

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ESSEX COUNTY EDUCATIONAL SERVICES  
COMMISSION,

Respondent,

-and-

Docket No. CO-82-190-137

EDUCATIONAL SERVICES TEACHERS  
ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission reverses a summary judgment in favor of the Educational Services Teachers Association and remands for a hearing on a Complaint based on a charge the Association filed against the Essex County Educational Services Commission. The charge had alleged that the County violated the New Jersey Employer-Employee Relations Act when, upon resuming operations after a court had invalidated its decision to subcontract the work done by its employees, it refused to negotiate with the Association. Because the case involves important questions of first impression and because a pending Commissioner of Education proceeding may be relevant to the Commission's deliberations, the Commission remands for a hearing.

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COMMISSION,

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Docket No. CO-82-190-137

EDUCATIONAL SERVICES TEACHERS  
ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Petit-Clair & Graves, Esqs.  
(Edward F. Petit-Clair, of Counsel)

For the Charging Party, Greenberg, Kelley & Prior,  
Esqs. (James F. Schwerin, of Counsel)

DECISION AND ORDER

On February 1, 1982, the Educational Services Teachers Association ("Association") filed an unfair practice charge against the Essex County Educational Services Commission ("County") with the Public Employment Relations Commission. The charge alleged that the County violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), specifically subsections 5.4(a)(1) and (5),<sup>1/</sup> when, on October 26, 1981, it refused to negotiate a contract with the Association.

<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; 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."

On June 7, 1982, the Director of Unfair Practices issued a Complaint. The County filed an Answer in which it denied all material allegations and alleged that it had lawfully effected a total reduction in force on July 1, 1980 and that no negotiations unit existed at the time the County refused to negotiate. The County further contended that a pending Commissioner of Education proceeding involving the legality of the reduction in force and the rights of affected teachers was significant in determining whether the County had an obligation to negotiate with the Association.

On June 15, 1982, prior to the filing of the County's Answer, the Association filed a Motion for Summary Judgment with a supporting brief. On July 12, 1982, the County filed a response. The Chairman of the Commission referred the motion to Hearing Examiner Alan R. Howe.

On July 28, 1982, the Hearing Examiner issued his Decision and Order on the Charging Party's Motion for Summary Judgment, H.E. No. 83-2, 8 NJPER 498 (¶13231 1982). He found no genuine issues of material fact and granted the motion. He concluded that the County had violated the Act when it failed to negotiate with the Association and ordered it to negotiate in good faith. He further found that the County committed an unfair practice in unilaterally changing the terms and conditions of employment of its teachers and ordered the County to compensate them effective September 1981, at the annual salary in effect prior to the July 1, 1980 total reduction in force.

On August 20, 1982, the County filed Exceptions. The County contends that the Hearing Examiner erred in: 1) finding that the Association had made a demand to negotiate, 2) finding that a negotiations unit existed on October 22, 1981 when the Association allegedly demanded negotiations, 3) failing to consult the record of the Commissioner of Education proceeding, and 4) finding that the County violated the Act by changing its teachers' terms and conditions of employment when the charge itself contained no such allegations. The Association filed a brief in opposition to the County's Exceptions, and the County filed a reply.

The Essex County Educational Services Commission is an educational body organized pursuant to N.J.S.A. 18A:6-52. In the 1979-80 school year, it employed 103 teachers to provide remedial and auxiliary educational services pursuant to N.J.S.A. 18A:46A-1 et seq. and N.J.S.A. 18A:46-19.1 et seq. On December 13, 1979, the County voluntarily recognized the Association as the exclusive negotiating representative for the teachers. On April 21, 1980, the County notified 61 teachers in the unit that they would not be employed in the following year. On July 1, 1980, upon notice that it would not receive additional funding, the County eliminated all remaining positions in the unit. At no time had the parties entered into a collective negotiations agreement.

At some time during the Fall of 1980, the County contracted with Education and Training Consultants, Inc., (ETC) a private employer, to provide the services it originally provided through the teachers represented by the Association. In December

1980, the Association instituted an action in Superior Court, Chancery Division, alleging that the contract between ETC and the County was ultra vires.<sup>2/</sup> On October 15, 1981, the Appellate Division, reversing a partial summary judgment upholding the validity of the contract, held that the County had no authority to contract with a private agency such as ETC. The County then contracted with Remedial Education and Diagnostic Services, Inc. (READS) for the remainder of the 1981-82 school year.<sup>3/</sup> This contract was disavowed as well. In response to a second law suit filed in the Superior Court, Law Division, the County hired teachers to provide the special services needed by the various nonpublic school children. Th County paid these teachers at an hourly rate.

Pursuant to N.J.A.C. 19:14-4.8(d), summary judgment may be granted "[i]f it appears from the pleadings, together with the briefs, affidavits and other documents filed, that there exists no genuine issue of material fact and the movant or cross-movant is entitled to its requested relief as a matter of law...." A motion for summary judgment is to be granted with extreme caution,

<sup>2/</sup> The Association also filed another unfair practice charge against the County alleging that its refusal to negotiate over its decision to subcontract violated our Act. On June 3, 1982, the Director of Unfair Practices, noting that the decision to subcontract was non-negotiable and that related litigation was underway before the Commissioner of Education, declined to issue a Complaint. DUP No. 82-36, 8 NJPER 354 (¶13162 1982).

<sup>3/</sup> It is unclear whether the County contracted with READS prior or subsequent to October 22, 1981, the date the Association allegedly demanded negotiations. The County claims that at the time the demand was allegedly made, the negotiations unit did not exist and that no other teachers had been hired to replace them. It is also unclear exactly how many of the teachers employed before the total reduction in force were rehired.

the moving papers are to be considered in the light most favorable to the party opposing the motion, all doubts are to be resolved against the movant, and the summary judgment procedure is not to be used as a substitute for a plenary trial. Baer v. Sorbello, 177 N.J. Super. 182, 185 (App. Div. 1981); In re Bergen Community College, P.E.R.C. No. 83-47, \_\_\_, \_\_\_ NJPER \_\_\_ (¶ \_\_\_ 1982). In light of these principles, the Commission has been reluctant to grant summary judgments.

The instant case involves important questions of first impression for this Commission. For example, it is necessary to determine what is the obligation to negotiate of an employer whose work force has been abolished and then hired anew, when does any such obligation to negotiate arise, and what is the appropriate relief if the employer refused to negotiate in good faith.<sup>4/</sup> We should be especially reluctant to answer such questions of first impression in the absence of a complete factual setting.

We are also aware of the pendency of a Commissioner of Education proceeding involving the County and the reemployment claims of some of its former teachers, but are uncertain as to

<sup>4/</sup> The County has excepted to the Hearing Examiner's determination that it violated the Act by changing its employees' terms and conditions of employment and the Hearing Examiner's recommended order requiring the County to reinstate the annual salary rate in effect prior to the July 1, 1980 reduction in force. The County asserts that the charge contained no allegations challenging its decision to pay employees hired in or after October 1981 based on an hourly rate. On remand, the Hearing Examiner should consider whether this aspect of the case is properly before him and should state his reasons for deciding whether or not it is. If he concludes that aspect of the case is properly before him, he should receive evidence concerning the reasons the County hired employees at an hourly rather than a salaried rate.

how it relates to the issues before us. If the legality of the County's total reduction in force is in question or the County's obligation to rehire former teachers, the Commissioner of Education proceeding may well cast light on the issues before us. Thus, we are reluctant to decide summarily this case with virtually no knowledge of that proceeding. See Hackensack v. Winner, 82 N.J. 1 (1980).

In conclusion, we stress that we are not passing judgment on the conclusions reached by the Hearing Examiner concerning the issues before him. After the completion of a full hearing, any doubts as to the correctness of his determinations and the propriety of the recommended relief may well be resolved. However, since this case presents significant questions of first impression, and since we are not completely free of doubt, we decline to decide those questions without the benefit of a plenary hearing.

ORDER

The Hearing Examiner's grant of summary judgment is reversed and the case is remanded for a hearing and further proceedings consistent with this opinion.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Butch and Graves voted for this decision. Commissioners Hipp and Newbaker abstained. None opposed. Commissioners Hartnett and Suskin were not present at the time of the vote on this decision.

DATED: Trenton, New Jersey  
November 17, 1982  
ISSUED: November 18, 1982

STATE OF NEW JERSEY  
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ESSEX COUNTY EDUCATIONAL SERVICES  
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-and-

Docket No. CO-82-190-137

EDUCATIONAL SERVICES TEACHERS ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner grants the Charging Party's Motion for Summary Judgment on a charge of unfair practices, which alleged that the Respondent violated Subsections (a)(1) and (5) of the New Jersey Employer-Employee Relations Act when after a hiatus of a year plus several months it refused to negotiate upon demand for a collective negotiations agreement following a voluntary recognition of the Charging Party by the Respondent in December 1979. The Respondent, after recognizing the Charging Party, negotiated with the Charging Party until shortly before July 1, 1980 when the Respondent terminated all of its employees and subcontracted its operation to a private employer. After the Appellate Division held that the Respondent's action in subcontracting was ultra vires, the Respondent resumed its operation for the 1981-82 school year without negotiating with the Charging Party. Further, the Respondent, instead of compensating its employees on the basis of an annual salary, paid said employees on an hourly basis.

By way of remedy, the Hearing Examiner recommends that the Commission order the Respondent to negotiate with the Charging Party in good faith and to make its employees whole for lost earnings based on the difference between the total monies paid and annual salary paid prior to July 1, 1980. The make whole order dated back to September 1, 1981 and included interest at the rate of 12% per annum since that date.

A Hearing Examiner's Decision and Order on a Motion for Summary Judgment 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.



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Appearances:

For the Respondent

Petit-Clair & Graves, Esqs.  
(Edward F. Petit-Clair, Esq.)

For the Charging Party

Greenberg, Kelley & Prior, Esqs.  
(James F. Schwerin, Esq.)

DECISION AND ORDER ON CHARGING PARTY'S  
MOTION FOR SUMMARY JUDGMENT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on February 1, 1982 by the Educational Services Teachers Association (hereinafter the "Charging Party" or the "Association") alleging that the Essex County Educational Services Commission (hereinafter the "Respondent") has engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (hereinafter the "Act"). The Respondent is authorized to employ principals, teachers and other employees under Title 18A for employment in public schools and did employ such personnel for the 1979-80 school year; the President of the Charging Party did during the Fall of 1979 request recognition by the Respondent of the Charging Party as the exclusive negotiating representative for the teaching personnel employed by the Respondent; under date of December 19, 1979, the Executive Director of the Respondent advised the President of the Charging Party that the Respondent had on

December 13, 1979 formally recognized the Charging Party as the exclusive representative for teachers employed by the Respondent; by resolution of July 1, 1980 the Respondent terminated the employment of all teachers represented by the Charging Party; the Respondent immediately thereafter subcontracted said teaching services to a private contractor for the 1980-81 school year; as a result of legal proceedings instituted by the Charging Party the Appellate Division on October 15, 1981 held that the Respondent had no legal authority to subcontract teaching services; after another effort to subcontract, the Respondent commenced employing teachers for the 1981-82 school year; on October 22, 1981 counsel for the Charging Party demanded negotiations for a collective negotiations agreement, which had not previously been consummated; on October 26, 1981 counsel for the Respondent declined to enter into collective negotiations on the ground that an Unfair Practice Charge was pending under Docket No. CO-81-69 and that, thus, a demand for negotiations was premature; all of which is alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1) and (5) of the Act.<sup>1/</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 June 7, 1982. Thereafter, on June 15, 1982, prior to the filing by the Respondent of its Answer, the Charging Party filed a Motion for Summary Judgment with a supporting brief. On June 25, 1982 the Respondent filed its Answer, which raises no genuine issues of material fact. The Respondent filed

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<sup>1/</sup> These Subsections prohibit public employers, their representative or agents from:

"(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act.

"(5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

its response to the Motion for Summary Judgment on July 12, 1982.<sup>2/</sup>

Pursuant to N.J.A.C. 19:14-4.8(a), the Chairman of the Commission referred the Charging Party's Motion for Summary Judgment to the instant Hearing Examiner under date of July 21, 1982.

Upon the record papers filed by the parties in the instant proceeding to date, the Hearing Examiner makes the following:

UNDISPUTED FINDINGS OF FACT

1. The Essex County Educational Services Commission is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. The Educational Services Teachers Association is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

3. The Respondent is an educational body organized pursuant to N.J.S.A. 18A:6-52 and for 1979-80 school year it employed 103 teachers for the delivery of direct services to non-public school children pursuant to the N.J.S.A. 18A:46A-1 et seq. and N.J.S.A. 18A:46-19.1 et seq.

4. In the Fall of 1979 the President (pro-tem) of the Charging Party requested in writing that the Respondent recognize the Charging Party as the exclusive negotiating representative for its teachers, supra.

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<sup>2/</sup> The Respondent contends that the Commission should refrain from proceeding in the instant matter for the reason that there is pending in the Office of Administrative Law (OAL) a Commissioner of Education proceeding, which involves an adjudication of the rights of the individual teachers, who were terminated by the Respondent as of July 1, 1980, supra. The Respondent states that the OAL adjudication of the issues "...will be of central importance in determining whether the...(Respondent's) ...decision not to begin negotiations was taken in good faith and valid, or was an unfair practice as has been charged." Additionally, Respondent takes the position that the negotiating unit, represented by the Charging Party, "...ceased to exist..." and that the Charging Party made no effort to negotiate with the subcontractor thereafter. The Respondent erroneously contends further that the question of the non-existence of the negotiating unit is before the OAL. As will be apparent hereinafter, the instant Hearing Examiner declines to defer adjudication of the Motion for Summary Judgment pending the OAL proceeding.

5. On December 13, 1979 the Respondent formally recognized the Charging Party as the exclusive representative for the said teachers and this action was communicated to the President of the Charging Party by the Respondent's Executive Director under date of December 19, 1979.

6. Prior to the consummation of a collective negotiations agreement the Respondent on April 25, 1980 notified sixty-one (61) of the unit teachers that they would not be offered employment for the 1980-81 school year. Thereafter, after being informed that it could not lawfully borrow funds, the Respondent by resolution of July 1, 1980 effected a total reduction in force as to the remaining teachers represented by the Charging Party.

7. The teaching services, which were to have been provided by the Respondent, were thereafter subcontracted to a private employer, Education & Training Consultants, Inc., which provided the said services for the 1980-81 school year.

8. In December 1980 the Charging Party instituted legal proceedings in the Superior Court, Chancery Division, Essex County, alleging that the subcontracting by the Respondent was ultra vires.

9. On October 15, 1981 the Appellate Division, reversing the Superior Court, held that the Respondent's subcontracting of services was ultra vires.

10. On October 22, 1981 counsel for the Charging Party requested in writing of counsel for the Respondent that it "continue collective negotiations unlawfully terminated by your client when it acted ultra vires..." in subcontracting its services.

11. At the time of the foregoing request for negotiations, the Respondent had resumed providing teaching services for the 1981-82 school year in response to a second law suit instituted in the Superior Court, Law Division, Essex County. Respondent has employed teachers for 1981-82 on an hourly basis rather than on an annual salary as had been the case prior to July 1, 1980.

12. Counsel for the Respondent on October 26, 1981 declined the demand for negotiations as being premature in view of the pendency of an earlier Unfair Practice Charge filed by the Charging Party on September 18, 1980 and docketed as No. CO-81-69.

DISCUSSION

Based on the foregoing undisputed findings of fact, it is clear that the instant proceedings are ripe for disposition on the Charging Party's Motion for Summary Judgment: See analysis and discussion by the New Jersey Supreme Court in Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 73-75 (1954) and the New Jersey Civil Practice Rules 4:46-2. Under these authorities a motion for summary judgment may properly be granted when the record papers disclose that "...there is no genuine issue as to any material fact... and that the moving party is entitled to a judgment or order as a matter of law..." The Hearing Examiner is satisfied that the requisites for the grant of the Charging Party's Motion for Summary judgment are met.

Further, the pendency of the Commissioner of Education proceeding in OAL, supra, raises no obstacle or impediment to the disposition by the Hearing Examiner of the Charging Party's Motion for Summary Judgment. First, the facts herein are undisputed and, thus, there can be no duplication or conflict between the facts in this proceeding and the facts developed in a hearing before an Administrative Law Judge of the OAL, such as would be precluded by the New Jersey Supreme Court's decision in Hackensack v. Winner, 82 N.J. 1 (1980). Additionally, the issues to be adjudicated in the instant proceeding vis-a-vis the issues in the OAL proceeding are completely separate and distinct from one another. Thus, there will be no conflict or overlap in the two separate adjudications. As noted previously, the question in the Commissioner of Education proceeding is whether or not individual teachers, who were terminated as of July 1, 1980, have any rights to reemployment with monetary compensation while the question in the instant proceeding is whether or not the Respondent is under a legal obligation, at the present time, to negotiate collectively

with the Charging Party under our Act, namely, Subsections(a)(1) and (5).

\* \* \* \*

Based on all the foregoing, and the legal arguments made by counsel for the parties, the Hearing Examiner hereby grants the Charging Party's Motion for Summary Judgment for the following reasons:

The Charging Party Has Not Lost Its  
Majority Status As Collective Negotiations  
Representative By The Actions Taken By  
The Respondent Since July 1, 1980

The obligation to negotiate can be created either by certification after an election or by voluntary recognition. In the instant case, the obligation was created by an act of voluntary recognition. However, once the recognition is accorded, the Respondent is not free to withdraw recognition or cease negotiations at will: Atlantic County Sewerage Authority, P.E.R.C. No. 81-91, 7 NJPER 99 (1981).

Further, it is clear by reference to the private sector that where voluntary recognition has been granted by the employer a presumption exists that majority status continues unless and until the employer meets the burden of establishing a reasonable good faith doubt as to majority status. See NLRB v. Carilli, 648 F.2d 1206, 1214 (9th Cir. 1981) and Zim's Foodliner, Inc. v. NLRB, 495 F.2d 1131 (7th Cir. 1974). Any evidence submitted by the employer to establish a reasonable good faith doubt must be "...clear, cogent and convincing..." NLRB v. Tragniew, Inc., 470 F.2d 669, 674-75 (9th Cir. 1972).

It is plain as a pikestaff that the Respondent herein has not demonstrated in any manner whatsoever that it could have a reasonable good faith doubt as to the continuing majority status of the Charging Party. The Respondent relies solely on the fact of an earlier Unfair Practice Charge having been filed by the Charging Party with the Commission in 1980.

It appears to the Hearing Examiner that the status of the Charging Party herein as a viable majority representative is governed by the decision of the

New Jersey Supreme Court in Galloway Township Board of Education v. Galloway Township Association of Educational Secretaries, 78 N.J. 1 (1978). There the unit consisted of seven secretaries, who had been represented by the Association in negotiations for an initial collective agreement. The Supreme Court found that the fact that six of the secretaries had been separated from employment did not amount to the dissolution of the Association. As the Court said:

"...the job titles which were included in the negotiating unit represented by the Association continue to exist, although different employees hold the jobs at present. No representation proceeding aimed at the replacement or ouster of the Association as the majority representative... has been initiated by the present unit employees, although the Association's certification has long since expired.." (78 N.J. at 17).

The Supreme Court in Galloway reinstated a Commission order that the Board negotiate on demand with the Association as to terms and conditions of employment. In so doing the Court said, inter alia, that:

"...The union's loss of majority status need not be attributable to the particular unfair labor practices committed by the employer. The rationale for the federal rule is the belief that a union which has been freely chosen by the unit employees as their bargaining representative must be permitted to enjoy that right..." (78 N.J. at 18, 19).

The gap in the operations of the Respondent during the 1980-81 school year, when it subcontracted its teaching services, is irrelevant to the continuing majority status of the Charging Party. See Textile Workers Union of America v. Darlington Mfg. Co., 380 U.S. 263, 273 (1965) and NLRB v. Southern Plasma Corp., 626 F.2d 1287 (5th Cir. 1980).

As pointed out by the Charging Party, the hiatus between the collective negotiations at the end of the 1979-80 school year, and the Charging Party's demand to resume those negotiations in October 1981, is irrelevant to the ongoing majority status of the Charging Party. In Pioneer Inn Associates v. NLRB, 578 F.2d 835 (9th Cir. 1978) the union had been inactive for several years and was "...neither administering terms of the contract nor attempting to negotiate a new agreement..." Although recognizing that an extended period of inactivity could be taken into consideration, it was not enough, in and of itself, to establish the lack of majority

status.

Thus, the Hearing Examiner concludes that the Respondent's obligation to negotiate is a continuing one, based on the fact that it has resumed the same operation as it had been engaged in prior to the subcontracting in 1980.

Respondent Is Obligated To Maintain  
The Status Quo As Of July 1, 1980  
Regarding Terms And Conditions Of  
Employment Of Teachers Currently Employed

In concluding that the Respondent is committing an unfair practice if it has unilaterally changed the terms and conditions of employment of teachers represented by the Charging Party, during the course of collective negotiations, the Hearing Examiner relies upon Galloway Township Board of Education v. Galloway Township Education Association, 78 N.J. 25 (1978). That case involved the unilateral action of the Board in refraining from paying increments to teachers, who were normally entitled to them, at the commencement of the new school year. The parties were in collective negotiations for a successor agreement when this action of the Board occurred. The Court, in concluding that the Board's action constituted an unfair practice, said:

"...The basis of the rule prohibiting unilateral changes by an employer during negotiations is the recognition of the importance of maintaining the then-prevailing terms and conditions of employment during this delicate period until new terms and conditions are arrived at by agreement. Unilateral changes disruptive of this status quo are unlawful because they frustrate the 'statutory objective of establishing working conditions through bargaining.' NLRB v. Katz, supra 369 U.S. at 744..." (78 N.J. at 48).

Under the holding of the Supreme Court in Galloway, supra, the Respondent must compensate the teachers presently employed at the annual salary paid to teachers prior to July 1, 1980. This constitutes the status quo ante, which must continue until different terms and conditions are negotiated between the Charging Party and the Respondent and embodied into a collective negotiations agreement.

The authority of the Commission to order such a remedy is clear from the Galloway cases, supra. As the Supreme Court said in Hackensack v. Winner, supra,



the Commission's:

"...jurisdiction over unfair practices in sufficiently broad to accomodate claims of wrongful treatment relating to the organizational rights of employees as well as to their working conditions..." (82 N.J. at 20).

Accordingly, the Hearing Examiner concludes that the Respondent must restore the status quo ante as of July 1, 1980 by compensating teachers presently employed at the annual salaries in effect on July 1, 1980, and not to compensate them on an hourly basis as is presently the case.

\* \* \* \*

Upon the foregoing, the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

1. The Charging Party's Motion for Summary Judgment is granted.
2. The Respondent, by its conduct herein, has violated N.J.S.A. 34:13A-5.4(a)(1) and (5).

RECOMMENDED ORDER

The Hearing Examiner hereby recommends that the Commission ORDER;

A. That the Respondent 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 refusing to negotiate with the Educational Services Teachers Association for a collective negotiations agreement covering teachers presently employed by the Respondent.
2. Refusing to negotiate in good faith with the Educational Services Teachers Association for teachers in the collective negotiations unit previously recognized by the Respondent, particularly, by refusing to negotiate with the Educational Services Teachers Association for a collective negotiations agreement covering teachers presently employed by the Respondent.

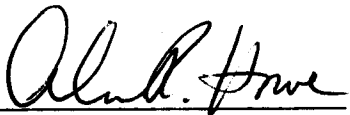
B. That the Respondent take the following affirmative action:

1. Forthwith restore the status quo ante by compensating teachers in the collective negotiations unit represented by the Educational Services

Teachers Association at the annual salary in effect prior to July 1, 1980, and to make said teachers presently employed whole for lost earnings from September 1, 1981, the measure of said lost earnings being the difference between the annual salary in effect prior to July 1, 1980 and the total monies paid to said teachers since September 1, 1981, together with interest at the rate of 12% per annum from September 1, 1981.

2. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of said notice, on forms to be provided by the Commission, shall be posted immediately upon receipt thereof and, after being signed by the Respondent's authorized representative, shall be maintained by it for at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondent to insure that such notices are not altered, defaced or covered by other materials.

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

  
Alan R. Howe  
Hearing Examiner

Dated: July 28, 1982  
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 refusing to negotiate with the Educational Services Teachers Association for a collective negotiations agreement covering teachers presently employed by the Respondent.

WE WILL NOT refuse to negotiate in good faith with the Educational Services Teachers Association for teachers in the collective negotiations unit previously recognized by the Respondent, particularly, by refusing to negotiate with the Educational Services Teachers Association for a collective negotiations agreement covering teachers presently employed by the Respondent.

WE WILL forthwith restore the status quo ante by compensating teachers in the collective negotiations unit represented by the Educational Services Teachers Association at the annual salary in effect prior to July 1, 1980, and to make said teachers presently employed whole for lost earnings from September 1, 1981, the measure of said lost earnings being the difference between the annual salary in effect prior to July 1, 1980 and the total monies paid to said teachers since September 1, 1981, together with interest at the rate of 12% per annum from from September 1, 1981.

ESSEX COUNTY EDUCATIONAL SERVICES COMMISSION

(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  
Chairman, Public Employment Relations Commission,  
P.O. Box 2209, Trenton, New Jersey 08625 Telephone (609) 292-6780