P.E.R.C. NO. 78-23

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MAYWOOD BOARD OF EDUCATION,

Respondent-Charging Party,

-and-

Docket Nos. CO-76-96-53
and CE-76-17-54

MAYWOOD EDUCATION ASSOCIATION,

Charging Party-Respondent.

SYNOPSIS

The Maywood Board of Education and Maywood Education Association each filed unfair practices against the other. The Association alleged that the Board had violated the Act by refusing to negotiate its decision to lay off several teachers and to negotiate the impact of that decision on the discharged teachers and on the remaining teachers. The Board alleged that the Association had committed an unfair practice by refusing to negotiate salaries pursuant to a salary reopener provision in the existing agreement unless other issues were also negotiated.

The Hearing Examiner concluded that the Board did not violate the Act by refusing to negotiate the decision to lay off several teachers because such a decision is not a mandatory subject of negotiations. However, he did find that the Board had violated the Act by refusing to negotiate the impact of that decision on the remaining teachers and by failing to negotiate regarding unilateral changes in the work hours of kindergarten teachers and the workload of two physical education teachers. Finally, the Hearing Examiner concluded that the Board failed to meet its burden of proof in support of its charge against the Association. The Association filed exceptions to the Hearing Examiner's Recommended Report and Decision. These exceptions related to the recommended affirmative action section of the recommended order. The Board filed an answer to the Association's exceptions.

The Commission held that the Board did not violate the Act by refusing to negotiate with the Association regarding the decision to lay off certain employees but that the Board did violate the Act by refusing to negotiate the effect of that decision on remaining employees' terms and conditions of employment by refusing to negotiate regarding the change in the working hours of the kindergarten teachers and by refusing to negotiate regarding the change in workload of the two physical education teachers. Additionally, the Commission adopted the Hearing Examiner's conclusion that the Board had failed to prove its charge against the Association.

The Commission did not adopt the remedy proposed by the Hearing Examiner that the Board be ordered to negotiate with the Association in an effort to make a tenured librarian who was layed off whole for the pay lost between her dismissal and her subsequent reemployment. The Commission concluded that this decision was not negotiable, that her termination was lawful, and that an award of back pay would not be appropriate. Additionally, the Board has restored the status quo by reemploying the tenured librarian. Nevertheless, the Commission held that the Board did violate the Act by refusing to negotiate the effect of the decision to lay off this librarian. These negotiations must take place within the framework of Title 18A and may not include negotiations for back pay or reemployment rights.

The Board was also ordered to negotiate in good faith with the Association concerning the impact, if any, of that tenured librarian's absence on the terms and conditions of employment of the remaining librarian and to negotiate concerning the impact of the absence of the librarian and the music teacher on the terms and conditions of employment of remaining classroom teachers. The Board was also ordered within sixty (60) days of the date of this decision to restore the working hours of the kindergarten teachers as they existed prior to the unilateral extension of the teachers' day by the Board and to restore the status quo as to the working hours of the physical education teachers prior to the change in their workloads.

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Docket Nos. CO-76-96-53
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MAYWOOD EDUCATION ASSOCIATION,

Charging Party-Respondent.

Appearances:
For the Maywood Board of Education, Gerald L. Dorf, P.A. (Mr. Thomas J. Savage, of Counsel; Mr. Stanley Schwartz, On the Brief)

For the Maywood Education Association, Goldberg, Simon and Selikoff (Mr. Theodore M. Simon, Of Counsel; Mr. Louis P. Bucceri, On the Brief)

DECISION AND ORDER

An Unfair Practice Charge (the "Charge") was filed with the Public Employment Relations Commission (the "Commission") on October 6, 1975 by the Maywood Education Association (the "Association") alleging that the Maywood Board of Education (the "Board") had committed an unfair practice within the meaning of the New Jersey Employer-Employee Relations Act (the "Act").[1/] In particular the Association alleged that the Board by its action in refusing to negotiate both its decision to lay-off several teachers and to negotiate the impact of that decision on the discharged teachers and the remaining teachers affected by the decision had violated N.J.S.A. 34:13A-5.4(a)(1) and (5).[2/] On November 3, 1975, the Asso-

1/ N.J.S.A. 34:13A-1 et seq.
2/ These subsections prohibit employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by
(Continued)

ciation amended its charge, alleging that the Board had also committed an unfair practice by refusing to negotiate over other unilateral changes in terms and conditions of employment.

The Maywood Board of Education filed an Unfair Practice Charge with the Commission on October 7, 1975, alleging that the Association had committed an unfair practice within the meaning of N.J.S.A. 34:13A-5.4(b)(3) [3/] by its action in refusing to negotiate salaries for the 1975-76 school year, pursuant to a salary reopener clause in the existing agreement, unless other issues were also negotiated.

It appearing that the allegations of the charges, if true, might constitute unfair practices within the meaning of the Act, two Complaints and Notices of Hearing were issued on December 17, 1975, along with an Order Consolidating Cases, and hearings were held before Hearing Examiner Edmund G. Gerber on January 20, April 13, and May 20, 1976. [4/]

On July 15, 1977, the Hearing Examiner issued his Recommended Report and Decision, H.E. No. 78-1. A copy of the Report is attached hereto and made a part hereof. The Association filed

2/ (Continued) 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."

3/ This subsection provides: employee organizations, their representatives or agents from: (3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit."

4/ All parties were given an opportunity to present evidence, to examine and cross-examine witness, and to argue orally.

Exceptions with a supporting brief on August 15, 1977. On September 26, 1977, the Board filed an Answer to the Exceptions with a supporting brief.

On August 12, 1975, William Monahan, President of the Association, received a telephone call from Harry Kickuth, President of the Board, informing him that at a workshop meeting the previous evening the Board had decided to furlough four teachers: Joan Conley, a librarian with tenure; Jill Bigler, a music teacher without tenure; Constance Mandrioli, a second grade teacher without tenure and Sharry Freeburg, a speech therapist. Commencing September 8, 1975 and on several occasions thereafter until the filing of the charge, the Association attempted to negotiate with the Board the issue of the reduction in force ("RIF") and/or the impact of the RIF decision. The Association alleged that the Board rebuffed every attempt by the Association to negotiate this issue. The Association contended that the only issue that the Board would negotiate was the salary question pursuant to a salary reopener provision in the collective negotiations agreement between the Association and the Board covering the period July 1, 1974 through June 30, 1976.

On October 6, 1975, the Association filed its charge against the Board alleging a refusal to negotiate the RIF decision and its impact on the terminated teachers and on the remaining teachers. On October 7, 1975, the Board filed its charge against the Association alleging that the Association refused to negotiate over salary unless the RIF decision and its impact were also negotiated. On November 3, 1975, the Association amended its charge to allege

that the Board had also refused to negotiate regarding other unilateral changes in terms and conditions of employment. Those changes were a twenty minute expansion of the working day for kindergarten teachers and an increase in the pupil-contact time for two physical education teachers.

The Hearing Examiner concluded that the Board did not violate N.J.S.A. 34:13A-5.4(a)(5) by refusing to negotiate the RIF decision since such decision was not a mandatory subject of negotiations. In re Union County Regional H.S. Board of Education, P.E.R.C. No. 76-45 (1976), reversed on other grounds, 145 N.J. Super 435 (App. Div. 1976) certif. den. 74 N.J. 248 (1977). However, the Hearing Examiner did find that the Board violated N.J.S.A. 34:13A-5.4(a)(5) by refusing and failing to negotiate the impact of the RIF decision on the remaining teachers and by refusing and failing to negotiate the unilateral changes in the working hours of the kindergarten teachers and the workload of two physical education teachers. Since such a refusal and failure to negotiate necessarily interferes with the employees' exercise of negotiations rights guaranteed by the Act, the Hearing Examiner found the Board also violated N.J.S.A. 34:13A-5.4(a)(1).

The Hearing Examiner also concluded that the Board failed to meet the burden of proof by a preponderance of the evidence in support of its charge against the Association.

The Recommended Order stated that the Board's charge against the Association should be dismissed in its entirety. It also recommended that the Commission order the Board to cease

and desist from interfering with, restraining or coercing employees in the exercise of rights guaranteed to them by the Act and to cease and desist from refusing to negotiate in good faith with the Association concerning changes in terms and conditions of employment. Finally, the Recommended Order contained an affirmative action section which reads:

> "2. Take the following affirmative action which is deemed necessary to effectuate the purposes of the Act:
>
> (a) Negotiate with the Association in an effort to make Joan Conley, the tenured librarian who was unlawfully dismissed as of October 15, 1975, whole or nearly so for the pay she lost between her dismissal and subsequent rehiring in 1976.
>
> (b) Negotiate with the Maywood Education Association concerning:
>
> (i) the impact of Joan Conley's absence on the terms and conditions of employment of librarian Ann Glagola.
>
> (ii) the impact of the absence of the three teachers who were dismissed on the terms and conditions of employment of the remaining classroom teachers.
>
> (iii) the increase in the kindergarten teachers' working day for 1975-76.
>
> (iv) the increase in pupil-contact time in 1975-76 for physical education teachers Alino and Peters." (Footnote omitted)

On August 15, 1977, the Association filed Exceptions to the Hearing Examiner's Recommended Report and Decision. Specifically, the Association takes exception to the recommended affirmative action section of the Recommended Order. The Association contends that members of the Charging Party are entitled to be made "whole" for losses where, as here, the Respondent has been found to have committed unfair practices under the Act. In addition, the Association argues that the recommended order should restore the parties to the status quo ante in order to negate any advantage gained by

the unlawful conduct of the Board. The Association urges the Commission to adopt the finding of facts and conclusions of law of the Hearing Examiner.

On September 26, 1977, the Board filed its Answer to the Exceptions to the Hearing Examiner's Recommended Report and Decision. The answer supports the recommended order and argues that it is both appropriate and proper. The answer further alleges that this Commission has no authority to order payment of back pay when no services were ordered upon a determination of an Unfair Practice. /In re Galloway Township Board of Education, P.E.R.C. No. 76-31, reversed 149 N.J. Super. 346 (App. Div., 1977), certification granted ___ N.J. ___ (July 20, 1977)/

We have considered the entire record in this proceeding. See N.J.A.C. 19:14-7.2. Based upon this consideration and noting the absence of exceptions to the Hearing Examiner's findings of fact and conclusions of law,[5/] we hereby adopt those findings and conclusions.

Specifically, we conclude that the Board did not violate the Act by refusing to negotiate with the Association regarding the decision to RIF certain employees but that the Board did violate the Act by refusing and failing to negotiate the impact or effect of that decision on the remaining employees' terms and conditions of employment,[6/] by refusing and failing to negotiate regarding the change in working hours of the kindergarten teachers and by

5/ N.J.A.C. 19:14-7.3(b) provides that any exceptions not urged shall be deemed to have been waived.

6/ We recognize that in accord with the Union County/Cranford decision, supra, the Board is not required to negotiate RIF procedures (Continued)

by refusing and failing to negotiate regarding the change in workload of the two physical education teachers. These refusals also constituted a violation of N.J.S.A. 34:13A-5.4(a)(1). Additionally, we adopt the Hearing Examiner's conclusion that that Board has failed to prove its charge against the Association by a preponderance of the evidence.

Both the exceptions and the answer to the exceptions go to the appropriateness of the Hearing Examiner's recommended remedy. Essentially, the Association, citing numerous private sector cases, contends that the employees affected by the illegal conduct of the Board are entitled to have the status quo ante restored and to be made whole for losses incurred as a result of this conduct. The Association argues that an order to negotiate under these circumstances is inappropriate and may be no remedy at all.

The Hearing Examiner recommended that the Board be ordered to negotiate with the Association in an effort to make Joan Conley, a tenured librarian, whole for the pay she lost between her dismissal as of October 15, 1975 and her subsequent rehiring in 1976.

We do not adopt that remedy. The decision to RIF Ms. Conley was not negotiable and her termination was lawful and was in accord with N.J.S.A. 18A:28-9 and 10. Therefore, an award of back

6/ (Continued) affecting non-tenured teachers nor is it obligated to negotiate reemployment rights for these teachers. We conclude, however, that the Board must negotiate the effect that the decision to RIF non-tenured teachers has on the terms and conditions of employment of teachers who remain employed within the district; furthermore, we conclude that the Board, consistent with Title 18A, must negotiate the effect of a decision to RIF tenured teachers on the tenured teachers' terms and conditions of employment as well as on remaining teachers within the district.

pay is not appropriate. Additionally, the status quo has been restored by the Board. Nevertheless, the Board did violate the Act by failing and refusing to negotiate regarding the impact or effect of its decision to RIF Ms. Conley. Thus, the Board will be ordered to negotiate with the Association regarding the effect of this decision on Ms. Conley.

In part 2(b)(i) of the Recommended Order, the Hearing Examiner proposed that the Board be ordered to negotiate with the Association regarding the effect of Ms. Conley's absence on the terms and conditions of employment of the remaining librarian, Ann Glagola.[7/] We find the recommended remedy to be both appropriate and adequate for this violation under the present circumstances.[8/]

As to part 2(b)(ii) of the Recommended Order, the RIF decision to terminate the employment of the librarian (Joan Conley) and of the music teacher (Jill Bigler) impacted on the terms and conditions of employment of the remaining teachers.[9/] By uncontested testimony, it was shown that due to the loss of these two specialty teachers, the classroom teachers lost an unassigned period of 35 minutes a week in the case of the absence of

7/ She testified that her increased workload caused her to spend an additional 10 hours a week at home in order to keep abreast and that this work included answering mail, ordering books and supplies and filing Title Two forms for the Memorial School. Although she was never instructed to do this additional work at home, the principal of the Maywood School testified that she would not have been satisfied if this work had not been done.

8/ We note again that the decision to RIF Ms. Conley was not negotiable and that the status quo has been restored by the Board in that Ms. Conley has been rehired.

9/ The decision to RIF a second grade teacher was never implemented. Also, no evidence was offered to show any impact of the decision to RIF the speech therapist. Therefore, the impact of those two are not considered.

the music teacher and of 35 minutes every other week (or an average of 17½ minutes per week) with regard to the loss of the librarian. During these unassigned periods, a classroom teacher was free to do as he/she chose whether it was related or not to educational endeavors. While there was no change in the length of the work day, there was a change in the workload which caused the classroom teachers to spend an additional 52½ minutes (35 minutes music and 17½ minutes library) per week teaching their classes. The Board was required to negotiate in good faith this change in terms and conditions of employment, that is, the increased workload of these affected classroom teachers.[9/] We believe that the Hearing Examiner's

9/ The Appellate Division in Byram Township Board of Education v. Byram Township Education Association, 159 N.J. Super. 12 (1977), affirming, as modified on other issues, P.E.R.C. No. 76-27, 2 NJPER 143 (1976) affirmed the Commission's determination that a proposal relating to a teacher's workload, e.g. teachers in departmental areas should not teach more than five teaching periods or more than five hours per day, related to a required subject for collective negotiations. The Commission in the instant matter therefore concludes that a decision to assign an additional classroom teaching period to individuals who previously were assigned non-teaching duties during that particular time period directly relates to workload considerations and is a required subject for collective negotiations.

Although not raised by the parties in this matter, we deem it appropriate at this time to resolve an inconsistency in one of our earlier decisions. In In re Board of Education of the Borough of Verona, P.E.R.C. No. 77-42, 3 NJPER 80 (1976), we held that the decision to replace a non-teaching duty period with a classroom teaching period was a permissive subject of negotiations. That holding is not consistent with the above analysis and the Appellate Division decision in Byram and must therefore be reversed.

We reaffirm our determination in In re North Plainfield Education Association, P.E.R.C. No. 76-16, 2 NJPER 49 (1976) that the Board of Education's decision to eliminate a writing conference period and to provide instead that English teachers teach a fifth classroom period each day relates to a permissive rather than a required subject of collective negotiations. The North Plainfield Board of Education changed professional teaching assignments, as is its managerial prerogative, and did not substitute an additional teaching period for a non-teaching period. The Commission in North Plainfield, supra, did find that if the Board of Education's decision impacted on workload, that impact or effect on terms and conditions of employment was a required subject for negotiations.

recommended remedy that the Board negotiate this impact is appropriate as the affirmative remedy.

As to part 2(b)(iii) and part 2(b)(iv) of the Recommended Order, there were unilateral changes in the length of the work day for kindergarten teachers and in the workload of two physical education teachers. These two situations were not caused by the RIF decisions, but were unilaterally instituted by the Board. Prior to the school year 1975-1976, the hours of kindergarten teachers were 8:45 a.m. to 11:15 a.m. and 12:15 p.m. to 2:45 p.m. Beginning September 1975, the hours were unilaterally changed to 8:35 a.m. to 11:15 a.m. and 12:15 p.m. to 2:55 p.m. The length of a work day is a term and condition of employment and is mandatorily subject to negotiation.

Likewise, the workload of a teacher is a term and condition of employment and is a mandatory subject of negotiation. The Board's rationale that the workload was increased to create an equitable situation among all physical education teachers is insufficient. The unilateral change affects terms and conditions of employment which cannot be accomplished without prior negotiations in good faith. The Board must restore the status quo ante and must negotiate in good faith any increased workload of physical education teachers Alino and Peters.

In the case of Mr. Alino, his workload should be rolled back to his workload during the school year 1973-74. The four additional classes plus the class he volunteered to teach became required classes which were never negotiated. Ms. Peters should

have her workload changed back to her workload during the school year 1974-75.

In order to effectuate the policies of the Act, we determine the restoration of the status quo ante must be ordered to negate any advantage gained by the unlawful conduct by the Board. However, the Board will be given 60 days from this decision to restore the status quo ante. This period is provided so as to avoid any unnecessary disruption of the school day and/or year.

ORDER

Accordingly, for the reasons set forth above, it is ordered that the Board's charge be dismissed in its entirety.

It is further ordered that the Maywood Board of Education shall cease and desist from interferring with, restraining or coercing employees in the exercise of rights guaranteed to them by the Act by refusing to negotiate in good faith with the Maywood Education Association concerning terms and conditions of employment of unit employees and more specifically by making unilateral changes in the length of the work day and the work loads of unit employees.

It is further ordered that the Maywood Board of Education take the following affirmative action which is deemed necessary to effectuate the purposes of the Act:

(a) Negotiate in good faith with the Maywood Education Association concerning the impact of the RIF decision on terms and conditions of employment of Joan Conley, the tenured librarian,

for the period from her discharge to her reemployment.[10/]

(b) Negotiate in good faith with the Maywood Education Association concerning the impact, if any, of Joan Conley's absence on the terms and conditions of employment of librarian Ann Glagola.

(c) Negotiate in good faith with the Maywood Education Association concerning the impact of the absence of the librarian and music teacher on the terms and conditions of employment of the remaining classroom teachers.

(d) Within 60 days of the date of this Decision and Order, restore the status quo ante as to the working hours of the kindergarten teachers prior to the extension of the teachers' day by 20 minutes and negotiate in good faith the impact on these teachers for the period during which these teachers worked longer hours.

(e) Within 60 days of the date of this Decision and Order, restore the status quo ante as to the working hours of the physical education teachers prior to the change in workload and negotiate in good faith concerning the impact on these teachers during which the workload of these teachers was unilaterally increased. In the case of Mr. Alino, his workload should be returned to what it was during the 1973-74 school year. In the case of Ms. Peters, her workload should be returned to what it was during the 1974-75 school year.

(f) Post at its central administrative building in Maywood, as well as at Memorial School and Maywood Avenue School,

10/ These negotiations must take place within the framework of the provisions of Title 18A and may not include negotiations regarding back pay and reemployment rights.

copies of the attached notice marked as Appendix "A". Copies of such notice on forms to be provided by the Public Employment Relations Commission shall be posted by the Board immediately upon receipt thereof, after being duly signed by the Board's representative, and shall be maintained by it for a period of at least sixty (60) consecutive days thereafter in conspicuous places including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by the Board to insure that such notices are not altered, defaced or covered by any other material.

(g) Notify the Chairman within twenty (20) days of receipt of this Order what steps the Board has taken to comply herewith.

BY ORDER OF THE COMMISSION

Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Forst, Hartnett and Parcells voted for this decision. Commissioners Hipp and Hurwitz abstained. None opposed.

DATED: Trenton, New Jersey
November 15, 1977
ISSUED: November 17, 1977

"APPENDIX A"

# 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 New Jersey Employer-Employee Relations Act by refusing to negotiate in good faith with the Maywood Education Association concerning terms and conditions of employment of unit employees and more specifically by making unilateral changes in the length of the work day and workloads of unit employees.

WE WILL negotiate in good faith with the Maywood Education Association concerning the impact of the RIF decision on terms and conditions of employment of Joan Conley, the tenured librarian, for the period from her discharge to her reemployment.

WE WILL negotiate in good faith with the Maywood Education Association concerning the impact of the absence of the librarian and music teacher on the terms and conditions of employment of the remaining classroom teachers.

WE WILL, within 60 days of the date of this Decision and Order, restore the status quo ante as to the working hours of the kindergarten teachers prior to the extension of the teachers' day by 20 minutes and negotiate in good faith the impact on these teachers for the period during which these teachers worked longer hours.

WE WIL, within 60 days of the date of this Decision and Order, restore the status quo ante as to the working hours of the physical education teachers prior to the change in workload and negotiate in good faith concerning the impact on these teachers for the period during which the workload of these teachers was unilaterally increased. In the case of Mr. Alino, his workload should be returned to what it was during the 1973-74 school year. In the case of Ms. Peters, her workload should be returned to what it was during the 1974-75 school year.

MAYWOOD BOARD OF EDUCATION
(Public Employer)

Dated _____ By _____
(Title)

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

H.E. No. 78-1

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

In the Matter of

MAYWOOD BOARD OF EDUCATION,

Respondent in Docket No. CO-76-96-53,

Charging Party in Docket No. CE-76-17-54,

-and-

MAYWOOD EDUCATION ASSOCIATION,

Charging Party in Docket No. CO-76-96-53,

Respondent in Docket No. CE-76-17-54.

## SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find the Maywood Board of Education committed an unfair practice by refusing to negotiate with the Maywood Education Association over the changes in the working day and workloads of certain teachers in the Maywood School District brought about by a reduction in force (RIF) in the district and recommends that the Commission further find the Board committed an unfair practice in dismissing Joan Conley, a tenured teacher, without negotiating the impact of her dismissal. The Hearing Examiner recommends that the Commission Order the Board to negotiate with the Association over these items.

The Hearing Examiner also recommends that the Commission dismiss an action filed by the Board wherein the Board alleges that the Association committed an unfair practice by refusing to negotiate over a salary reopener provision in the then existing contract unless the RIF decision and its impact were also negotiated.

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 conclusions of law.

H.E. No. 78-1

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE PUBLIC EMPLOYMENT
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MAYWOOD EDUCATION ASSOCIATION,

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Respondent in Docket No. CE-76-17-54.

Appearances:

For the Maywood Board of Education,
Gerald L. Dorf, P.A.
(Thomas J. Savage, Of Counsel;
Stanley Schwartz, On the Brief)

For the Maywood Education Association,
Goldberg, Simon & Selikoff
(Theodore M. Simon, Of Counsel;
Louis P. Bucceri, On the Brief)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

The Maywood Education Association (the "Association"), employee representative of the certificated, non-supervisory personnel employed by the Maywood Board of Education (the "Board"), filed an Unfair Practice Charge with the Public Employment Relations Commission (the "Commission") on October 6, 1975, alleging that the Board had committed an unfair practice within the meaning of the New Jersey Employer-Employee Relations Act (the "Act") 1/ by its action in refusing to negotiate both its decision to lay-off

1/ It is specifically alleged that the Board violated N.J.S.A. 34:13A-5.4(a)(1) and (5). These subsections provide that an employer, its representatives or agents are prohibited 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."

several teachers and to negotiate the impact of that decision as to the laid-off teachers and the remaining teachers affected by the decision. On November 3, 1975, the Association amended its charge, alleging that the Board had also committed an unfair practice by refusing to negotiate over other changes in terms and conditions of employment.

The Maywood Board of Education filed an Unfair Practice Charge with the Commission on October 7, 1975, alleging that the Association had committed an unfair practice within the meaning of the Act [2/] by its action in refusing to negotiate for 1975-76 salaries, pursuant to a salary reopener clause in the existing agreement, unless other issues were also negotiated.

It appearing that the allegations of the charges, if true, might constitute unfair practices within the meaning of the Act, two Complaints and Notices of Hearing were issued on December 17, 1975, along with an Order Consolidating Cases, and hearings were held before the undersigned on January 20, April 13, and May 20, 1976. [3/]

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On August 12, 1975, William Monahan, President of the Association, received a telephone call from Harry Kickuth, President of the Board, informing him that at a workshop meeting the previous evening, the Board had

2/ It is specifically alleged the Association violated N.J.S.A. 34:13A-5.4(b)(3). This subsection provides that employee organizations, their representatives or agents are prohibited from:

"(3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit."

3/ All parties were given an opportunity to examine witnesses, to present evidence and to argue orally. All parties filed post-hearing briefs by September 7, 1976. Upon the entire record in this proceeding, I find that the Board is a public employer within the meaning of the Act and is subject to its provisions, and that the Association is an employee representative within the meaning of the Act and is subject to its provisions. Unfair Practice Charges having been filed with the Commission alleging that the respective parties have engaged or are engaging in unfair practices within the meaning of the Act, as amended, questions concerning alleged violations of the Act exist and these matters are appropriately before the Commission for determination.

decided to furlough four teachers: Joan Conley, a librarian with tenure; Jill Bigler, a music teacher without tenure; Constance Mandrioli, a second grade teacher without tenure; and Sharry Freeburg, a speech therapist. Kickuth said the decision not to retain the four teachers for the forthcoming school year would be announced at the next public Board meeting on September 8, 1975. 4/

Monahan called the Association's New Jersey Education Association ("N.J.E.A.") field representative, Joseph Vender, and then contacted Louis Cirangle, Superintendent of Schools, in an effort to arrange a meeting with the Board. Cirangle explained that many Board members were away and no meeting could take place then.

On September 8, 1975, just prior to the public Board meeting, Monahan and other Association officers met briefly with the Board. They questioned Board members as to why the reduction in force ("RIF") decision had been made and attempted to discuss the impact of the decision. The Board said the RIF decision was made for financial reasons and it would not discuss the matter further.

Pursuant to a salary reopener provision in the collective negotiations between the Association and the Board, [this agreement covered the period from July 1, 1974 through June 30, 1976], the parties met on September 18, 1975 and began negotiations for the 1975-76 salary guide. At this meeting, Vender attempted to get the Board to also discuss the RIF decision and its impact on the terms and conditions of employment of the remaining teachers. The Board refused to negotiate anything but salary, claiming the other issues were non-negotiable.

On October 2, 1976, the parties met again, this time assisted by a mediator, Dr. Samuel Ranhand. Again Vender attempted to discuss the RIF and its impact and again the Board refused.

The Association filed its charge against the Board four days later on October 6, alleging refusal to negotiate the RIF decision and its impact. On October 7, the Board filed its charge against the Association alleging

4/ The Board apparently reversed its decision with regard to Sharry Freeburg, the speech therapist. She was not named at the September 8 meeting of the Board as one of the teachers who would not be rehired.

the Association refused to negotiate salary unless the RIF decision and its impact were also negotiated. On November 3, the Association amended its charge to allege that the Board had also refused to negotiate over other unilateral changes in terms and conditions of employment: twenty-minute expansion of the working day for kindergarten teachers, and an increase in pupil-contact time for two physical education teachers.

On November 6, 1975, the parties met again with the mediator and after an all-night session reached an agreement 5/ on some issues; they settled the salary issue and agreed that the Association would withdraw some of the issues raised in its amended charge of November 3. 6/ They agreed that the Association would request that the Commission postpone action on the Association's charge for thirty days.

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The issues in this case revolve about the negotiability of certain matters in dispute and whether such matters were, indeed, negotiated in good faith. Specifically, the issues are: (1) Was the decision to lay-off certain teachers for financial reasons mandatorily negotiable or strictly within the management prerogative of the Board? (2) Was the impact of such decision mandatorily negotiable prior to implementation? (3) Did the Board negotiate the impact of the RIF decision in good faith with the Association? (4) Was the change in workload for the kindergarten and physical education teachers mandatorily negotiable prior to implementation? (5) Did the Board negotiate this workload change or its impact in good faith with the Association prior to implementation? (6) Did the Association negotiate salary in good faith with the Board prior to October 7? (7) Is evidence of what took place between the parties subsequent to the filing of all charges and the amendments thereto relevant to a determination of whether the parties had engaged in unfair practices as charged?

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5/ Exhibit B-2.

6/ The withdrawn issues did not concern the RIF or its impact, have not previously been enumerated by the undersigned, and will not be discussed here.

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1. The Board claimed that its RIF decision was made solely because there was not enough money to rehire all of the teachers in the school system for the 1975-76 school year. The Association did not charge the Board with discrimination in its selection of the teachers who would not be retained, and no evidence was introduced to dispute the Board's expressed reason for its decision. Under the education laws, a Board of Education does have the right to unilaterally reduce the number of teaching positions in the system for reasons of economy. 7/ Such unilateral decision-making under the education laws does not of itself violate the provisions of the Act requiring negotiations of changes in terms and conditions of employment prior to implementation. 8/ An actual RIF decision, as previously decided by the Commission, is not mandatorily negotiable. 9/

2. However, when the Board's decision to reduce the number of teachers in the system was translated into a decision not to rehire three particular teachers, there was a fundamental impact on the terms and conditions of employment of those three individuals. They were about to become unemployed.

The Commission recognizes the distinction between a managerial decision and its impact. The impact, as it affects terms and conditions of employment is mandatorily negotiable.

The Commission, on several occassions, ordered boards of education to negotiate with their respective teacher associations over procedures to be followed in implementing RIF decisions. 10/ While the Commission did not distinguish between tenured and non-tenured teachers, each of the cases in question involved non-tenured teachers only. However, two of these decisions have been

7/ N.J.S.A. 18A:28-9.

8/ N.J.S.A. 34:13A-5.4. See also Red Bank Board of Education v. Warrington, 138 N.J. Super. 564, 351 A. 2d 778 (1976).

9/ Union County Board of Education v. Union County Teachers Association, 145 N.J. Super. 435 (App. Div. 1976) certif. den. ___ N.J. Super. ___ (19 ); Rutgers, the State University and Rutgers Council of A.A.U.P., P.E.R.C. No. 76-13, 2 NJPER 13 (1976).

10/ Board of Education of City of Englewood and Englewood Teachers' Association, P.E.R.C. No. 76-23, 2 NJPER 72 (1976); New Providence Board of Education and New Providence Education Association, P.E.R.C. No. 76-36, 2 NJPER 190 (1976); Union County Regional High School Board of Education and Union County Regional High School Teachers Association, Inc., and Cranford Board of Education and Cranford Education Association, P.E.R.C. No. 76-43, 2 NJPER 221 (1976).

reversed by the Appellate Division in Board of Education of the City of Englewood v. Englewood Teachers Association, ___ N.J. Super. ___ (App. Div. 1977) (not yet approved for publication), and Union County Board of Education v. Union County Teachers Association, 145 N.J. Super. 435 (App. Div. 1976) certif. den. ___ N.J. ___ (19 ). In both of these decisions the court relied on the fact that the teachers involved in the RIF were non-tenured. The court went beyond the right to negotiate procedures and dealt with substantive rights. As stated in Union County, supra, at 437,

> Under the statutory scheme established by the Legislature for the administration and operation of our public school system, N.J.S.A. 18A:1-1 et seq., nontenured teachers have no right to the renewal of their contracts, the local boards of education, in turn, are invested with virtually unlimited discretion in such matters, and nontenured teachers whose contracts of employment are not renewed by reason of a reduction in force plainly are denied any reemployment rights whatever, N.J.S.A. 18A:28-5, 9, 10, 11 and 12;...

and in Englewood, supra, the Court ruled, "the determination not to renew the contract of a non-tenured teacher is a discretionary matter for the local board and where it results from a reduction in force there exists no right of reemployment."

At present, the undersigned must accept the view of the Appellate Division as the law in New Jersey, Accordingly, I can recommend no redress for Jill Bigler and Constance Mandrioli, the two non-tenured teachers who were not rehired as a result of the Board's RIF decision. But the Court's explicit reference to the non-tenured status of teachers who were not retained demonstrates that the Court perceived a distinction between the rights of tenured and non-tenured teachers and accordingly, leads the undersigned to conclude that the impact of a RIF decision as to tenured teachers is mandatorily negotiable. Therefore, the Board must negotiate the impact of its RIF decision on the terms and conditions of employment of Joan Conley, the tenured librarian who was let go. 11/ Further the Board must negotiate terms and conditions of

11/ In accordance with the Commission's Decision In the Matter of State Supervisory Employees Association, CSA/SEA and State of New Jersey, P.E.R.C. No. 77-67 and In the Matter of Local 195 I.F.P.T.E. and Local 518, S.E.I.U. and State of New Jersey, P.E.R.C. No. 77-57 the results of such negotiations must not be violative of N.J.S.A. 18A:28-10 et seq.

employment of all teachers remaining in the system, whether tenured or non-tenured, who may have been affected by the RIF. [12] Such negotiation properly takes place prior to implementation of a RIF decision. [13]

3. The Board, while it disputes the requirement to negotiate impact, maintains that it did, in fact, negotiate impact, and therefore committed no unfair practice in that regard.

In compliance with the education laws, [Title 18A] the tenured librarian was given sixty days' notice and the impact of her not being rehired was not felt until she left October 15. Again in compliance with the education laws, the two non-tenured teachers were given thirty days' notice and paid until September 15. However, the impact of their leaving was felt by other teachers as soon as school opened at the beginning of September, since these teachers were not sent into the classroom at all for the 1975-76 school year. [14]

Ample evidence was introduced [15] indicating that due to the loss of the librarian, the responsibilities of Ann Glagola, the only remaining librarian, were increased significantly and, due to the loss of the librarian and the music teacher, the kindergarten and elementary teachers were required to spend additional time in the classrooms with their students, anywhere from twenty-five minutes to almost an hour per week. Testimony was in dispute as to whether this time had previously been free time during which teachers could do as they pleased, or whether it was assigned as preparation and planning time, but the undersigned finds it unnecessary to resolve this dispute. Regardless of whether teachers lost free time or preparation and planning time, the terms and conditions of their employment were still changed. The changes, therefore, were mandatorily negotiable. [16]

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12/ See also, In re Byram Tp. Board of Education and Byram Tp. Education Association, P.E.R.C. No. 76-27, 2 NJPER 143 (1976), ___ N.J. Super. ___ (App. Div. 1977) (not yet approved for publication).

13/ N.J.S.A. 34:13A-5.3, Piscataway Tp. Board of Education, P.E.R.C. No. 91, 1 NJPER 49 (1975).

14/ Transcript, 1/20/76, p. 52, Association brief, p. 12.

15/ Exhibit J-1.

16/ In re Byram Tp. Board of Education and Byram Tp. Education Association, supra, note 14, and cases cited therein.

The Board's RIF decision was made August 11, communicated to the Association President August 12, officially announced to the public September 8, and officially implemented partially on September 15 and completely by October 15, 1975. The impact of the decision, however, began to be felt in early September. Monahan testified that he had requested, through proper channels, a meeting with the Board shortly after learning of the RIF decision in August, but was denied a meeting at that time.

There is no dispute that no meeting took place until the evening of September 8 when the parties met for a short time just prior to the public Board meeting. The Board initially claimed this was a negotiating session, but the Association disagreed, claiming that the Board flatly refused to discuss the RIF decision or its impact because they believed the matters to be non-negotiable. Later, the Board admitted, in testimony and in its brief, that the first negotiating session was September 18. The Board, therefore, did not meet its obligation to negotiate the impact of its RIF decision prior to implementation, [17] or upon demand in August, September and October.

4. At the beginning of September, 1975 the Board unilaterally increased the working day of kindergarten teachers by twenty minutes, claiming it was motivated by reasons of student safety. At the same time, it increased the teaching load of two physical education teachers, claiming it was merely trying to equalize the workload of these two teachers with that of other physical education teachers. Assuming the expressed motive in each case to be both accurate and laudable, the fact remains that the primary effect of both moves was a significant change in the terms and conditions of employment of these kindergarten and physical education teachers. The changes themselves, therefore, just as the impact of the RIF decision, were mandatorily negotiable. [18]

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17/ See note 15. As the Board correctly points out in its brief, the Commission first distinguished between a decision and its impact on 9/11/75 [See note 10], so perhaps the Board can be excused for its initial refusal to negotiate impact. But the Board was represented by able labor counsel and should have reversed its position on the negotiability of the RIF decision's impact prior to October 6, the date of the Association's charge.

18/ Englewood Teachers Association v. Englewood Board of Education, 64 N.J. 1 (1973); In re Byram Tp. Board of Education and Byram Tp. Education Association, supra, note 14.

5. Failure to negotiate the impact of these working hours and workload changes was not alleged by the Association in its initial charge filed October 6, 1975, but was alleged in the Association's amended charge filed November 3, 1975. From all of the testimony, it is apparent that aside from the salary question, the Association's main concern throughout the fall of 1975 was the RIF and its impact. Vender testified the other charges were omitted from the original charge in the hope that the Board could be persuaded to negotiate over the working hours and workload changes. There is no dispute that on September 18 the Association specifically requested that the Board negotiate over those items, or that the Board refused, claiming they were non-negotiable. Dorf could not refer to any negotiating session prior to the filing of the Association's amended charge where the Board did, in fact, discuss these items, although he indicated vaguely that at the September 18 meeting, he personally told the Association that the Board would discuss the impact of the RIF decision at a later date, "if need be." 19/

The Board maintains in its post-hearing brief that the changes in working hours for kindergarten teachers were non-negotiable, and in referring to its alleged negotiation of the impact of the decision, simply notes generally the number of meetings and telephone communications between the parties throughout the fall of 1975, but refers to nothing specific prior to the filing of the Association's amended charge. The undersigned finds, therefore, that the Board did not negotiate over the change in the kindergarten teachers' working day either prior to implementation of the change as it should have, 20/ or prior to the Association's November 3 charge.

As to the increase in pupil-contact time for two physical education teachers, Alino and Peters, the Board, in its post-hearing brief, still maintains that the item is non-negotiable. Its rationale is that the two teachers simply had their workloads increased to bring them in line with other physical education teachers similarly qualified and similarly paid. Therefore, the Board reasons, their "terms and conditions of employment" were not changed, and there was nothing to discuss. The Board claims no violation could be found

19/ Transcript, 5/20/76, p.38.

20/ See note 15.

unless the Board increased a teacher's workload beyond that of other teachers similarly situated, which it did not do.

The undersigned finds this view too restrictive. A contract was in effect covering the terms and conditions of employment for 1974-75, with provision for reopening negotiations to set salaries for 1975-76. It is almost axiomatic that no changes primarily affecting terms and conditions of teachers' employment were to be made during the contract period without prior negotiations between the parties. Obviously, no one expects that each teaching day will be a replica of the previous day, or that nothing at all will change from month to month or from year to year. But teachers under contract are entitled to assume there will be no significant changes in the overall time they spend with their pupils from one contract year to the next without prior negotiation. As a result of the Board changes, each of these two physical education teachers spent approximately one hour and thirty minutes more time per week with their pupils, [21] meaning they had less free or preparation time. Teachers are protected not only collectively, but individually as well, against unilateral changes in their terms and conditions of employment. These were by no means de minimis changes [22] and should actually have been negotiated prior to implementation but at least on demand. Demand was made September 18, prior to the filing of the charge on November 3 alleging refusal to negotiate. The Board offered no credible evidence indicating negotiations had in fact taken place over these issues prior to November 3.

6. The Board filed its charge against the Association on October 7 alleging refusal to negotiate over salary. By its own admission the first session scheduled for negotiation of the salary reopener clause was September 18. The next meeting prior to the filing of the Board's charge was apparently a mediation session with Dr. Ranhand on October 2, after the parties had reached an impasse.

Monahan testified that after the Board refused to discuss the RIF decision or its impact on September 18, both sides continued to negotiate over

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21/ Jeffrey Alino, one of the two teachers, disputed the computation of his extra time, but everyone agreed he spent at least an additional one hour and twenty minutes more time with his pupils.

22/ In re Galloway Tp. Board of Education and Galloway Tp. Education Association, P.E.R.C. No. 77-3, 2 NJPER 254 (1976).

salary. He also testified that the Association's chief concern was in reaching a salary settlement. 23/ Vender, on cross-examination, stated unequivocally that the Association had taken the position that the salary matter could not be settled without negotiation of the other matters, 24/ but he also testified that the Association had negotiated salary that evening.

The Board simply presented no credible evidence to refute this testimony of Monahan and Vender, and the undersigned finds that although the Association took a hard line regarding settlement of the salary issue, insisting, quite properly, on negotiation of at least the impact of the RIF decision and other changes, it did not refuse to negotiate salary, and did do so prior to October 7. 25/

7. Much of the Board's defense against the Association charges and its efforts to substantiate its own charge against the Association rest on evidence of post-charge events. The Association argued that all such evidence was irrelevant and should not be admitted. The undersigned, however, noting the Commission's liberal rules on the admissibility of evidence, and believing such evidence might bear on any remedy ordered if any charges were proved, did admit evidence of post-charge events.

With respect to substantiation of the charges filed, post-charge evidence can only be considered insofar as it sheds light on what actually happened prior to the filing of charges. In the instant case, evidence relating to meetings and communications between the parties after charges were filed has been considered insofar as it reveals the parties' state of mind prior to the filing of charges, since the dispute before the undersigned is whether the parties were negotiating in good faith.

Obviously, if good faith negotiations over the impact of the RIF decision occurred after October 6, such negotiations would be relevant as to

23/ Transcript, 1/20/76, p. 64.

24/ Transcript, 4/13/76, p. 52.

25/ It is noted that the Board also argued that the job action which was on-going on September 18 is evidentiary of the Association's bad faith. While this might be so, such conduct does not prove the allegations of the Board's charge. See note 26.

the nature and extent of the remedy ordered by the Commission, but such negotiations in themselves could not alter the finding of a refusal to negotiate prior to October 6. Similarly, if the Board could prove, as it alleged in its post-hearing brief, that the Association tried to "bully" the Board with the filing of two Unfair Practice Charges within one month, and with the maintenance of an inflexible bargaining position throughout the fall of 1975, such evidence would relate to proof of bad faith on the Association's part, but could not substantiate by itself the alleged refusal of the Association, as of October 7, to bargain in good faith over salary. 26/

The Association strenuously maintained that no negotiations occurred at all on issues other than salary, and even if the discussions occurring after the filing of charges were found to constitute negotiations of such non-salary issues, viewed in their entirety, these discussions did not satisfy the Board's obligations to negotiate in good faith. Vender,

the N.J.E.A. representative for the Association, on direct and cross-examination, repeatedly stated that the Board never negotiated issues other than salary. He said the only discussion of such issues occurred with Gerald Dorf, the Board's representative, who would ask if the Association would make specified proposals which he could take to the Board. Never, maintained Vender, did the Board make an offer personally or through Dorf, by which it would agree to be bound. Vender testified he thought that Dorf honestly was trying to resolve the matter but that his hands were tied because the Board wouldn't budge from its position

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26/ The Board charge against the Association, dated October 6 and filed October 7, alleged refusal to negotiate salary without negotiation of certain other issues. The charge was never formally amended or informally amended at hearing through litigation by the parties. Only the Board's post-hearing brief generalizes the charge to one of general bad faith and suggests for the first time that if the Association were really interested not in bullying the Board but in settling the impact of the RIF decision, it should have filed a Scope of Negotiations Petition with the Commission. The undersigned agrees that the filing of such a petition, along with a request for interim relief, might well have been a more expeditious route. But since the Association was apparently convinced of the correctness of its opinion regarding the negotiability of the impact of the RIF decision, it was entitled to go the route of an Unfair Practice Charge. I note also that the Board could have filed a scope petition just as easily as the Association.

that issues other than salary were non-negotiable. 27/

Dorf contradicted Vender's testimony characterizing any discussions over non-salary issues as either futile attempts by the Association to get the Board to negotiate or informal discussion between Vender and Dorf [or his associate], with Dorf having no authority from the Board to negotiate. Dorf testified that there were numerous discussions of non-salary issues and that several oral proposals were made. But on cross-examination, he admitted that nothing from the Board was in writing, and that he couldn't remember specifically the subjects discussed on particular days. Dorf's assertions of good faith negotiations by the Board are, therefore, little more than uncorroborated assertions. The testimony of both Vender and Monahan, together with the Board's maintenance, even post-hearing, of its position that the RIF decision impact and other work changes were non-negotiable, is more persuasive and accordingly, I find that the Board did not negotiate non-salary issues at any time prior to the filing of all charges.

Progress was made, however, after the last charge was filed on November 3. On November 7, after an all night session with mediator Ranhand, an agreement was reached. The salary issue was settled. 28/ Some minor issues were struck from the Association's November 3 charge and, at Dorf's request, the Association agreed to ask the Commission to postpone proceedings on all charges for thirty days.

On November 24, the parties met to discuss open issues, but Vender maintains that even at this late date, statements by Dorf were in the nature of a fishing expedition in an attempt to resolve the Unfair Practice Charges, and never indicated a willingness on the Board's part to negotiate over non-salary issues. Dorf, of course, denies this, but the truth of this particular point is irrelevant. Whether the discussions after November 3 were attempts merely to settle Unfair Pracitce Charges, in good faith or in bad, or whether they were good faith negotiations of non-salary issues is irrelevant here. All such discussions occurred after the violations are found to have occurred

27/ Transcript, 1/20/76, pp. 98, 100.

28/ Since the undersigned has found that the Association did not refuse to negotiate salary prior to October 7, and since the only remedy sought by the Board is an order to negotiate salary in good faith, the fact that the salary issue was settled on November 7 obviates any alleged necessity for the undersigned to consider whether post-charge events constituted bad faith on the part of the Association.

[and not occurred] and neither the Board's nor the Association's versions of such post-charge events, even if accepted as true, would convince the undersigned to reverse findings of fact or conclusions of law regarding the occurrence or non-occurrence of the violations charged.

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In summary, with respect to the Association's charges against the Board, the undersigned finds that the Board did not violate the Act by refusing and failing to negotiate its RIF decision, since such decision was not subject to mandatory negotiation. I find, however, that the Board specifically violated N.J.S.A. 34:13A-5.4(a)(5) by refusing and failing to negotiate either the impact of its RIF decision or the change in working hours of kindergarten teachers, or the change in workload of two physical education teachers, as proved by a preponderance of the evidence. Further, since such refusal and failure to negotiate necessarily interferes with employee exercise of negotiating rights guaranteed by the Act, I find it is also a violation of N.J.S.A. 34:13A-5.4(a)(1).

With respect to the Board's charge against the Association, I find that the Board failed to meet its burden of proof by a preponderance of the evidence concerning alleged violations of N.J.S.A. 34:13A-5.4 (b)(3).

## RECOMMENDED ORDER

Accordingly, for the reasons set forth above, it is recommended that the Board's charge be dismissed in its entirety.

It is further recommended that the Commission Order that the Maywood Board of Education shall:

1. Cease and desist from:

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

(b) Refusing to negotiate in good faith with the Maywood Education Association concerning changes in terms and conditions of employment of unit employees.

2. Take the following affirmative action which is deemed necessary to effectuate the purposes of the Act:

(a) Negotiate with the Association in an effort to make Joan Conley, the tenured librarian who was unlawfully dismissed as of October 15, 1975, whole or nearly so for the pay she lost between her dismissal and subsequent rehiring in 1976. 29/

(b) Negotiate with the Maywood Education Association concerning:

(i) the impact of Joan Conley's absence on the terms and conditions of employment of librarian Ann Glagola.

(ii) the impact of the absence of the three teachers who were dismissed on the terms and conditions of employment of the remaining classroom teachers.

(iii) the increase in the kindergarten teachers' working day for 1975-76.

(iv) the increase in pupil-contact time in 1975-76 for physical education teachers Alino and Peters.

(c) Post at its central administrative building in Maywood, as well as at Memorial School and Maywood Avenue School, copies of the attached notice marked as Appendix "A". Copies of such notice on forms to be provided by the Director of Unfair Practice Proceedings of the Public Employment Relations Commission shall be posted by the Board immediately upon receipt thereof, after being duly signed by the Board's representative, and shall be maintained by it for a period of at least sixty (60) consecutive days thereafter in conspicuous places including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by the Board to insure that such notices are not altered, defaced or covered by any other material.

(d) Notify the Director of Unfair Practice Proceedings within twenty (20) days of receipt of this Order what steps the Board has taken to comply herewith.

Edmund G. Gerber
Hearing Examiner

DATED: July 15, 1977
Trenton, New Jersey

29/ It is suggested this could be achieved through a prospective, temporary, lightening of duties without a reduction in pay, or through voluntary assumption of additional duties for additional pay.

APPENDIX "A"

# 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 SHALL NOT interfer with, restrain or coerce employees in the exercise of rights guaranteed to them by the Act.

WE SHALL NOT refuse to negotiate in good faith with the Maywood Education Association concerning changes in terms and conditions of employment of unit employees.

WE WILL negotiate with the Association in an effort to make Joan Conley, the tenured librarian who was unlawfully dismissed as of October 15, 1975, whole or nearly so for the pay she lost between her dismissal and subsequent rehiring in 1976.

WE WILL negotiate with the Maywood Education Association concerning:

(i) the impact of Joan Conley's absence on the terms and conditions of employment of librarian Ann Glagola.

(ii) the impact of the absence of the three teachers who were dismissed on the terms and conditions of employment of the remaining classroom teachers.

(iii) the increase in the kindergarten teachers' working day for 1975-76.

(iv) the increase in pupil-contact time in 1975-76 for physical education teachers Alino and Peters.

MAYWOOD BOARD OF EDUCATION
(Public Employer)

Dated _____ By _____
(Title)

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