

L.D. NO. 95-4

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

VINELAND BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-94-371

VINELAND ADMINISTRATORS AND  
SUPERVISORS ASSOCIATION,

Charging Party.

Appearances:

For the Respondent  
Frank DiDomenico, attorney

For the Charging Party  
Wayne J. Oppito, attorney

DECISION

Vineland Board of Education and the Vineland Administrators and Supervisors Association jointly agreed on October 13 and 26, 1994, respectively, to have the unfair practice charge, Docket CO-94-371, filed by VASA, submitted to the Commission's Litigation Alternative Program ("LAP"). The parties agreed to accept this LAP decision as a final and binding resolution of Docket CO-94-371.

On December 6, 1994, I held an informal hearing. The parties argued their respective positions, presented witnesses and submitted documents. Briefs were filed by VASA on December 15, 1994 and by the Board on December 19, 1994. Based upon all of the above, I find the following:

FACTS

The parties' current negotiations agreement covers a period from July 1, 1992 to June 30, 1995 (J1). VASA represents a negotiations unit comprised principals, assistant principals and supervisors, all of whom work a twelve month work year. The parties' agreement specifies the number of vacation days, sick and leave days. Attendance during inclement weather or a similiar emergency is not addressed in either the parties' agreement or in written Board policies. However, there was in existance a long standing past practice wherein if schools were closed for a scheduled holiday or vacation or for inclement weather, all building-based VASA bargaining unit members - principals, assistant principals and 10 month supervisors - were not required to report to work.

Prior to the 1993-94 school year, all but one of the supervisors were 10 month employees, assigned full-time to a building or part-time to the central administratrion office. The one exception was Bernice Seibert, a 12 month supervisor assigned full-time to the Board's central administration office. During negotiations for the current agreement, VASA proposed to make all supervisors 12 month employees. The Board intially rejected the proposal, but in the fall of 1992, it entered into a mid-contract agreement with VASA to move the 10 month supervisors onto the previously negotiated 12 month guide, effective for the school year 1993-94. The parties did not negotiate any other terms of employment.

Starting with the 1993-94 school year, the Board made certain changes to the supervisors' work schedule. All supervisors were told that they would be required to spend two days a week at the Board's central administrative office. For the 1994-95 school year, supervisors will spend three days in the central administrative office. In addition, the Board adopted a 1993-94 school calendar that for the first time included a week-long Easter vacation. Although the schools would be closed, the central administration office was scheduled to be open on the Monday and Tuesday of the vacation week. A question arose late in October 1994 whether the newly created 12 month supervisors were to adhere to the past practice of taking the school vacation or report to work the first two days of the Easter vacation.

The Board contended that had a policy for the last 20 years that the central administration office personnel did not share the same work schedule as personnel assigned to the schools: Even though the District's schools may be closed in accordance with the school calendar or because of inclement weather or other emergency situation, the central administration office is open, unless specifically announced, and 12 month personnel are expected to report to work. Therefore, on January 3, 1994, Thomas Thayer, Assistant Superintendent and Board Secretary, sent a memo to the central administrative office staff stating:

This is to confirm that the Administration Offices will be open on Monday and Tuesday during the week before Easter. Additionally, unless announced otherwise, the offices, as always, will

be open when schools are closed due to inclement weather. (J2a)

On January 4, 1994, VASA president, Dr. Bertha Henson, responded to Thayer:

Supervisors of Instruction housed at the Board of Education Offices...understand that the memorandum...does not apply to them. They intend to follow past practice in adhering to the Board of Education approved school calendar for 1993-94 term. (J2b)

Thereafter, inclement weather in January 1994 forced the Board to close its schools for several days. On three of those declared snow days, January 18, 19, 20, the central administration office was open.<sup>1/</sup> On January 18 and 19, no supervisors reported to work (R1a-R1d). On January 20, only four supervisors came in to the office (R1e and R1f).

On February 1, Thayer responded to Henson's memo reiterating the Board's position that "supervisory staff housed in this building is expected to report to work on days when this building is open." (J2c). On March 9, 1994, VASA filed a grievance with the superintendent, Dr. Charles Valentine, seeking to recind Thayer's February 1 memo (J3a). Dr. Valentine denied the requested relief.

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<sup>1/</sup> On the other snow days, the superintendant, Dr. Charles Valentine, initiated the telephone chain to notify school personnel of the closure and had the local radio station make a specific announcement that the central administration office was also closed.

Another storm on March 28, 1994 forced the superintendent to closed all the district's schools. The central administration office was kept open. Only two supervisors reported to work on that day (R1g and R1h). On April 4 and 5, when the central administration office was open during the district's Easter vacation, no supervisors reported to work.

The parties agree that, in the past, 10 month supervisors, whether assigned to a school or to the central administrative office, followed the school calendar as did principals and assistant principals - that is, when the schools were closed for holidays or inclement weather, these VASA unit members did not report to work. However, a factual dispute exists whether or not this practice also includes the position of 12 month supervisor.

For the past 15 years, Seibert had been the only 12 month supervisor.<sup>2/</sup> She testified that the first time she had ever heard of the Board's policy for 12 month VASA unit members assigned to the central office was when she read Thayer's January 3 memo (J2a). Seibert stated that she and 10 month supervisors, the other VASA unit members working at the central administration office, had always followed the school calendar.

Seibert also testified that she was not aware that she was required to come to work when the schools were closed for inclement weather but the office was open. She had never been charged

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<sup>2/</sup> Seibert has been a supervisor with the Board for 28 years; the first 13 years were spent as a 10 month employee.

vacation or sick days when inclement weather prevented her from reporting to work. She had few instances of absences due to weather because she "rarely missed" work during inclement weather. Seibert pointed out that her secretary is a 12 month employee who is required to come in whenever the central office is open. Therefore, Seibert voluntarily come in to the office when the district's schools were closed or called in so that she could give directions to her secretary.

William Maenner, who has been the VASA negotiations chairman for the past 12 years, testified that the issue of an inclement weather policy had never been raised during negotiations.

Valentine corroborated Maenner's testimony. He testified that when the parties agreed to make 10 month supervisors 12 month employees, the only issue discussed was when the supervisors should be place on the 12 month salary guide. Dr. Valentine indicated that he had personally "pitched" the upgrade of the 10 month supervisory position to the Board. He argued to the Board that making the supervisors 12 month employees would enhance the "back-up" they could provide to principals. But the parties never explored this issue when the parties agreed to increase the supervisors' work year.

Valentine also agreed that Board's policy on central administrative office personnel was never put in writing. The first time he heard of the policy was in 1977 when he was assigned to the central office after being promoted from the position of principal

to program director, a non-bargaining unit position. Valentine stated that he was told to "come in when the schools are closed," unless the office was also closed. Valentine assumed that Seibert followed this same policy.

Assistant Superintendent for Business/Board Secretary, Thomas Thayer, corroborated Valentine's testimony that the personnel assigned to the central administration office followed different work schedules. Thayer, like Valentine, has been in a non-bargaining unit position since he has been assigned to the central administration office 20 years ago. And, like Valentine, Thayer had been told that he must report to work when the office was open. He also assumed that Siebert, as another 12 month employee, followed the same work schedule as he did. He added that, when the work year of the 10 month supervisors was negotiated, the parties only discussed vacation. It was agreed that the newly created 12 month supervisors get 20 vacation days as do principals and vice-principals.

#### DISCUSSION

The 1993 negotiations over the change in the work year for 10 month supervisors was cursory; the parties merely agreed to move the 10 month supervisors onto the previously negotiated a 12 month salary guide and give them 20 days vacation. It appears that the parties felt that negotiations over these two issues completed their agreement. The winter of 1994, however, began to unravel this impression.

The Board's work year and inclement weather policy for 12 month employees at the central administration office had never been put in writing. Valentine and Thayer testified that they were told about the policy when they assumed managerial positions at the central administration office. I find that their testimony merely proves that the Board's management employees were to adhere to the policy.

The assertions of Valentine and Thayer that the policy applied to Seibert as well, were based on an assumption that all 12 month employees assigned to the central administration office had the same work year. Seibert, however, did not share their understanding. She, unlike Valentine and Thayer, has been a VASA unit member since she was assigned to the central administrative office. No one informed her of the policy when she was promoted into a 12 month supervisor's position. Seibert did not know that the policy existed until Thayer circulated his January 3 memo (J2a). For the 15 years that she has been a 12 month supervisor, Seibert followed the school calendar as did the 10 month supervisors working out of the central administrative office. Similarly, she understood that she did not have to report to work when the schools were closed because of inclement weather.<sup>3/</sup> Her practice was never challenged or corrected throughout this period.

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<sup>3/</sup> The fact that Seibert volunteered to come in to the central office when the schools were closed during inclement weather is not material to the determination of whether there was a past practice. The issue is whether she was required to report.



A past practice is a term and condition of employment which is not enunciated in the parties' agreement but arises from the mutual consent of the parties, implied from their conduct.

Caldwell-West Caldwell Bd. of Ed., P.E.R.C. No. 80-64, 5 NJPER 536, 537 (¶10276 1979), aff'd in part, rev'd in part 180 N.J. Super 440 (1981). Here, the parties agreement is silent on work days outside the school calendar for 12 month supervisors.<sup>4/</sup> Siebert's testimony shows that the Board, over a period of 15 years, allowed her to follow the school calendar, as other VASA unit members did. Therefore, I find that a past practice did exist whereby the VASA unit position of 12 month supervisor shared the same work year as other unit members.

Having found that the past practice existed as to all 12 month employees, I find that the Board cannot change this term and condition of employment without first negotiating with VASA. In Somerville Bd. of Ed., P.E.R.C. No. 87-128, 13 NJPER 323 (¶18134 1987), the Commission found that the Board committed an unfair practice when it unilaterally legthened the workyear of 12 month employees. The Commission ordered the Board to negotiated with the union before changing the length of the workyear. A make whole rememdy was not necessary in that instance since the Board had restored the days it had previously taken away. Here, however, the Board has not restored VASA 12 month supervisors to the status quo ante; therefore, the appropriate rememdy is twofold.

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<sup>4/</sup> Article 7 of the parties' agreement only concerns sick and personal leave, and vacation days (J1).

ORDER

Based upon the foregoing, I order the Vineland Board of Education to:

A. Cease and desist from unilaterally increasing the length of VASA supervisor' workyear.

B. Take affirmative action to:

1. Negotiate in good faith before changing the length of VASA supervisors' work year;

2. Immediately make whole those VASA supervisors who did not report to work by restoring charged leave days (either sick or vacation), and compensate those VASA supervisors who had reported to work when the schools were closed.



Illse E. Goldfarb  
Commission Designee

DATED: February 27, 1995  
Trenton, New Jersey