed counter-proposal at this table.

A. No.

Q. There was a discussion of possible things that they wanted and then reasons why the administration did not feel it was appropriate?

A. That's correct.

We correct finding no. 11 to state that Young, not Lyons, made the joke about the domino effect. We add that Young told Lyons he could substitute phone calls for visits to high schools.

We add to finding no. 12 that the contract does not provide for binding arbitration of grievances.

We agree with the Hearing Examiner that the Board had an obligation to negotiate with the Association over possible additional compensation for the temporary teaching assignment. Teaching is not part of, or incidental to, a curriculum assistant's job duties as defined in the job description; none of the listed performance responsibilities expressly encompass classroom teaching and the general language of paragraphs 26 and 28 does not do so impliedly. Nor is there a past practice negating an obligation to negotiate possible compensation for curriculum assistants assigned to teach classes; the Holcomb situation is distinguishable since he had been teaching before becoming a curriculum assistant and merely

continued to teach his classes until a replacement could be found, and the driver education situation is distinguishable since the curriculum assistant merely scheduled, rather than taught, classes.^{3/} Finally, the Hearing Examiner properly relied on Sayreville Bd. of Ed., P.E.R.C. No. 84-74, 10 NJPER 38 (¶15021 1983) and the other cases she cited in determining that the issue of possible additional compensation for the teaching assignment was mandatorily negotiable. This teaching assignment was unrelated to the employee's normal duties and introduced pupil contact responsibilities. The Board's directive to the curriculum assistant not to extend his work day and to reduce his administrative work if necessary does not eliminate the right to negotiations over compensation for duties unrelated to one's normal responsibilities, although this directive may be relevant in negotiating over how much, if any, compensation will be paid.

We also agree with the Hearing Examiner that the November 30 meeting did not fulfill the Board's negotiations obligation. We have recognized that an employer or employee representative may take a hard line in negotiations so long as it does so with a sincere intent to reach agreement instead of a pre-determined

^{3/} The Board claims a past practice of assigning administrators to teach in emergencies without the need for prior negotiations over compensation. We need not decide this point since we are certain that there was no past practice eliminating the need to negotiate entirely, either before or after the assignment.

intention to avoid agreement. Ocean County College, P.E.R.C. No. 84-99, 10 NJPER 172 (¶15084 1984); State of New Jersey, E.D. No. 79, 1 NJPER 39 (1975), aff'd 141 N.J. Super. 470 (App. Div. 1976). But the record does not indicate that the Board's representatives negotiated with an open mind and until impasse over the Association's proposals. At the November 30 meeting, the administration took the position that it had a right to make this assignment and that "no compensation, either extra sick day benefits, vacation day benefits or salary remuneration would be considered." The superintendent, although he thought the term "negotiations" could be used, did not think the parties had negotiated and instead characterized the meeting as "a discussion of possible things [the Association] wanted and the reasons why the administration did not feel it was appropriate." The administration made no counterproposals and instead reiterated its initial position that the curriculum assistant's administrative duties had been reduced. Under all the circumstances of this case, we do not believe that the Board negotiated with the Association until impasse about possible additional compensation for the teaching assignment.^{4/} Accordingly, we conclude that the Board violated subsections 5.4(a)(5) and, derivatively, (a)(1).

^{4/} We do not suggest that the Board had any obligation to agree to additional compensation or that the Board's objections to such compensation were unreasonable.

ORDER

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

A. Cease and Desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, specifically by assigning Curriculum Assistant Lyons to a teaching position without negotiating compensation with his majority representative, the Hamilton Township Administrators and Supervisors Association; and

2. Refusing to negotiate in good faith with the Association concerning terms and conditions of employment, specifically compensation for Lyons' assignment.

B. Take the following affirmative action:

1. Negotiate in good faith concerning compensation for Lyons' teaching assignment;

2. In the future, negotiate in good faith regarding compensation for teaching assignments given curriculum assistants and;

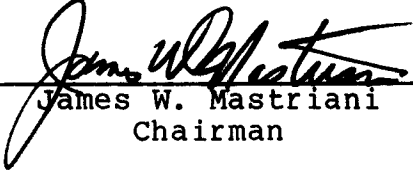
3. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A". Copies of such notice, on forms to be provided by the Commission, shall be posted immediately upon receipt thereof, and, after being signed by the Respondent's authorized representative,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

days. Reasonable steps shall be taken by the Respondent to ensure that such notices are not altered, defaced or covered by other material; and

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

That portion of the Complaint alleging a violation of N.J.S.A. 34:13A-5.4(a)(3) is dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hipp, Johnson, Smith and Wenzler voted in favor of this decision. 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 our employees in the exercise of the rights guaranteed to them by the Act, specifically by assigning Curriculum Assistant Lyons to a teaching position without negotiating compensation with his majority representative, the Hamilton Township Administrators and Supervisors Association.

WE WILL cease and desist from refusing to negotiate in good faith with the Association concerning terms and conditions of employment, specifically compensation for Lyons' assignment.

WE WILL negotiate in good faith concerning compensation for Lyons' teaching assignment.

WE WILL, in the future, negotiate in good faith regarding compensation for teaching assignments given curriculum assistants.

HAMILTON TOWNSHIP BOARD OF EDUCATION

(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. 86-57

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

In the Matter of

HAMILTON TOWNSHIP BOARD OF EDUCATION

Respondent,

-and-

Docket No. CO-85-166-130

HAMILTON TOWNSHIP ADMINISTRATORS
AND SUPERVISORS ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends the Commission find that the Hamilton Township Board of Education violated N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(5) and, derivatively, (a)(1) when it failed to negotiate with the Hamilton Township Administrators and Supervisors Association concerning compensation for a change in work load of a certain employee. Accordingly, the Hearing Examiner recommends an order to negotiate and a posting.

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. 86-57

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

In the Matter of

HAMILTON TOWNSHIP BOARD OF EDUCATION

Respondent,

-and-

Docket No. CO-85-166-130

HAMILTON TOWNSHIP ADMINISTRATORS
AND SUPERVISORS ASSOCIATION,

Charging Party.

Appearances:

For the Respondent,
Aron, Salsberg and Rosen, Esqs.
(Louis C. Rosen, Esq. of counsel)

For the Charging Party,
Robert M. Schwartz, Esq.

HEARING EXAMINER'S
RECOMMENDED REPORT AND DECISION

On January 8, 1985, the Hamilton Township Administrators and Supervisors Association ("Association" or "HTASA") filed an Unfair Practice Charge against Hamilton Township Board of Education ("Board"). The charge alleges the Board violated the New Jersey Employer-Employee Relations Act ("Act") N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (3) and (5),^{1/} when it

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with,

Footnote Continued on Next Page

unilaterally increased the work load of Al Lyons, Curriculum Assistant for the Industrial Arts Department (K-12), without negotiating compensation therefor. The Association contends that between the period November 26 and December 21, 1984, Lyons was temporarily assigned to teach one class per day of industrial arts at Hamilton High School West. It is the Association's position that this assignment increased Lyons' work load, which was partially evidenced by a work day increase, and thus the Board was obligated to negotiate additional compensation.

The Board denies violating the Act. Although it admits making the temporary assignment, it contends Lyons' work load was not increased. Instead it maintains that Lyons was instructed to decrease his regular work load for the period of the temporary assignment so that his normal work day would not be lengthened.

A Complaint and Notice of Hearing was issued on May 10, 1985. The Board filed an Answer on June 14, 1985. Hearings were held in this matter on August 28 and October 2, 1985, before Hearing

1/ Footnote Continued From Previous Page

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; (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."

Examiner Judith Mollinger. At hearing, the parties were given the opportunity to examine and cross-examine witnesses, present relevant evidence and argue orally. Both parties filed post-hearing briefs by December 10, 1985.^{2/}

Based upon the entire record, I make the following:

FINDINGS OF FACT

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

2. The Hamilton Township Administrators and Supervisors Association is a public employee representative within the meaning of the Act.

3. Alan J. Lyons has been employed by the Hamilton Township Board of Education since July, 1984, in the position of Curriculum Assistant for Industrial Arts and Technology for Children. His duties include: working with teachers to improve instruction, observing teachers, writing evaluations, working with the Maintenance Department to keep equipment in repair, and working with the Purchasing Department to order supplies and equipment ^{3/}

^{2/} Subsequent to the receipt of briefs, Hearing Examiner Mollinger resigned from the Commission. Pursuant to N.J.A.C. 19:14-6.4, this matter was transferred to me for issuance of a Recommended Report and Decision.

^{3/} In the Curriculum Assistant-Industrial Arts job description (R-2), there are 28 specific "performance responsibilities" encompassing these general areas. Of relevance is Responsibility Number 28 which states as follows: "Performs such other Curriculum Assistant-Industrial Arts related tasks as may from time to time be assigned."

(Exhibit R-2, 1 T 7/6-13).^{4/}

Lyons' office is in the District's Administration Building in Hamilton Square. In performing his duties, Lyons follows no set daily schedule and has no "typical" day.^{5/} Lyons testified that he usually starts his day at his office doing paperwork and organization (1 T 10/22-25). The rest of his day is spent visiting different schools to observe teachers both formally (for the entire period) and informally (10-15 minutes to help solve problems) (1 T 13/22, 1 T 14/20), and to respond to any equipment breakdowns that may have been reported (1 T 10/10). Lyons does 4-5 formal evaluations per week (1 T 14/6) and 25-30 informal evaluations per week (1 T 14/20). Annually, Lyons is responsible for formally observing 27 secondary industrial arts teachers (1 T

^{4/} 1 T 7/6-13 refers to Transcript of August 28, 1985, page 7, lines 6-13. 2 T, where used, refers to Transcript of October 2, 1985.

^{5/} In a memo from Dr. Fred Young, Director of Curriculum, to Building Principals, dated September 26, 1984, regarding Curriculum Staff Schedules for the 1984-85 school year (R-3), it was stated as follows:

The attached reflects the weekly work schedule of the Curriculum Staff for this school year.

The schedule is flexible, and, if necessary, curriculum staff will adopt their schedules to meet specific needs and requirements at the district/building levels....If an emergency situation arises at a particular school which requires that a curriculum staff member be in attendance outside the regular schedule, the building principal can make arrangements with the curriculum staff member directly.

7/17). He also informally assists 80 elementary teachers in the Technology for Children program (1 T 8/11).

4. On November 21, 1984, Lyons was called into the office of Dr. Fred Young, Director of Curriculum. Due to the administration's lack of success in finding a qualified substitute for an injured industrial arts teacher, Lyons was assigned to teach one period per day of wood shop until a replacement could be found (1 T 18/18-24).^{6/} Lyons was told that he would receive a letter formally advising him of this assignment (1 T 19/18).

Dr. Young testified that at the November 21 meeting, he specifically instructed Lyons not to do any extra work beyond his

^{6/} It is unclear from the record exactly when the injury to the wood shop teacher occurred. However, the record does reveal that considerable efforts were made by the administration over a period of time to secure a certified replacement for the injured teacher (2 T 21/17, 2 T 82/19). These efforts included publishing advertisements, contacting local colleges and various state industrial arts organizations, and approaching the superintendent's round table of every superintendent in Mercer County (2 T 21/21 - 22/4, 2 T 82/19). No qualified person was found and therefore Superintendent DeMartin "asked the staff to look in the building to see if any properly certified persons could adjust their schedules to take over the duties." All but the one period of wood shop was covered in this way, and therefore the decision was made to use Al Lyons, the only other properly certificated person in the district, to fill the void (2 T 83/9).

In addition, DeMartin testified that he received several calls from parents, members of the Board of Education and staff members concerning the "increasing problem" at Hamilton West. Students enrolled in the wood shop class were unable to receive any "hands-on" shop instruction and instead were "sitting in the auditorium" because a certified person was not in charge (2 T 82/4). A teacher with a certification in industrial arts must be present in order for any equipment to be operated. (2 T 23/1).

normal work day. Young told Lyons that after fulfilling his teaching obligation, he should only complete as much work as possible during the regular work day and that he (Lyons) would be excused from all other duties (2 T 27/24, 2 T 42/15). Young further told Lyons that his primary responsibility was his teaching assignment (2 T 74/5). Lyons did not contradict that part of Young's testimony.

5. On November 26, 1984, Lyons sent a memo to Dr. Young confirming his assignment (CP-1). After submitting the memo, Lyons received a letter from Albert DeMartin, Superintendent of Schools, also dated November 26, 1984, formally advising him of his temporary assignment (CP-2). Lyons acknowledged receiving CP-2 on November 26, 1984 (1 T 22/3).

CP-2 specifically directed Lyons as follows: "You are to be flexible and adjust your regular schedule of activities to accommodate the [teaching] assignment so that you will not have to extend your work day." Lyons did not discuss CP-2 with DeMartin, but did mention it to Dr. Young (1 T 23/10-12). Dr. Young testified that after CP-2 was received by Lyons, Young repeated his direction to Lyons against doing extra work (2 T 27/14).

6. Lyons testified that during his teaching assignment he continued to perform all of his regular duties as Curriculum Assistant. He stated he was not released from any responsibilities (1 T 26/24, 1 T 27/3). Lyons also testified that, on average, he did an extra 1 - 1 1/2 hours of work at home per night (1 T 32/16, 1

T 33/17). At night, he worked on specifications, prepared for class and wrote up observations (1 T 32/23-33/5). Lyons prepared for his class everyday (1 T 26/3). During the three-week period of his teaching assignment, Lyons did all observations and ordering of supplies and equipment in the morning (1 T 31/23, 1 T 32/2, 1 T 31/16-20).

7. Lyons was assigned to teach 7th period wood shop at Hamilton High School West from November 26, 1984 through December 19, 1984 (1 T 25/8). Seventh period is the last period of the school day: 1:45 p.m. - 2:30 p.m.

8. Young testified that on one prior occasion a Curriculum Assistant for Industrial Arts was assigned to teaching duties in an emergency situation (2 T 17/7). Young stated that in January, 1982, Curriculum Assistant Bersch retired, and Holcomb (Lyons' predecessor), an industrial arts teacher, was appointed to fill the position. Due to the inability of the District to find a certified replacement teacher for Holcomb, Holcomb continued his teaching duties while performing some Curriculum Assistant tasks (2 T 56/1-57/4).

Superintendent DeMartin contradicted that testimony. DeMartin stated that in his experience as Superintendent (since April, 1979) he had never known other administrators to teach in emergency situations (2 T 85/16), and that he had never issued a directive ordering same (2 T 92/22).

9. By undated letter from Gary Bender, President of HTASA, to Superintendent DeMartin, the Association informed the Superintendent of its intentions to seek "relief" for Lyons with regard to the "proposed unilateral assignment" and also of its request for a "meeting" between the Association's executive board and the Superintendent to "seek the appropriate relief as soon as possible" (CP-5).

On November 30, 1984, a meeting was held in the Superintendent's conference room. The meeting lasted 1 - 1 1/2 hours and included several separate management caucuses. Present at the meeting were DeMartin (Superintendent), Callahan (Asst. Superintendent), Fitzpatrick (Director of Personnel), Rosen (Board Attorney), Bencivengo (V.P. of Association), Bender (President of Association), Reed (Treasurer of Association) and Mopsick (Field Consultant) (1 T 39/6, 1 T 40/9). Before this meeting, nobody had approached the Association to negotiate the change in Lyons' work load (1 T 40/7).

Bender testified that at that meeting the whole situation involving Lyons' assignment was discussed, and an attempt was made to seek relief in the form of some type of compensation (1 T 39/14). The Association requested monetary compensation based on the number of teaching days times 1/7 (1 T 39/22).

Bender stated that the Board's response was to relieve Lyons of some of his duties so he could teach without extending his day (1 T 41/4). The Association's reply was that Lyons had already

been teaching for five days without compensation and that the Board's proposal was not acceptable (1 T 41/7). The Association additionally proposed either sick leave, personal leave, or vacation days as compensation (1 T 41/10). Bender testified that the Board's response remained unchanged and therefore the HTASA filed a formal grievance on Lyons' behalf. That grievance was dated November 26, 1984 (CP-3).

Superintendent DeMartin also testified that compensation for Lyons was discussed at the November 30 meeting (2 T 86/14). He stated that it was the Board's position that the assignment was not an expansion of duties, that an emergency situation existed, and that no compensation, either extra sick day benefits, vacation day benefits, or salary remuneration, would be considered (2 T 86/22 - 87/1). According to DeMartin, all of these proposals were discussed at the meeting (2 T 87/4, 2 T 87/10).

DeMartin did not believe the meeting was a "negotiating session," but instead thought it was a "request." He stated that there were no counter-proposals made by the Board at the table (2 T 87/24). Rather, he characterized the meeting as a "discussion of possible things the Association wanted and then the reasons why the administration did not feel it was appropriate" (2 T 88/3).

10. On December 6, 1984, the Superintendent issued his grievance decision (CP-3):

This unanticipated temporary assignment is not a violation of the agreement and it is within the lawful exercise of the district's managerial prerogatives. Furthermore, the employee and his supervisors have

been given the flexibility to arrange the work day so that it will not add to the employee's daily time and/or responsibilities. His supervisor has been asked to assume any regular duties that this employee is not able to complete due to his temporary one period per day assignment. In light of this, the grievance is denied.

CP-3 was copied to "employee."

11. On December 12, 1984, Lyons was formally observed by Dr. Young (CP-4). Lyons testified that it was not until that time that he became aware of the Superintendent's statement that Young should take over duties Lyons could not complete because of his teaching assignment (1 T 28/20, 1 T 29/11). Lyons stated that he joked with Young that if Young assumed some of Lyons' duties, then someone would have to assume Young's duties and there would be a domino effect (1 T 29/17). Lyons testified that Young never assumed any of Lyons duties, either before or after December 12 (1 T 29/25).

It was Young's testimony that he told Lyons that he could take care of some duties which were within his realm, but that since Young's specializations were English and Social Studies, he (Young) would be unable to take care of problems with equipment. According to Young, there was an understanding that Lyons would handle the equipment malfunctions and Young would take care of issuing memos, paperwork and budgetary matters, if necessary (2 T 28/16-29, 2 T 54/5). Other than the reference in CP-3, Young stated he was not actually asked to perform Lyons' duties because it was understood that this was his responsibility (2 T 39/22).

Young does not recall doing any of Lyons' work (2 T 40/22, 2 T 74/10-14). Young testified that Lyons never asked to be relieved of specific duties so he assumed Lyons was able to handle them. (2 T 79/24). Young stated that when he spoke to Lyons at the December 12 observation, Young repeated his offer to provide assistance, but he never specifically told Lyons "what duties [Young] had picked up for him" (2 T 53/13-24).

CP-4 was signed by Lyons, and December 17, 1984, is indicated as the "date copy handed to teaching staff member." In CP-4, Young stated as follows: "It should be noted that the temporary teaching assignment given to you to cover a class at Hamilton West is placing a severe restriction on your ability to provide the necessary support and supervision of the total T4C and Industrial Arts program."

12. The collective bargaining agreement entered into between HTASA and the Board covering the period July 1, 1983 - June 30, 1986, (J-1) does not address work load increases or scheduling changes.

ANALYSIS

The Association claims that the Board increased Al Lyons' work load without negotiations, when it temporarily assigned Lyons to teach one period per day of wood shop for the period November 26, 1984-December 19, 1984. The Board answers that the assignment was

within its managerial prerogative, that the assignment did not increase or change Lyons' work load, that no prior negotiation was necessary because an emergency situation existed and that, alternatively, negotiations did in fact take place.

The Association does not take issue with the Board's right to assign Lyons to teach the period of wood shop. The Board has a non-negotiable managerial prerogative to make such an assignment, particularly in such an emergent situation. Ramapo-Indian Hills Ed. Ass'n. v. Ramapo-Indian Hills H.S. Dist. Bd. of Ed., P.E.R.C. No. 80-9, 5 NJPER 302 (¶10163 1979), aff'd 176 NJ Super 35 (App. Div. 1980); In re Byram Twp. Bd. of Ed., P.E.R.C. No. 76-27, 2 NJPER 143 (1976), aff'd 152 NJ Super 12 (App. Div. 1977); Wanaque Bd. of Ed., P.E.R.C. No. 82-54, 8 NJPER 26 (¶13011 1981); and Sayreville Bd. of Ed., P.E.R.C. No. 84-74, 10 NJPER 37 (¶15021 (1983)). However, it has also been repeatedly held that the severable issue of compensation for such assignments is mandatorily negotiable. Woodstown-Pilesgrove Reg. School Dist. Bd. of Ed. v. Woodstown-Pilesgrove Ed. Assn., 81 NJ 582 (1980); Ramapo, supra; In re Perth Amboy Bd. of Ed., P.E.R.C. No. 83-36, 8 NJPER 573 (¶13264 1982), mot. for recon. den. P.E.R.C. No. 83-63, 9 NJPER 16 (¶14007 1982); Piscataway Bd. of Ed., P.E.R.C. No. 83-87, 9 NJPER 68 (¶14037 1982); In re Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55 (1975); In re East Brunswick Bd. of Ed., P.E.R.C. No. 82-76, 8 NJPER 124 (¶13054 1982); and Sayreville, supra.

In Sayreville, supra, the Commission found that the Board had a non-negotiable managerial prerogative to assign teaching periods to four guidance counselors.^{7/} Relying on prior cases, the Commission in Sayreville, supra, determined that the issue of compensation for the new classroom assignments was mandatorily negotiable. Prior to the assignment, the normal duties of the guidance counselors did not include classroom teaching. Further, notwithstanding that each guidance counselor who was given a teaching assignment had their regular counselling load lightened in order to accommodate the change, the Commission held that the assignment was a change in work load, and therefore the Board was required to negotiate over compensation.

The same rationale applies in the instant case. As a Curriculum Assistant, Lyons did not teach before the wood shop assignment. In addition, similar to the facts in Sayreville, supra, the Board here unilaterally attempted to reduce Lyons' duties by releasing him from some of his regular responsibilities, but it failed to negotiate with the Association over compensation. Accordingly, consistent with the law in this area, I conclude that

^{7/} That this was a proper assignment within the Board's discretion was previously determined by the Commissioner of Education. Sayreville Board of Education, 1983 SLD ____ (1/5/83).

the severable issue of compensation for the change in Lyons' assignment is mandatorily negotiable.^{8/}

The Board argues that under the circumstances of this case, no negotiations were necessary because 1) the teaching assignment was contemplated by Lyons' job description and therefore it was part of his normal duties, 2) there was an established past practice of assigning administrators to teaching positions without negotiating over compensation, and 3) an emergency situation was in existence. I find that none of these arguments have merit.^{9/}

The job description for Curriculum Assistant-Industrial Arts includes a catch-all paragraph which requires performance of "such other Curriculum Assistant-Industrial Arts related tasks as may from time to time be assigned." This is the only paragraph

^{8/} Considerable testimony was presented regarding whether Lyons' work day was lengthened by virtue of the teaching assignment and if so, whether the alleged extension was as a result of unnecessary duties being voluntarily assumed by Lyons. Whether Lyons "voluntarily" assumed duties, however, is not an adequate defense to a violation here. Any work day extension was a ramification of the Board's unlawful unilateral work load change and cannot be overcome by discussions with Lyons. The Board had the obligation to negotiate Lyons' work load -and any impact on Lyons' work day- with the Association. Its failure to do so was a violation. Thus, the Association has the right to demand negotiations over compensation to address the work load change and any work day increases.

^{9/} A fourth argument which was considered (although not raised by the Board) was whether the collective negotiations agreement in effect permitted the Board to make the assignment without negotiation. A review of the agreement reveals that the subject of assignment or workload is not addressed and accordingly no contractual right and/or waiver can be found.

which could even remotely be construed to include a teaching responsibility. However, as written, the clause refers to tasks related to being a Curriculum Assistant in the area of industrial arts and not to tasks related generally to teaching industrial arts. Accordingly, I cannot conclude that a teaching assignment was contemplated as part of Lyons' "regular" duties.

With regard to the existence of a past practice, the record reveals an inconsistency. Young testified that on one prior occasion an industrial arts Curriculum Assistant (newly-appointed) continued some of his teaching duties until a replacement could be found. Superintendent DeMartin denies any such assignment ever occurred.

Even assuming that the instance referred to by Young did take place, this one incident cannot form the basis of a past practice. The circumstances surrounding Holcomb's assignment are distinguishable from the instant matter. Holcomb, who had been a teacher, just continued some of his classroom duties after being promoted to Curriculum Assistant, until his replacement could be found. Lyons, on the other hand, was not teaching at all prior to the wood shop assignment. Accordingly, I conclude that no past practice exists which would release the Board from its negotiations obligation.

Further, I also conclude that the Board's "emergency" defense is without merit. Such a defense goes to the issue of whether the Board was obligated to negotiate over Lyons' assignment

before it was given. In the instant case, however, the Association is not challenging the Board's right to make the assignment. Instead, the Association argues that negotiation relative to compensation for that assignment was required. If in fact an emergency did exist it would not have obviated the Board's obligation to negotiate over Lyons' compensation.

Finally, the Board argues, in the alternative, that if it was required to negotiate over compensation, it satisfied that obligation with the November 30, 1984, meeting between the administration and several union officials. I conclude that this argument must fail.

In order to determine if good faith negotiations had taken place, it is necessary to subjectively analyze the totality of the parties' conduct. The object of this analysis is to determine the intent of the parties; that is whether there was an open mind and a sincere desire to reach an agreement, as opposed to a pre-determined intention to go through the motions, seeking to avoid, rather than reach, an agreement. See In re State of New Jersey, E.D. No. 79, 1 NJPER 39 (1975), aff'd 141 NJ Super 470 (App. Div. 1976). In the instant case, the Board failed to meet this standard. There was one alleged "negotiations" session on this matter which lasted a total of 1 1/2 hours. Testimony from both a Board and an Association participant revealed that the Board never once changed its position

with regard to what if any compensation was due Lyons.^{10/} Moreover, Superintendent DeMartin himself did not think the November 30 meeting was a negotiating session. In fact, he stated there were no counter-proposals even made by the Board. DeMartin characterized the meeting as "a discussion of possible things the Association wanted and then the reasons why the administration did not feel it was appropriate." This type of interaction simply does not constitute good faith negotiations. The Board, through its administration, did not exhibit a sincere desire to reach an agreement.

Accordingly, having concluded that compensation for the change in Lyons' work load was mandatorily negotiable, that the Board did not establish any valid justification for its refusal to negotiate, and that no good faith negotiations occurred, I find that the Board violated §(a)(5), and derivatively, §(a)(1) of the Act when it assigned Lyons to teach one period of wood shop without negotiation.

CONCLUSIONS

1. The Hamilton Township Board of Education violated N.J.S.A. 34:13A-5.4(a)(5) and, derivatively, (a)(1) when it failed to negotiate with the Hamilton Township Administrators and

^{10/} That is not to say that the Board was prohibited from taking a hard line. However, together with all of the other circumstances, a lack of good faith can be inferred.

Supervisors Association regarding compensation for the assignment of Al Lyons, Curriculum Assistant, to a temporary teaching position.

RECOMMENDED ORDER

I recommend that the Commission ORDER the Hamilton Township Board of Education to:

A. Cease and Desist From:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, specifically by assigning Curriculum Assistant Lyons to a teaching position without negotiating compensation with his majority representative, the Hamilton Township Administrators and Supervisors Association.

2. Refusing to negotiate in good faith with the Association concerning terms and conditions of employment specifically compensation for Lyons' assignment.

B. Take the following affirmative action:

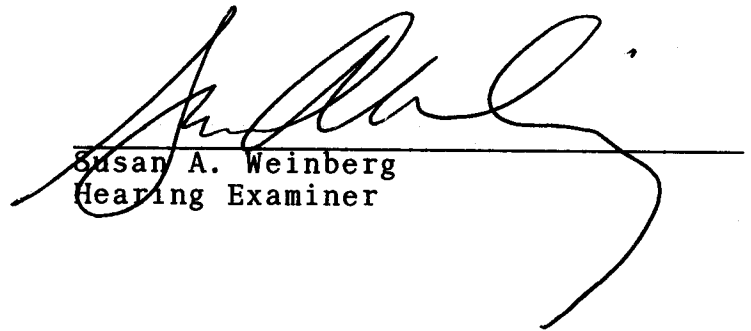
1. Negotiate in good faith concerning compensation for Lyons' teaching assignment.

2. In the future, negotiate in good faith regarding compensation for changes in work assignments of its employees.

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 for a period of at least sixty (60) consecutive days. Reasonable steps shall be taken by the Respondent to ensure that such notices are not altered, defaced or covered by other material.

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



Susan A. Weinberg
Hearing Examiner

DATED: May 23, 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 its employees in the exercise of the rights guaranteed to them by the Act, specifically by assigning Curriculum Assistant Lyons to a teaching position without negotiating compensation with his majority representative, the Hamilton Township Administrators and Supervisors Association.

WE WILL cease and desist from refusing to negotiate in good faith with the Association concerning terms and conditions of employment specifically compensation for Lyons' assignment.

WE WILL negotiate in good faith concerning compensation for Lyons' teaching assignment and, in the future, will negotiate compensation for changes in work assignments of employees.

Hamilton Township Board of Education

(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 W. Mastriani, Chairman, Public Employment Relations Commission, 495 W. State Street, Trenton, New Jersey (609) 292-9830.