

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

JAMESBURG BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-79-133-88

JAMESBURG EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

In an unfair practice proceeding, the Commission affirms and adopts the recommended report and decision of its Hearing Examiner. The Commission finds that a unilateral change by a public employer in compensation for teachers performing student supervisory duty is a violation of N.J.S.A. 34:13A-5.4(a)(5). The Commission dismisses a charge that the respondent also violated N.J.S.A. 34:13A-5.4(a)(7), finding that charge to be unsupported by stipulations or arguments.

By way of remedy, the Commission orders that the respondent cease and desist from refusing to negotiate with the petitioner concerning a rate of pay for student supervisory duty, reimburse all teachers who performed such duty without benefit of the original pay rate, and pay all teachers who perform such duty until such time as a change in the rate, if any, is negotiated.

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Appearances:

For the Respondent, Rubin, Lerner & Rubin, Esqs.
(David B. Rubin, of Counsel)

For the Charging Party, Klausner & Hunter, Esqs.
(Stephen E. Klausner, of Counsel)

DECISION AND ORDER

An Unfair Practice Charge was filed with the Public Employment Relations Commission on December 1, 1978 by the Jamesburg Education Association (the "Association") alleging that the Jamesburg Board of Education (the "Board") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act (the "Act") in that the Respondent ordered individual teachers to supervise two school playgrounds prior to the start of school on a rotating basis without compensation, contrary to a previous Board policy to compensate teachers for supervisory duty. This is alleged to be a violation of N.J.S.A. 34:13A-5.4 (a) (5) and (7) of the Act.^{1/}

1/ These subsections of N.J.S.A. 34:13A-5.4(a) prohibit public employers, their representatives or agents from: "(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. (7) Violating any of the rules and regulations established by the commission."

It appearing that the allegations of the Unfair Practice Charge, if true, might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on May 3, 1979. Pursuant to the Complaint and Notice of Hearing, the parties met on March 26, 1980 in Newark, New Jersey, at which time a stipulation of facts was developed. The parties, however, requested that the Hearing Examiner prepare a Recommended Report and Decision on this matter and not refer it directly to the Commission. Both parties filed briefs in this matter; the last brief was filed on August 27, 1980.

On September 12, 1980, the Hearing Examiner rendered his decision, H.E. No. 81-8, 6 NJPER 485 (¶11247 1980), a copy of which is attached hereto and made a part hereof. The Hearing Examiner recommended the dismissal of the charge as it related to subsection 5.4(a)(7) of the Act, but found that the Board had violated subsection 5.4(a)(5). The Hearing Examiner recommended that the Commission order:

1. that the Board reimburse all teachers for all playground supervision duty performed without additional compensation from the 1978-79 school year to present at \$8.00 per hour, the rate the Board had previously used,

2. that the Board negotiate with the Association prospectively concerning a rate of pay for playground supervisory duty,

3. that the Board post a notice in a conspicuous place relating the above remedies.

The Board filed exceptions to the Hearing Examiner's decision on September 22, 1980. A response to these exceptions was filed by the Association on October 2, 1980. Pursuant to N.J.A.C. 19:14-8.1, the entire record in this matter is appropriately before the Commission for review. We now adopt the decision of the Hearing Examiner for substantially the reasons stated in his Recommended Report and Decision.

At the outset, we note that the right of a board of education to assign teachers to supervisory duties is not in question here. It is well established that "the safety and well-being of the student body and the correlative maintenance of order and efficiency are matters of major educational policy which are management's exclusive prerogative." In re Byram Township Board of Education, 152 N.J. Super. 12, 24 (App. Div. 1977). However, the reassignment of teachers from unassigned duty to student supervisory duty is a change in teacher workload and therefore a negotiable term and condition of employment. Newark Board of Education and Newark Teachers Union Docket No. A-2060-78, App. Div. February 26, 1980.

The issue in question here presents a good example of how to harmonize these two potentially conflicting holdings. The compensation for such supervisory duties can be negotiated and arbitrated without significant interference with the educational policy. Once established, such compensation cannot be unilaterally altered by a board of education. In the instant case, it is undisputed that in September 1978, the Board, through its superintendent, established a pay rate for teachers of \$4.00 for each

half-hour of morning playground supervision, and that in October 1978, the Board changed its policy on supervisory duty and assigned the duty to individual teachers on a rotating basis without additional compensation. This change took place without negotiations between the Board and the Association, and has remained in effect from October 1978 until the present.

Compensation is clearly a term and condition of employment. Burlington County College Faculty Association v. Board of Trustees, Burlington County College, 64 N.J. 10, 14; Board of Education of City of Englewood v. Englewood Teachers Association, 64 N.J. 1, 8 (1973). When the Board decided to discontinue compensation for supervisory duty, it unilaterally altered terms and conditions of employment in violation of §5.4(a)(5) of the Act.

This unilateral change cannot be justified as being necessary for the Board to effect a policy goal. At all times herein under consideration, both school playgrounds were and are supervised by teachers; the Board's goal of assuring the safety and well-being of its students persists irrespective of compensation rates for supervisory duty.

We also affirm the Hearing Examiner's reimbursement order. The damages in this case are not speculative. See, e.g. Galloway Township Board of Education and Galloway Township Education Association, 517 N.J. Super. 74 (1978). Each teacher who performed supervisory duty after the Board changed its policy suffered a measurable monetary loss, and the Hearing Examiner's reimbursement order appropriately serves to make them whole.

As to the alleged violation of §5.4(a)(7), we concur with the Hearing Examiner that the charge was unsupported by stipulations or arguments and must be dismissed.

ORDER

Based upon the entire record and for the foregoing reasons, IT IS HEREBY ORDERED that the Board:

A. Cease and desist from refusing to negotiate with the Association concerning a rate of pay for playground supervisory duty.

B. Take the following affirmative action:

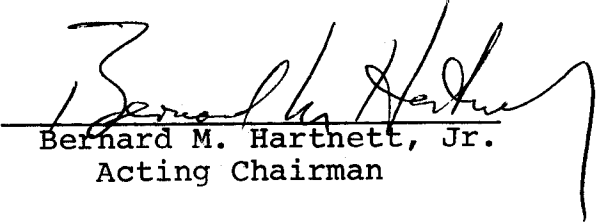
1. Reimburse all teachers who performed morning playground supervisory duty without additional compensation from the 1978-79 school year to the present at a rate of \$8.00 per hour.

2. Compensate all teachers who perform morning playground supervisory duty from the present until such time as a proposed change in the rate, if any, is negotiated.

3. Post, for a period of sixty (60) days, the Commission Notice attached hereto (Appendix A) in an area where notices to employees are normally posted, and take steps necessary to assure that the Notice is neither covered, obliterated, mutilated or expropriated.

4. Inform the Commission of the steps taken to comply with this order within twenty days of the receipt thereof.

BY ORDER OF THE COMMISSION



Bernard M. Hartnett, Jr.
Acting Chairman

Acting Chairman Hartnett, Commissioners Graves and Parcels voted in favor of this decision. None opposed. Commissioners Hipp and Newbaker abstained.

DATED: Trenton, New Jersey
December 10, 1980
ISSUED: December 11, 1980

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 refuse to negotiate with the Jamesburg Education Association concerning the rate of compensation for playground supervisory duty.

WE WILL reimburse all teachers who performed morning playground supervisory duty without additional compensation from the 1978-79 school year to the present at a prorated \$8.00 per hour.

WE WILL compensate all teachers who perform morning playground supervisory duty from the present until such time as a proposal for a new rate, if any, is negotiated.

JAMESBURG 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,
429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.

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SYNOPSIS

In a Hearing Examiner's Recommended Report and Decision, a Hearing Examiner found that the Jamesburg Board of Education committed an unfair practice. The teachers in the district had a morning preparation period from 8:15 to 8:45. The superintendent of schools had secured volunteer teachers for playground supervisory work who were paid \$4 a session during this preparation period. The school board subsequent thereto directed that the administration order all teachers to perform this duty on a rotating basis without compensation. The Hearing Examiner found that the school board's action constituted a unilateral change in terms and conditions of employment.

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.

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(David B. Rubin, Esq.)

For the Charging Party, Klausner & Hunter, Esqs.
(Stephen E. Klausner, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (Commission) on December 1, 1978, by the Jamesburg Education Association (Association) alleging that the Jamesburg Board of Education (the Board or Respondent) had engaged in unfair practices withing the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the Act), in that the Respondent ordered individual teachers to supervise the school playground prior to the start of school on a rotating basis without ever negotiating same with the Association. This is alleged to be a violation of N.J.S.A. 34:13A-5.4

(a) (5) and (7) of the Act. ^{1/} 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 May 3, 1979. Pursuant to the Complaint and Notice of Hearing the parties met on March 26, 1980, in Newark, New Jersey, at which time a stipulations of fact was entered into. The parties however requested that the Hearing Examiner prepare a Recommended Report and Decision on this matter and not refer it directly to the Commission. Both parties filed briefs in this matter and the Association filed its brief on August 27, 1980.

The Stipulated Facts

The Association is the exclusive majority representative of all teachers employed by the Jamesburg Board of Education.

The need for playground supervision arose when, in September 1978, the Jamesburg Board of Education adopted a free breakfast program for the students. Sometime in September of 1978 there was a posting at the Breckwell and Kennedy Schools requesting volunteers to supervise the school playgrounds from 8:15 to 8:45 at a compensation of \$4 a session. The Association approached the then superintendent of schools and advised him that although they were disturbed that they were not contacted concerning this action and posting of the notice, the Association felt that the rate of

^{1/} This subsection prohibits public employers, their representatives or agents from: "(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; (7) violating any of the rules and regulations established by the Commission."

pay was fair and reasonable for the work involved and they accepted the action and advised the superintendent that two teachers had indicated that they would be volunteering.

All teachers are expected to be in school at the time period in question; that is, 8:15 to 8:45, but this was considered to be a preparation period.

At the Board's October meeting the question was raised as to what the children do between the completion of breakfast and the start of the school day. The superintendent indicated that he had taken care of the situation by obtaining two volunteers at the \$4 per hour rate to supervise students after they finished breakfast and before regular school began. The Board then directed that the administration impose a schedule upon the teachers and cease paying them \$4 per session. On October 5th there was a notice posted at the two schools stating that all teachers would begin performing playground supervision commencing October 10 for the period 8:15 through 8:45. Contemporaneously with the notice a schedule was posted with rotating assignments for individual teachers to perform these duties. This program of playground supervision continued through to the end of the 1978-79 school year and at the beginning of the 1979 school year the program was modified to run from 8:15 to 8:30 or 15 minutes a day and ran throughout the 1979-1980 school year. No negotiations ever took place concerning the implementation of the October 5th playground supervision schedule.

Analysis

In Newark Board of Education and Newark Teachers Union, Docket No. A-2060-78, App. Div. February 26, 1980, the Appellate Division, in affirming a Commission decision, held that although teachers were expected to pursue education-related activity during preparation or unassigned periods, the re-assignment of teachers from unassigned duty to student supervisory duty is a change in teacher workload and therefore a term and condition of employment.

In Board of Education of Woodstown-Pilesgrove Regional School District and Woodstown-Pilesgrove Education Association, 81 N.J. 582 (1980, the court stated:

"The nature of the terms and conditions of employment must be considered in relation to the extent of their interference with managerial prerogatives. A weighing of balancing must be made. When the dominant issue is an educational goal, there is no obligation to negotiate...On the other hand, a viable bargaining process in the public sector has also been recognized... when this policy is preeminent, then bargaining is appropriate. Where the condition of employment is significantly tied to the relationship of the annual rate of pay to the number of days worked, then negotiations would be proper even though costs may have a significant affect on a managerial decision..." at p. 591.

In the instant matter the Association had already agreed to do the work in question for a fixed sum but the Board altered this policy without any negotiations. It is quite clear that the Board's alteration of this policy was done for purely financial reasons. Their agent, the superintendent, had established a rate of pay for the duties in question which was agreed to by the Asso-

ciation and the Board cannot alter the fixed rate of compensation without negotiating same. Accordingly I will recommend that the Commission find that the Board violated §5.4(a)(5) of the Act.

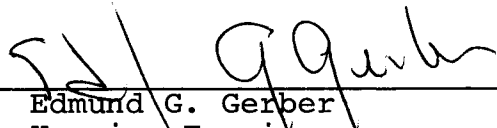
There is nothing in either the stipulations or the regular arguments presented which would indicate that a rule or regulation established by the Commission has been violated. Accordingly, I will recommend that the section of the Complaint alleging a violation of §5.4(a)(7) be dismissed.

The parties themselves have already established the measure of damages in the instant matter. The Superintendent set the rate of \$4 per half-hour session of playground supervision and the Association agreed this was a fair rate of compensation. Therefore since, in this case, damages are not speculative, I will hereby recommend that the Commission order that all teachers who were assigned playground supervision duty in the 1978-79 school year be reimbursed \$4 for every session of supervision which they attended. Further, for the 1979-80 school year since the supervision of the periods were only 15 minutes apiece I will recommend that the Commission order that the Board reimburse each teacher who performed supervisory duty \$2 for each period a teacher in fact attended. It is further recommended that for the 1980-81 school year any teachers who have been so ordered to participate in such supervisory duty be reimbursed at a pro-rated \$8 per hour. It is further ordered that the Board negotiate with the Association prospectively concerning a rate of pay for playground supervision duty. It is

further ordered that the Board post the following Notice in a conspicuous place for a period of not less than 30 days:

WE WILL NOT refuse to negotiate with the Jamesburg Education Association concerning the rate of compensation for playground supervisory duty.

WE WILL reimburse all teachers who performed playground supervisory duty following the breakfast program for time worked at a pro-rated \$8 per hour.


Edmund G. Gerber
Hearing Examiner

Dated: September 12, 1980
Trenton, New Jersey