

P.E.R.C. NO. 90-15

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matters of

NORTH BERGEN BOARD OF EDUCATION &  
NEW JERSEY EDUCATION ASSOCIATION,

Respondents,

-and-

Docket No. CO-H-88-289

NORTH BERGEN FEDERATION OF TEACHERS,  
LOCAL 1060, AFT, AFL-CIO

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the North Bergen Board of Education and the New Jersey Education Association violated the New Jersey Employer-Employee Relations Act when they negotiated and reached agreement concerning extended sick leave benefits and the retirement of a Board employee represented by the North Bergen Federation of Teachers.

P.E.R.C. NO. 90-15

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matters of

NORTH BERGEN BOARD OF EDUCATION &  
NEW JERSEY EDUCATION ASSOCIATION,

Respondents,

-and-

Docket No. CO-H-88-289

NORTH BERGEN FEDERATION OF TEACHERS,  
LOCAL 1060, AFT, AFL-CIO

Charging Party.

Appearances:

For the Respondent, Board of Education, Ruderman  
& Glickman, Esqs. (Mark S. Ruderman, of counsel)

For the Respondent, New Jersey Education  
Association, Zazzali, Zazzali, Fagella & Nowak,  
Esqs. (Paul L. Kleinbaum, of counsel)

For the Charging Party, Victor P. Mullica, Esq.

DECISION AND ORDER

On May 11, 1988, the North Bergen Federation of Teachers, Local 1060, AFT, AFL-CIO ("AFT") filed an unfair practice charge against the North Bergen Board of Education ("Board") and the New Jersey Education Association ("NJEA"). The charge alleges that the Board and the Association violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically and

respectively subsections 5.4(a)(1), (2) and (5),<sup>1/</sup> and 5.4(b)(1) and (2),<sup>2/</sup> when they negotiated and reached agreement concerning extended sick leave benefits and the retirement of an AFT unit member.

On September 2, 1988, a Complaint and Notice of Hearing issued. On September 21, the Board filed an Answer claiming it did not violate the Act because it did not coerce the affected employee in her ability to exercise her rights under the Act, interfere with the administration of any employee organization, or refuse to negotiate in good faith. On September 22, the NJEA filed an Answer denying it violated the Act and asserting several affirmative defenses.

On January 9 and 30, 1989, Hearing Examiner Alan R. Howe conducted a hearing. The parties examined witnesses and introduced

- 
- <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; (2) Dominating or interfering with the formation, existence or administration of any employee organization, and (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative.
- <sup>2/</sup> These subsections prohibit employee organizations, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act, and (2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances.

exhibits. They waived oral argument but filed post-hearing briefs by March 13, 1989.<sup>3/</sup>

On May 5, 1989, the Hearing Examiner issued his report and recommendation. H.E. No. 89-35, 15 NJPER \_\_\_\_ (¶ 1989). He found that the Board violated subsections 5.4(a)(1) and (5) when its superintendent negotiated with the NJEA with respect to an AFT unit member's extended sick leave and voluntary retirement for an AFT unit member. He concluded that the Board's conduct violated the exclusivity doctrine enunciated in Lullo v. IAFF, 55 N.J. 409 (1970). He further found that the Board's "egregious misconduct" warranted finding that it independently violated subsection 5.4(a)(1). The Hearing Examiner also found that NJEA violated subsection 5.4(b)(1) by "negotiating" for an AFT unit member.

On May 18, 1989, the Association filed exceptions. It concedes that the Hearing Examiner's findings of fact are substantially accurate but excepts to his legal conclusions. It claims that there was no breach of the exclusivity principle because it was the Board, not the NJEA's, responsibility to notify the AFT of the Board-NJEA contacts. The NJEA claims that it did not intend to undercut the AFT's majority status and that it does not claim to represent the affected employee. Alternatively, it claims that any

---

<sup>3/</sup> At the conclusion of the AFT's case-in-chief, the Hearing Examiner dismissed the subsection 5.4(b)(2) allegation. Since the AFT did not address the subsection 5.4(a)(2) in its brief, the Hearing Examiner deemed that allegation withdrawn.

breach of the exclusivity principle was unintentional and de minimis.

We have reviewed the record. The Hearing Examiner's findings of fact (H.E. at 4-11) are accurate. We incorporate them.

N.J.S.A. 34:13A-5.3 provides that the representative duly elected by a majority of the public employees in an appropriate unit shall be the exclusive representative of all employees in the unit. In Lullo, the Supreme Court upheld exclusive representation as the cornerstone of the Act. "Exclusivity promotes labor stability by discouraging rivalries among individual employees and employee groups and by avoiding the diffusion of negotiating strength which results from multiple representation." State of New Jersey, I.R. No. 83-2, 8 NJPER 425 (¶13197 1982), citing Lullo at 429; see also Red Bank Reg. Ed. Ass'n v. Red Bank Reg. H.S. Bd. of Ed., 78 N.J. 122 (1978); Newark Bd. of Ed., P.E.R.C. No. 85-24, 10 NJPER 545 (¶15254 1984); Mt. Olive Bd. of Ed., P.E.R.C. No. 84-72, 10 NJPER 34 (¶15020 1983).

N.J.S.A. 34:13A-5.4(a)(5) makes it an unfair practice for a public employer to refuse to negotiate with a majority representative concerning terms and conditions of employment of unit employees. Negotiations with a minority representative violates this subsection. See, e.g., Newark. Compare Rumson-Fair Haven Reg. H.S. Bd. of Ed., P.E.R.C. No. 87-46, 12 NJPER 831 (¶17319 1986).

Here, the Board's superintendent and a minority organization negotiated an early retirement arrangement involving

the grant of supplemental sick leave. That action strikes at the heart of the exclusivity principle. The NJEA's argument that exclusivity only requires notice to the majority representative is without merit. N.J.S.A. 34:13A-5.3 permits employers to meet "with an employee organization [minority organization] for the purpose of hearing the views and requests of its members" so long as "the majority representative is informed" and "any changes or modifications in terms and conditions of employment are made only through negotiation with the majority representative...." The Board not only engaged in discussions with the NJEA without notice to the AFT, it negotiated an agreement. Accordingly, we find that the Board violated subsection 5.4(a)(5) and, derivatively, (a)(1) and order it not to engage in similar conduct.

We further find that the Board's conduct independently violated subsection 5.4(a)(1).

It shall be an unfair practice for an employer to engage in activities which, regardless of the absence of direct proof of anti-union bias, tend to interfere with, restrain or coerce an employee in the exercise of rights guaranteed by the Act, provided the actions taken lack a legitimate business justification. [New Jersey Sports and Exposition Auth., P.E.R.C. No. 80-73, 5 NJPER 550, 551 (¶10285 1979)].

Negotiations with a minority organization interferes with the section 5.3 right of all unit members to be represented exclusively by a majority organization.

For the same reasons, we find that the NJEA violated subsection 5.4(b)(1). Cliffside Park Bd. of Ed., P.E.R.C. No.

87-61, 13 NJPER 2 (¶18001 1986) is not distinguishable. Not claiming to represent this employee for all employment conditions does not relieve the NJEA of liability for negotiating on her behalf for this employment condition. Further, we reject the argument that this violation was de minimis.

ORDER

A. The North Bergen Board of Education is ordered to cease and desist from:

1. Negotiating with the NJEA over a term and condition of employment of an AFT unit member.

2. Refusing to negotiate in good faith with the AFT concerning terms and conditions of employment of AFT unit members, particularly by negotiating with the NJEA over a term and condition of employment of an AFT unit member.

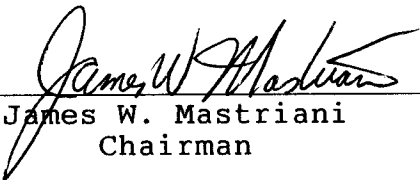
B. The New Jersey Education Association is ordered to cease and desist from negotiating with the North Bergen Board of Education on behalf of an AFT unit member.

C. The Board shall 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 Board'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.

D. The Board and the NJEA shall notify the Chairman of the Commission within twenty (20) days of receipt what steps they have taken to comply herewith.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

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

DATED: Trenton, New Jersey  
August 17, 1989  
ISSUED: August 18, 1989



# 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 negotiating with the NJEA over a term and condition of employment of an AFT unit member.

WE WILL cease and desist from refusing to negotiate in good faith with the AFT concerning terms and conditions of employment of AFT unit members, particularly by negotiating with the NJEA over a term and condition of employment of an AFT unit member.

Docket No. CO-H-88-289

NORTH BERGEN 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 St., CN 429, Trenton, NJ 08625 (609) 984-7372.

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

In the Matters of

NORTH BERGEN BOARD OF EDUCATION &  
NEW JERSEY EDUCATION ASSOCIATION,

Respondents,

-and-

Docket No. CO-H-88-289

NORTH BERGEN FEDERATION OF TEACHERS,  
LOCAL 1060, AFT, AFL-CIO

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent Board violated §§5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act when its Superintendent entered into "negotiations" with the Respondent NJEA with respect to the terms and conditions of employment (extended sick leave and voluntary retirement) for a classroom teacher represented exclusively by the Charging Party (AFT). The classroom teacher, one Pearl Cooper, had first sought assistance from the AFT in obtaining extended sick leave and, when she was not satisfied with the results, she approached a UniServ Representative of the NJEA who undertook to negotiate on her behalf with the Superintendent, obtaining a favorable result. The Hearing Examiner found that this conduct violated the exclusivity rule first enunciated by the New Jersey Supreme Court in Lullo v. IAFF, 55 N.J. 409 (1970) and cited by the Commission many times thereafter. Also, due to the egregious misconduct of the Board Superintendent, an independent violation of (a)(1) was found.

Citing Cliffside Park Bd. of Ed., P.E.R.C. No. 87-61, 13 NJPER 2 (¶18001 1986) where a violation of §5.4(b)(1) of the Act was found [the non-majority representative had sought to bargain on behalf of a supervisor in another unit]. So, too, was the Respondent NJEA found to have violated this subsection in the instant case since its "negotiating" for Cooper with the Superintendent was in derogation of Cooper's right to representation by the AFT.

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. 89-35

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

In the Matters of

NORTH BERGEN BOARD OF EDUCATION &  
NEW JERSEY EDUCATION ASSOCIATION,

Respondents,

-and-

Docket No. CO-H-88-289

NORTH BERGEN FEDERATION OF TEACHERS,  
LOCAL 1060, AFT, AFL-CIO

Charging Party.

Appearances:

For the Respondent, Board of Education, Ruderman &  
Glickman, Esqs. ( Mark S. Ruderman, of Counsel)

For the Respondent, New Jersey Education Association,  
Zazzali, Zazzali, Fagella & Nowak, Esqs.  
(Paul L. Kleinbaum, of Counsel)

For the Charging Party, Victor P. Mullica, Esq.

HEARING EXAMINER'S RECOMMENDED  
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public  
Employment Relations Commission ("Commission") on May 11, 1988 by  
the North Bergen Federation of Teachers, Local 1060, AFT, AFL-CIO  
("Charging Party" or "AFT") alleging that the North Bergen Board of  
Education ("Board") and the New Jersey Education Association  
("NJEA") have engaged in unfair practices within the meaning of the  
New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et  
seq. ("Act"), in that during the week of October 12, 1987, Philip J.  
Steinberg, the President of the AFT, spoke with one Pearl W. Cooper,

an elementary school teacher, concerning her accumulated sick leave and the need to apply to the Board for extended sick leave; Cooper made such application in February 1988 with the assistance of Steinberg; on February 8, 1988, Steinberg met with the Superintendent of the Board and presented him with letters from Cooper, as a result of which the Board on February 17, 1988, granted Cooper extended sick leave to February 23, 1988; then, as a result of a conversation between Steinberg and Cooper's son, Steinberg thereafter indicated that the AFT could petition the Board for additional extended sick leave; the Board's Superintendent caused the Board at its next meeting on March 16, 1988, to pass a resolution granting Cooper additional sick leave to April 14, 1988; the Board's Superintendent later indicated that the granting of this additional extended sick leave to Cooper was part of an arrangement negotiated between him and one Gerald Lange, a representative of the NJEA wherein Cooper would return to work until June 30, 1988, the date of her negotiated retirement, with the understanding that any absences after April 15, 1988, would be with full loss of pay; at no time throughout the foregoing was Steinberg or any representative of the AFT made aware that Cooper was seeking retirement nor was the AFT made aware of the activities between the Superintendent and Lange on Cooper's behalf; all of which is alleged to be a violation

by the Board of N.J.S.A. 34:13A-5.4(a)(1), (2) & (5) of the Act.<sup>1/</sup>  
and by the NJEA of N.J.S.A. 34:13A-5.4 (b)(1) & (2) of the Act.<sup>2/</sup>

It appearing that the allegations of the Unfair Practice Charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on September 2, 1988. Pursuant to the Complaint and Notice of Hearing, and after several mutually agreed upon adjournments, hearings were held on January 9 and January 30, 1989, in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally.<sup>3/</sup> Oral

---

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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

2/ These subsections prohibit employee organizations, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances."

3/ At the conclusion of the Charging Party's case, both the Board and NJEA moved to dismiss on the record. After hearing argument, the Hearing Examiner denied the Motion to Dismiss by the Board, but granted the Motion to Dismiss by the NJEA only as to the Section 5.4(b)(2) allegation.

argument was waived and the parties filed post-hearing briefs by March 13, 1989.<sup>4/</sup>

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

Upon the entire record,<sup>5/</sup> the Hearing Examiner makes the following:

FINDINGS OF FACT

1. The North Bergen Board of Education is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. The New Jersey Education Association is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

3. The North Bergen Federation of Teachers, Local 1060, AFT, AFL-CIO is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

---

<sup>4/</sup> Since the Charging Party did not address in its post-hearing brief the Section 5.4(a)(2) allegation in the Complaint, the Hearing Examiner deems the (a)(2) allegation withdrawn.

<sup>5/</sup> The Board presented no evidence and rested without calling any witnesses or offering any documentary evidence.

4. The AFT is the exclusive collective negotiations representative for a unit of all of the Board's "...classroom teachers, special subject teachers, librarians, nurses, athletic director, disciplinarians, all guidance personnel...etc." ("J-1, p. 1"). (emphasis supplied).

5. The NJEA does not represent classroom teachers or other employees within the AFT's collective negotiations unit, supra but does represent units of the following classifications of employees employed by the Board: administrators, custodians, attendance officers and supervisors of custodians (1 tr. 70).

6. At all times material hereto Pearl W. Cooper was a classroom teacher within the AFT's collective negotiations unit, who has been employed by the Board for 27 years (1 Tr. 11,12). Cooper was, however, a member of the NJEA (1 Tr. 70,71).<sup>6/</sup>

7. Philip J. Steinberg has been the President of the AFT for 3-1/2 years. He first spoke to Cooper during the week of October 12, 1987, when Cooper telephoned him at his home. Cooper stated that she was ill and had been using all of her sick days and, thus, she was concerned that if she became ill in the future she would have no more sick days. Further, although Cooper did not want to retire, she was concerned that the Board might force her to retire. [1 Tr 13-15].

---

<sup>6/</sup> The record is silent as to whether Cooper was also a member of the AFT.

8. The situation remained unchanged until early February 1988, when Cooper called Steinberg at home. Cooper was again ill and wished to request an extended sick leave from the Board, namely, February 8 through March 14, 1988. Steinberg advised Cooper to send him a letter addressed to the Board's Superintendent together with a doctor's letter, following which Steinberg would present the matter to the Superintendent. [1 Tr. 15-17].

9. Before receipt of the requested letters from Cooper, Steinberg met with the Board's Superintendent, Leo C. Gatttoni, Jr., on February 11, 1988. Steinberg requested of Gatttoni that he ask the Board to grant Cooper extended sick leave from February 8 through March 14, 1988 [1 Tr. 17,18].

10. After receiving Cooper's letter requesting extended sick leave and an accompanying doctor's letter, dated respectively February 13 and February 12, 1988 (CP-1), Steinberg submitted them to Gatttoni on February 16th. Following a short discussion, Gatttoni stated that he would submit Cooper's request and documentation to the Board. No other discussion took place at that time between Steinberg and Gatttoni. [1 Tr. 18-23].

11. The Board met on February 17, 1988 and Steinberg was present. The Board adopted a resolution granting Cooper's request for extended sick leave but only from February 8 through February 23, 1988, and not through March 14th as had been requested. [CP-2; 1 Tr. 22-26].



12. Steinberg encountered Gattoni on the following day, February 18th, and, after thanking him for obtaining the two weeks through February 23, 1988, he inquired as to whether Cooper might receive additional extended sick leave. Gattoni stated that Cooper should submit another letter and the Board would consider it. [1 Tr. 26,27].

13. Thereafter, on February 20th, Steinberg spoke with Cooper's son, Gene Cooper, at Steinberg's home. Gene Cooper wanted to know what could be done to obtain additional sick leave for his mother. Steinberg advised Cooper that another letter from his mother was required. [1 Tr 27, 28].

14. Steinberg presented the requested letter, dated February 22, 1988 (CP-3)<sup>7/</sup> to Gattoni on February 23rd. At this meeting, Gattoni was non-committal, stating only that he would submit it to the Board at its next meeting on March 16, 1988 and that the Board would make a decision. Gattoni did state to Steinberg that the problem with Cooper obtaining additional extended sick leave was her "...poor attendance record over the course of her teaching career..." [1 Tr. 28-32].

15. Steinberg was present at the Board meeting of March 16th (1 Tr 32). The Board on that date adopted a resolution which stated:

---

<sup>7/</sup> In this letter of February 22nd, Cooper requested extended sick leave through March 14, 1988.

BE IT RESOLVED, by the North Bergen Board of Education that Ms. Pearl Cooper be granted an extended sick leave of absence and terminating April 15, 1988 as recommended by the Superintendent in accordance with a negotiated agreement attached hereto and made a part hereof.

BE IT FURTHER RESOLVED, that payment for the period of extended sick leave is contingent upon Ms. Pearl Cooper's completion paragraphs 3,4 and 5 of the negotiated agreement. [CP-4]. [emphasis supplied].

16. The "negotiated agreement attached hereto and made a part hereof" [see CP-4, supra] was in fact a letter from Gerald Lange, an NJEA UniServe Field Representative, to Gattoni, dated March 14, 1988, which set forth the "...terms we agreed upon to settle the problem with Mrs. Cooper...", namely, (¶1) that Cooper would be restored to payroll retroactive to the date she was removed; (¶2) that Cooper would receive full pay until April 15, 1988; (¶3) that Cooper would return to work on that date; (¶4) that Cooper would tender her letter of retirement effective June 30, 1988; and (¶5) any absences after April 15th would be with full loss of pay. [CP-5].<sup>8/</sup>

17. It is undisputed that Steinberg did not learn of the "negotiated agreement" between Lange and Gattoni until the Board meeting of March 16th. After this meeting, Steinberg confronted Gattoni in the cafeteria and asked him to explain how this

---

<sup>8/</sup> The paragraph numbers in CP-5 correspond directly to the paragraph numbers [3, 4 and 5] contained in the Board's resolution of March 16th (CP-4, supra).

"agreement" came about. Gattoni said that he had "...worked out a deal with Gerry Lange with the NJEA..." (1 Tr. 36). When Steinberg told Gattoni that this was a violation of the AFT's contract, Gattoni "apologized," adding that he was very anxious to work out a deal for Cooper's retirement, and "...that he didn't stop to think about who he was negotiating with..." (1 Tr 36). [1 Tr 35-37].<sup>9/</sup>

18. Cooper sent Gattoni a letter on March 16, 1988, in which she requested her retirement as of June 30, 1988 (RU-1). On March 18, 1988, Lange again wrote to Gattoni (CP-6), enclosing Cooper's above "letter of retirement." On March 25, 1988, the Board's Secretary wrote to Cooper, enclosing a copy of the Board's resolution of March 16, 1988 (CP-4, supra). [CP-7]. Finally, the Board, at its meeting on April 20, 1988, acknowledged receipt of Cooper's retirement resignation, effective June 30, 1988 (CP-8).

19. Steinberg, on behalf of the AFT, had as recently as January 19, 1988, sought extended sick leave on behalf of Robert Strochak and in June 1987, Steinberg intervened on behalf of Antoinette Vecchio, who was granted extended sick leave in return for her resignation (1 Tr 42-45).

20. Lange acknowledged the NJEA does not represent the Board's classroom teachers but that he knew that Cooper was a member of the NJEA. However, Lange testified that he had never spoken to

---

<sup>9/</sup> Steinberg acknowledged that he knew of Lange as a field representative of NJEA but had never met him. Steinberg also testified that he had no prior knowledge that Cooper was seeking a retirement arrangement with the Board through Lange. [1 Tr 37, 41].

Cooper before she came into the NJEA office in January 1988 to meet the NJEA's pension consultant concerning her retirement. After Cooper met with the consultant, Lange suggested that she come into his office and talk with him about her situation, which she did. Cooper explained to Lange that she had exhausted her sick days and was looking to retirement. Lange first asked Cooper if she had consulted the AFT. Cooper replied that she had spoken to Steinberg and asked him if he could do anything for her but was told "We did all we could. And now you have to return to the classroom..." (1 Tr 72, 73) Lange then asked Cooper when her discussion with Steinberg had taken place and she said that it was about a week earlier. Cooper also told Lange that in the past she had sought assistance from the AFT, but that "...this time they said they couldn't do anything..." (1 Tr 73). Lange then volunteered to Cooper that he would call Gattoni and see if anything could be done and that he would be in touch with her. [1 Tr 70-74].

21. Within several days thereafter, Lange spoke to Gattoni and, after explaining Cooper's situation, Gattoni said that he would "get back" to him. Sometime within the next week, Gattoni called Lange and stated that the Board would grant her "...whatever days in return if she would guarantee that she would resign or retire" (1 Tr 74). At that point, Lange sent Gattoni the letter of March 14, 1988 (CP-5, supra), to which CP-6 was attached, outlining the terms of the settlement on behalf of Cooper, including a resignation or retirement as of June 30, 1988 [this became the "negotiated agreement" referred to in the Board's resolution of March 16, 1988 (CP-4)]. [1 Tr 74,75].

22. On cross-examination, Lange acknowledged the following:

a. Lange has known that AFT was the negotiations representative for teachers since 1968 or 1969 (1 Tr 79).

b. Lange knew when he spoke to Cooper that the AFT was the exclusive representative for teachers. Also, though he knew Steinberg, he never called him at any time during his discussions with Gattoni. Lange acknowledged that his letter to Gattoni (CP-5) was as a result of discussions that he had with Cooper, her son and Gattoni. [1 Tr 80-82].

c. Lange also testified that he did not know that Cooper was a member of the AFT and that he did not ask her that. Lange testified further that Cooper said that she had been represented by the AFT in the past. Lange testified further that he did not think it was incumbent upon him to speak to Steinberg as the representative of the AFT. Lange denied that Cooper had ever shown him CP-1 and he also denied that Cooper mentioned any letters she had sent to Steinberg. Finally, Lange testified that Gattoni never mentioned anything to him about the AFT "negotiating" on behalf of Cooper's sick leave. [1 Tr 99-102, 104].

23. Steinberg, in rebuttal, testified that he had never told Cooper that "We did all we could. And now you have to return to the classroom." (2 Tr 5). Also, Steinberg denied that he had ever stated to Cooper in a conversation "We helped you before. This time we can't do anything..." (2 Tr 5).

#### DISCUSSION AND ANALYSIS

The Respondent Board Violated §§5.4(a)(1) And (5) Of The Act When Its Superintendent "Negotiated" With Gerald Lange Of The NJEA In Or Around March 14, 1988, With Respect To Extended Sick Leave And Retirement For Pearl W. Cooper.

As ingenuous as Superintendent Gattoni's explanation to

Steinberg on March 16, 1988, might appear,<sup>10/</sup> the Board has no defense to the charge that it violated the Act by this conduct of Gattoni. The Board's violation is not vitiated by Gattoni's lame explanation that he was very anxious to work out a deal for Cooper's retirement and that he "...didn't stop to think about who he was negotiating with..." The use of the term "negotiating" is, of course, one of art and this Hearing Examiner must assume that Gattoni understood the use of this term since he had engaged in dialogue with Lange over several days, which resulted in the CP-5 letter from Lange to Gattoni, dated March 14, 1988 (CP-5). This letter contained the agreement reached [see Finding of Fact No. 16, supra]. It will be recalled that this same letter was attached to the Board's resolution of March 16, 1988. [See CP-4, supra].

It matters not a whit that the original discussions with respect to Cooper's request for extended sick leave occurred between Steinberg and Gattoni since the final resolution transpired in negotiations between Lange and Gattoni. The resulting Board resolution of March 16th granted Cooper extended sick leave to April 15, 1988, a date well beyond the earlier discussions between

---

10/ Gattoni said that he had "worked out a deal with Gerry Lange..." and apologized when Steinberg stated that his conduct was a violation of the AFT contract.

Steinberg and Gattoni. In addition, there was the factor of Cooper's agreement to retire voluntarily, effective June 30, 1988, which was never within the scope of any discussion between Steinberg and Gattoni prior to their last meeting on February 23, 1988. [See Finding of Fact No. 14, supra].

Further, when Steinberg and Gattoni last met on February 23rd, Gattoni's tone was one of discouragement with respect to additional extended sick leave for Cooper because of poor attendance over her teaching career. Also, recall that Steinberg testified without contradiction that he had no prior knowledge that Cooper was seeking a retirement arrangement with the Board through Lange.

Finally, in connection with the essential facts presented in this case, Steinberg testified that he had, on behalf of the AFT, arranged, if not "negotiated," extended sick leave for one Robert Stochak in January, 1988 and, also, had negotiated extended sick leave and a resignation for one Antoinette Vecchio in June 1987. Thus, the matter of obtaining additional extended sick leave and/or resignation was something that the AFT had engaged in previously.

In State of N.J., Dept. of Law & Public Safety, I.R. No. 83-2, 8 NJPER 425 (¶13197 1982) the State had established a "Council," whose objective was to encourage discussions concerning building maintenance problems, employee working conditions, personnel matters, which were to be presented to management for adjustment. Subsequently, the Communications Workers of America was certified as the exclusive majority representative for the employees

in question. The State acknowledged that the Council has acted as a "conduit through which employees' concerns can be made known to the administrative arm of the Division..." The Commission designee first quoted from N.J.S.A. 34:13A-5.3, which provides in part:

Representatives designated or selected by public employees for purposes of collective negotiation by the majority of the employees in a unit appropriate for such purposes...shall be the exclusive representatives for collective negotiation concerning the terms and conditions of employment of the employees in such unit. [emphasis supplied].

The Commission designee then noted that this principle of exclusivity is a cornerstone of the Act's structure for regulating the relationship between public employers , public employees and their representatives. In Lullo v. IAFF, 55 N.J. 409, 426 (1970) the New Jersey Supreme Court explained why the exclusivity principle was necessary:

However, the major aim [the equitable balance of bargaining power] could not be accomplished if numerous individuals wished to represent themselves or groups of employees chose different unions or organizations for the purpose. Such absence of solidarity and diffusion of collective strength would promote rivalries, would serve disparate rather than uniform overall objectives, and in many situations would frustrate the employees'community interests....Obviously, parity of bargaining power between employers and employees could not be reached in such a framework. So the democratic principle of majority control was introduced on the national scene, and the representative freely chosen by a majority of the employees in an appropriate unit to represent their collective interests in bargaining with the employer was given the exclusive right to do so...Experience in the private employment sector has established that investment of the bargaining representative of the majority with the exclusive



right to represent all the employees in the unit is a sound and salutary prerequisite to effective bargaining. Beyond doubt such exclusivity -- the majority rule concept -- is now at the core of our national labor policy. N.L.R.B v. Allis-Chalmers Mfg. Co., supra, 388 U.S. at 180...(emphasis supplied).

Finally, the Commission designee in State of N.J. concluded that Lullo's recognition of the fundamental importance of the principle of exclusivity in the public sector, coupled with the debilitating effects of departure from this principle, made it clear that a majority representative such as CWA suffered harm when the State permitted a separate, uncertified organization (the Council) to act on behalf of employees for purposes exclusively reserved to CWA as the majority representative.<sup>11/</sup> Thus, the Commission designee granted interim relief as requested by CWA, restraining the State from meeting with the "Council" for the purpose of permitting it to present grievances with respect to terms and conditions of employment.

Subsequently, the Commission had occasion to apply the principle of exclusivity in Mt. Olive Bd. of Ed., P.E.R.C. No. 84-73, 10 NJPER 34 (¶15020 1983) where the question was whether or not a board of education had violated the Act when its superintendent twice

---

<sup>11/</sup> The Commission designee took note of the narrow limitation on the exclusivity principle contained in §5.3 of the Act, namely, that the Act may not be construed to prevent any official from meeting with an employee organization for the purpose of hearing the views and requests of its members in such unit so long as (a) the majority representative is informed of the meeting; (b) any changes are made only through negotiation with the majority representative; and (c) a minority organization shall not present or process grievances.

met with bus drivers concerning their grievances. After quoting from §5.3 of the Act, supra, with respect to the principle of exclusivity, the Commission, citing Lullo and State of N.J. held that there was no violation of the Act since the superintendent knew that union shop stewards were present at each meeting and, thus, reasonably believed that he was dealing with duly authorized representatives of the union. Accordingly, no violation was found.

However, in Newark Bd. of Ed., P.E.R.C. No. 85-24, 10 NJPER 545 (¶15254 1984) the Commission was presented with a case where the board solicited employee suggestions concerning an attendance incentive program, the Board having distributed a pamphlet stating that it intended to offer direct and tangible rewards to those employees with outstanding attendance records. The Commission, in finding a violation, noted that the solicitation of suggestions from individual employees was a subject for mandatory negotiations with the union. Thus, the Board's solicitations undermined the union's right to exclusive representative status. See Lullo, State of N.J., and Mt. Olive, supra. Compare, Rumson-Fair Haven Reg. H.S. Bd. of Ed., P.E.R.C. No. 87-46, 12 NJPER 831, 832 (¶17319 1986).

The Hearing Examiner finds and concludes that under the facts previously found and the above-cited authority of Lullo, State of N.J. and the several Commission decisions, there can be no doubt whatsoever but that the Respondent Board violated §5.4(a)(5) and, derivatively, §5.4(a)(1) of the Act by the conduct of Superintendent Gattoni in negotiating with Gerald Lange, a representative of NJEA, which was not certified as the exclusive representative for the Board's teachers.

The Respondent Board Independently Violated §5.4(a)(1) Of The Act By The Conduct Of Its Superintendent In Negotiating With Gerald Lange Of The NJEA With Respect To Extended Sick Leave In Exchange For The Voluntary Retirement Of Pearl W. Cooper.

A public employer independently violates §5.4(a) of the Act if its action tends to interfere with an employee's statutory rights and lacks a legitimate and substantial business justification: Jackson Tp., P.E.R.C. No. 88-124, 14 NJPER 405 (¶19160 1988), adopting H.E. No. 88-49, 14 NJPER 293, 303 (¶19109 1988); UMDNJ--Rutgers Medical School, P.E.R.C. No. 87-87, 13 NJPER 115 (¶18050 1987); Mine Hill Tp., P.E.R.C. No. 86-145, 12 NJPER 526 (¶17197 1986); N.J. Sports and Exposition Auth., P.E.R.C. No. 80-73, 5 NJPER 550 (¶10285 1979); Gorman, Basic Text on Labor Law, at 132-34 (1976). Also, the Charging Party need not prove an illegal motive in order to establish this independent violation of §5.4(a)(1) of the Act: Morris, The Developing Labor Law, at 75-78 (2d ed. 1983).

The Hearing Examiner has no doubt but that the Respondent Board has also independently violated §5.4(a)(1) of the Act by the conduct of Superintendent Gattoni in "negotiating" with Gerald Lange of the NJEA, a non-majority representative of the Board's teachers, concerning Cooper's request for extended sick leave in exchange for voluntary retirement. The Act and the Commission's decisions require only that the conduct of the public employer tend to interfere with an employee's statutory rights and that it lacks a legitimate and substantial business justification.

The conduct of Superintendent Gattoni tended to interfere with Cooper's rights to have been represented by her exclusive representative, President Steinberg of the AFT. This opportunity for Steinberg's representation was vitiating by Gattoni when he agreed to negotiate with Lange regarding the terms under which Cooper would receive extended sick leave to April 15, 1988, a date never discussed with Steinberg, and her voluntary retirement. Also, the question of this extended sick leave being given in exchange for Cooper's voluntary retirement was never within the knowledge of Steinberg until after the Board adopted its March 16, 1988 resolution (CP-4, supra).

The Hearing Examiner attaches no weight whatever to the fact that Cooper was also a member of the NJEA, a fact probably not known to Steinberg. Additionally, no weight is attached to the fact that Cooper apparently approached the office of the NJEA without Steinberg's knowledge. When Gattoni learned of the Cooper-Lange conversation he had an obligation under §5.3, supra, to advise Steinberg of what was transpiring between Gattoni and Lange regarding Cooper's request for extended sick leave in exchange for voluntary retirement.

Although, as pointed out by counsel for the NJEA, it was not incumbent on Lange to advise Steinberg of his negotiations with Gattoni, Lange in fact knew that the AFT was the exclusive representative for teachers when he first spoke with Cooper in the NJEA office and later with Gattoni.

As noted previously, the Commission designee in State of N.J. referred to the narrow limitation on exclusivity in §5.3 of the Act, which the Hearing Examiner refers to again. In the instant case, the majority representative (Steinberg) was not informed of any conversations or meetings between Gattoni and Lange and, additionally, the "changes or modifications" made with respect to the terms and conditions of employment of Cooper were not made through the AFT in negotiations. Such an egregious violation of these strictures of §5.3 of the Act plainly warrants a finding that the Respondent Board independently violated §5.4(a)(1).

The Respondent NJEA Violated §5.4(b)(1) Of The Act By The Conduct Of Gerald Lange In "Negotiating" With Superintendent Gattoni Regarding Extended Sick Leave In Exchange For Voluntary Retirement By Pearl W. Cooper.

The pertinent facts as to the conduct of Lange on behalf of the Respondent NJEA are set forth in Findings of Fact Nos. 15, 16, 18, 20-22, supra, and will not be repeated again. Suffice it to say that Lange's professed ignorance of Cooper's relationship with Steinberg prior to her walking into the NJEA office is immaterial. The fact is that Lange involved himself with Gattoni on behalf of Cooper, a teacher who he knew was in the AFT unit, and then proceeded to "negotiate" terms and conditions of employment on behalf of Cooper with Superintendent Gattoni. While, as noted previously, it was not Lange's obligation to notify Steinberg [it having been Gattoni's obligation under §5.3 of the Act], Lange voluntarily elected to involve himself in direct negotiations with Gattoni on Cooper's behalf.

Thus, the Hearing Examiner finds that the NJEA violated §5.4(b)(1) of the Act since the conduct of Lange falls within the scope of the prohibition found by the Commission in Cliffside Park Bd. of Ed., P.E.R.C. No. 87-61, 13 NJPER 2 (¶18001 1986). In that case the offending union claimed to represent an employee in another unit [supervisors] when it had no right to do so. Since Cliffside Park cannot be distinguished from the facts in the instant case, a violation of the Act is found as to the NJEA.

\* \* \* \*

Based upon the foregoing, and upon the entire record in this case, the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

1. The Respondent Board violated N.J.S.A. 34:13A-5.4(a)(1) and (5) by the conduct of its Superintendent, Leo C. Gattoni, Jr., when he undertook to "negotiate" with a non-majority representative (NJEA) on and after March 14, 1988, with respect to the terms and conditions of employment of Pearl W. Cooper, a classroom teacher represented by the AFT, the exclusive collective negotiations representative.
2. The Respondent Board independently violated N.J.S.A. 34:13A-5.4(a)(1) by the same conduct of its Superintendent described above.
3. The Respondent NJEA violated N.J.S.A. 34:13A-5.4(b)(1) by the conduct of its UniServ Field Representative, Gerald Lange, on and after March 14, 1988, when he "negotiated" with the Superintendent

of the Respondent Board with respect to terms and conditions of employment of Pearl W. Cooper, who was, at that time, in the collective negotiations unit exclusively represented by the AFT.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER:

A. That the Respondent Board cease and desist from

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly, by directing its Superintendent to refrain from entering into "negotiations" with a non-majority representative such as the NJEA in matters affecting the terms and conditions of employment of employees in the collective negotiations unit represented by the AFT.

2. Negotiating terms and conditions of employment with respect to employees within the collective negotiations unit exclusively represented by the AFT with any public employee representative other than the AFT, the AFT being the exclusive collective negotiations representative for classroom teachers, etc. as set forth in Exhibit J-1, supra.

B. That the Respondent NJEA cease and desist from:

1. Interfering with, restraining or coercing employees in the collective negotiations unit represented exclusively by the AFT, particularly, with respect to the terms and conditions of employment of classroom teachers such as Pearl W. Cooper, or any other employee like situated, within the AFT's collective negotiations unit as set forth in Exhibit J-1, supra.

C. That the Respondent Board and the Respondent NJEA post in all places where notices to employees are customarily posted, copies of the attached notices marked respectively as Appendix "A" and Appendix "B." Copies of such notices on forms to be provided by the Commission shall be posted immediately upon receipt thereof and, after being signed by the authorized representative of the respective Respondents, shall be maintained by them 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.

D. Each of the said Respondents shall notify the Chairman of the Commission within twenty (20) days of receipt what steps they have taken to comply herewith.



---

Alan R. Howe  
Hearing Examiner

Dated: May 5, 1989  
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 NOT interfere with, restrain or coerce our employees in the exercise of the rights guaranteed to them by the Act, particularly, by directing its Superintendent to refrain from entering into "negotiations" with a non-majority representative such as the NJEA in matters affecting the terms and conditions of employment of employees in the collective negotiations unit represented by the AFT.

WE WILL NOT negotiate terms and conditions of employment with respect to employees within the collective negotiations unit exclusively represented by the AFT with any public employee representative other than the AFT, the AFT being the exclusive collective negotiations representative for classroom teachers, etc. as set forth in Exhibit J-1, supra.

Docket No. CO-H-88-289

NORTH BERGEN 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 St., CN 429, Trenton, NJ 08625 (609) 984-7372.

Appendix B

# 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 NOT interfere with, restrain or coerce employees in the collective negotiations unit represented exclusively by the AFT, with respect to the terms and conditions of employment of classroom teachers such as Pearl W. Cooper, or any other employee like situated within the AFT's collective negotiations unit as set forth in Exhibit J-1, supra.

Docket No. CO-H-88-289

NEW JERSEY EDUCATION ASSOCIATION  
(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 St., CN 429, Trenton, NJ 08625 (609) 984-7372.