

P.E.R.C. NO. 87-61

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CLIFFSIDE PARK BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-85-42-125

CLIFFSIDE PARK DEPARTMENT HEADS/  
SUPERVISORS ASSOCIATION--NJEA,

Charging Party.

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CLIFFSIDE PARK EDUCATION ASSOCIATION,

Respondent,

-and-

Docket No. CO-85-43-126

CLIFFSIDE PARK DEPARTMENT HEADS/  
SUPERVISORS ASSOCIATION--NJPSA,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the Cliffside Park Board of Education violated the New Jersey Employer-Employee Relations Act when it refused to negotiate with the Cliffside Park Department Heads/Supervisors Association over the stipend the Director of Guidance should receive for the one week guidance counselors worked before school opened and the one week guidance counselors worked after school closed. The Commission finds that the Supervisors Association was the exclusive representative for purposes of negotiating the compensation to be paid the Director of Guidance and the Board violated its obligation to negotiate only with the Association when it refused to negotiate over that part of his compensation attributable to the two weeks in question. The Commission further finds that the Cliffside Park Education Association violated the New Jersey Employer-Employee Relations Act when it claimed the right to represent the Director of Guidance insofar as he performed guidance counselling work and when it collected a representation fee from him.

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Docket No. CO-85-43-126

CLIFFSIDE PARK DEPARTMENT HEADS/  
SUPERVISORS ASSOCIATION--NJPSA,

Charging Party.

Appearances:

For the Respondent-Employer, Winne, Banta, Rizzi,  
Hetherington & Basralian, Esqs. (Robert M. Jacobs, of counsel)

For the Respondent-Employee Organization, Bucceri & Pincus,  
Esqs. (Sheldon Pincus, of counsel)

For the Charging Party, Wayne J. Oppito, Esq.

DECISION AND ORDER

On August 16, 1984, the Cliffside Park Department  
Heads/Supervisors Association ("Supervisors Association") filed  
unfair practice charges against the Cliffside Park Board of  
Education ("Board") and Cliffside Park Education Association

("CPEA"). The charges alleged that the Board and CPEA violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when they wrongfully negotiated compensation paid to the Director of Guidance, a position in the negotiations unit of the Supervisors Association, for the one week guidance counselors worked before school opened and the one week guidance counselors worked after school closed. The Board allegedly violated subsections 5.4(a)(1),(2),(5) and (7)<sup>1/</sup> and CEA allegedly violated subsections 5.4(b)(1) and (5).<sup>2/</sup>

On May 9, 1985, the Director of Unfair Practices issued and consolidated Complaints and directed a hearing. The Board filed an Answer asserting that it properly negotiated with the CPEA, rather than the Supervisors Association, concerning compensation for the two weeks in question since the Director of Guidance allegedly did not function as a supervisor during that time. CPEA filed an Answer

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

<sup>2/</sup> These subsections prohibit employee organizations, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (5) Violating any of the rules and regulations established by the commission."

denying the Complaints' allegations and asserting that the Supervisors Association lacked standing to bring these charges and the Commission lacked jurisdiction to hear them.

On June 18 and August 29, 1985, Hearing Examiner Susan Wood Osborn conducted a hearing. The parties examined witnesses and introduced exhibits, and the Hearing Examiner granted CPEA's motion, joined by the Board, to amend its Answer to assert that the charges were untimely.

The parties filed post-hearing briefs. CPEA and the Board argued that the Director of Guidance did not perform supervisory functions during the week before school and the week after and hence they properly negotiated over the stipend he and other guidance counselors would receive.

On September 10, 1986, the Hearing Examiner issued her report and recommended decision. H.E. No. 87-20,     NJPER     (¶        1986) (copy attached). She concluded that the Board violated subsections 5.4(a)(1) and (5) and the Association violated subsection 5.4(b)(1) when they negotiated a stipend for work performed by the Director of Guidance before school opened and after it closed. She recommended an order requiring the Board to negotiate with the Supervisors Association concerning the stipend for the two weeks of work in question and to stop deducting CPEA representation fees from the paychecks of the Director of Guidance; requiring CPEA to stop seeking to negotiate over the stipend received by the Director of Guidance and stop demanding that

representation fees be deducted; and requiring both the Board and CPEA to post notices of their violations and remedial actions taken. She found all other allegations to be meritless.

On October 6, after receiving an extension of time, CPEA filed exceptions. It asserts that the Director of Guidance worked as a guidance counselor, not a supervisor, during the two weeks in question and that it thus properly negotiated on his behalf and collected representation fees. It also asserts that the charges were untimely under N.J.S.A. 34:13A-5.4(c) and the doctrine of laches; that the Hearing Examiner erred in stating that the recognition clause covers only full-time guidance counselors; and that since the Board paid the Director of Guidance the stipend in question, CPEA was obligated by N.J.S.A. 34:13A-5.7<sup>3/</sup> to collect a representation fee from the Director of Guidance.

The Board and the Supervisors Association have not filed exceptions.

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3/

This section provides:

Any action engaged in by a public employer, its representatives or agents, or by an employee organization, its representatives or agents, which discriminates between nonmembers who pay the said representation fee and members with regard to the payment of such fee other than as allowed under this act, shall be treated as an unfair practice within the meaning of subsection 1(a) or subsection 1(b) of this act.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 4-16) are thorough and accurate.<sup>4/</sup> We adopt and incorporate them here.

In Cliffside Park Bd. of Ed., D.R. No. 83-10, 8 NJPER 540 (¶13248 1982), the Director of Representation determined that the Board's department heads, including the Director of Guidance, were supervisors and could not be included in the negotiations unit of teachers CPEA represents. He rejected CPEA's claim that department heads should remain in its unit to the extent they were teachers and distinguished Ocean Tp. Bd. of Ed., P.E.R.C. No. 82-9, 7 NJPER 446 (¶12198 1981). The Supervisors Association was then recognized as the majority representative of the department heads, with the exclusive power to negotiate over their compensation and other terms and conditions of employment.

We agree with the Hearing Examiner that the Board violated subsections 5.4(a)(1) and (5) when it refused to negotiate with the Supervisors Association over the stipend the Director of Guidance should receive for the two weeks in question and instead insisted that this stipend was fixed by its collective negotiations agreement with CPEA. These two weeks were part of a continuous work year for

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<sup>4/</sup> In her findings of fact, the Hearing Examiner correctly states that the salary provisions of Article V, Section F of the 1984-1986 agreement between the Board and CPEA only apply to full-time guidance counselors. In her analysis, the Hearing Examiner erroneously states that this agreement's recognition clause only applies to full-time guidance counselors.

all guidance counselors. We see no basis for ruling that the Director of Guidance did not assume his supervisory responsibilities over other guidance counselors until the moment school started or that he lost these responsibilities the moment school ended. The Supervisors Association was the exclusive representative for purposes of negotiating the compensation to be paid the Director of Guidance and the Board violated its obligation to negotiate only with the Supervisors Association when it refused to negotiate over that part of his compensation attributable to the two weeks in question.<sup>5/</sup>

We reject the claim that these charges were untimely. In May 1984, the Supervisors Association and the Board commenced negotiations for a successor collective negotiations agreement. The Supervisors Association sought to negotiate over the stipend the Director of Guidance received for the two summer weeks all guidance counselors worked, and the Board flatly refused to negotiate, claiming that amount was inalterably fixed by the CPEA-Board contract. The charges followed within three months, well within the

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<sup>5/</sup> This case is distinguishable from Ocean Tp. and Fair Lawn Bd. of Ed., P.E.R.C. No. 79-45, 5 NJPER 50 (¶10033 1979). These cases suggest that an employee organization representing teachers may negotiate over the terms and conditions of employment of extracurricular positions, even if the employees serving in these positions are department heads or non-unit employees. First, this case does not involve any separate extracurricular positions. Second, as the first Cliffside Park held, CPEA is not entitled to negotiate over the terms and conditions of the Director of Guidance to the extent the Director performs guidance counselling because, unlike extracurricular assignments, those duties are not severable from his position as Director of Guidance.

six month statute of limitations. The fact that the Supervisors Association, upon becoming majority representative of the department heads in 1982, chose to accept the then existing guidance counselor stipend as part of the compensation package for the Director of Guidance in the 1982-84 agreement does not mean that it forever waived its right to negotiate over a change in that aspect of the compensation package in later agreements.

We also agree with the Hearing Examiner that the Cliffside Park Education Association violated subsection 5.4(b)(1) when it claimed the right to represent the Director of Guidance insofar as he performed guidance counseling work and when it collected a representation fee from him. The earlier Cliffside Park decision established that CPEA had no right to represent the Director of Guidance insofar as he did guidance counseling as part of his overall job duties. CPEA had no right or obligation to collect representation fees from the Director of Guidance simply because the Board mistakenly believed that its contract with CPEA controlled the stipend the Director was to receive.

#### ORDER

A. The Cliffside Park Board of Education is ordered to cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of their rights guaranteed by the Act by refusing to negotiate compensation with the Supervisors Association for the two-week period worked immediately before and after the school year.



2. Refusing to negotiate with the Supervisors Association concerning compensation for the Director of Guidance for the two-week period worked immediately before and after the school year.

3. Negotiating with the CPEA on behalf of Vincent Rinaldi for work he performs during the aforesaid period.

4. Collecting a representation fee from Rinaldi and transmitting same to the CPEA.

B. The Cliffside Park Education Association is ordered to cease and desist from:

1. Interfering with Vincent Rinaldi in the exercise of his rights guaranteed by the Act by claiming to represent him, and by negotiating terms and conditions of his employment, specifically, a stipend for work performed during the two-week period immediately before and after the regular school year.

2. Demanding that the Board deduct a representation fee from Vincent Rinaldi's salary.

C. The Cliffside Park Board of Education is ordered to take the following affirmative action:

1. Negotiate in good faith with the Cliffside Park Supervisors Association concerning compensation for the Director of Guidance for that period of time he worked immediately before and after the regular school year since May 1984.

2. Negotiate upon demand with the Supervisors Association concerning compensation for the Director of Guidance for

the period of time immediately before and after the regular school year in future years.

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

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

D. The Cliffside Park Education Association is ordered to take the following affirmative action:

1. Refund to Vincent Rinaldi all monies received from him from the date of the filing of the charge on August 16, 1984, to the present, as a result of the application of the representation fee provision of its 1984-86 collective negotiations agreement to Rinaldi, together with twelve percent (12%) interest on such monies collected during the period August 16, 1984 through January 1, 1986, and 9.5 percent (9.5%) interest on such monies collected during the period January 2, 1986 through the present.

2. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix

"B." Copies of such notice on forms to be provided by the Commission shall be posted immediately upon receipt thereof and, after being signed by the Respondent's authorized representative, shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

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

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

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

DATED: Trenton, New Jersey  
November 17, 1986  
ISSUED: November 18, 1986

# NOTICE TO ALL EMPLOYEES

## PURSUANT TO

AN ORDER OF THE

## PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

## NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining or coercing employees in the exercise of their rights guaranteed by the Act by refusing to negotiate compensation with the Supervisors Association for the two-week period worked immediately before and after the school year.

WE WILL cease and desist from refusing to negotiate with the Supervisors Association concerning compensation for the Director of Guidance for the two-week period worked immediately before and after the school year.

WE WILL cease and desist from negotiating with the CPEA on behalf of Vincent Rinaldi for work he performs during the aforesaid period.

WE WILL cease and desist from collecting a representation fee from Rinaldi and transmitting same to the CPEA.

WE WILL negotiate in good faith with the Cliffside Park Supervisors Association concerning compensation for the Director of Guidance for that period of time he worked immediately before and after the regular school year since May, 1984.

WE WILL negotiate upon demand with the Supervisors Association concerning compensation for the Director of Guidance for the period of time immediately before and after the regular school year in future years.

CO-85-42-125  
Docket No. CO-85-43-126

CLIFFSIDE PARK BOARD OF EDUCATION  
(Public Employer)

Dated \_\_\_\_\_

By \_\_\_\_\_  
(Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State St., CN 429, Trenton, NJ 08625 (609) 984-7372.

# NOTICE TO ALL EMPLOYEES

## PURSUANT TO

AN ORDER OF THE

## PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

## NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL cease and desist from interfering with Vincent Rinaldi in the exercise of his rights guaranteed by the Act by claiming to represent him, and by negotiating terms and conditions of his employment, specifically, a stipend for work performed during the two-week period immediately before and after the regular school year.

WE WILL cease and desist from demanding that the Board deduct a representation fee from Vincent Rinaldi's salary.

WE WILL refund to Vincent Rinaldi all monies received from him from the date of the filing of the charge on August 16, 1984, to the present, as a result of the application of the representation fee provision of our 1984-86 collective negotiations agreement to Rinaldi, together with twelve percent (12%) interest on such monies collected during the period August 16, 1984, through January 1, 1986, and 9.5 percent (9.5%) interest on such monies collected during the period January 2, 1986 through the present.

CO-85-42-125  
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CLIFFSIDE PARK EDUCATION ASSOCIATION  
(Public Employer)

Dated \_\_\_\_\_

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(Title)

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H. E. NO. 87-20

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

In the Matters of

CLIFFSIDE PARK BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-85-42-125

CLIFFSIDE PARK DEPARTMENT HEADS/  
SUPERVISORS ASSOCIATION--NJPSA,

Charging Party.

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CLIFFSIDE PARK EDUCATION ASSOCIATION,

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Docket No. CO-85-43-126

CLIFFSIDE PARK DEPARTMENT HEADS/  
SUPERVISORS ASSOCIATION--NJPSA

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Cliffside Park Board of Education violated N.J.S.A. 34:13A-5.4(a)(1) and (5) by its refusal to negotiate certain compensation for summer work performed by the Director of Guidance with the majority representative, Cliffside Park Supervisors Association, and by instead negotiating that compensation with the Cliffside Park Education Association. Specifically, the Hearing Examiner found that at all times material herein, the Director of Guidance is represented by the Supervisors Association, and that work that employee performs during a two-week period in the summer is integral to his overall duties.

Additionally, the Hearing Examiner recommends that the Commission find that the Cliffside Park Education Association violated N.J.S.A. 34:13A-5.4(b)(1) by continuing to assert itself as the majority representative of the Director of Guidance, by negotiating certain compensation for that employee, and by demanding and collective a representation fee from that employee.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

H. E. NO. 87-20

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

In the Matters of

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SUPERVISORS ASSOCIATION--NJPSA,

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Appearances:

For the Respondent-Employer  
Winne, Banta, Rizzi, Hetherington & Basralian, Esqs.  
(Robert M. Jacobs, of Counsel)

For the Respondent-Employee Organization  
Bucceri and Pincus, Esqs.  
(Sheldon Pincus, of Counsel)

For the Charging Party  
Wayne J. Oppito, Esq.

HEARING EXAMINER'S  
REPORT AND RECOMMENDED DECISION

The Cliffside Park Department Heads/Supervisors Association  
("Supervisors Association") filed Unfair Practice Charges with the



Public Employment Relations Commission ("Commission") on August 16, 1984, alleging that the Cliffside Park Board of Education ("Board") and the Cliffside Park Education Association ("CPEA") have engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). Specifically, the Supervisors Association alleges that the Board and the CPEA wrongfully negotiated certain terms and conditions of employment concerning Vincent Rinaldi, who, as the Director of Guidance, is a unit member of the Supervisors Association. The Supervisors Association alleges that the Board by its conduct violated N.J.S.A. 34:13A-5.4(a)(1), (2), (5) and (7) of the Act<sup>1/</sup> and that the CPEA by its conduct violated N.J.S.A. 34:13A-5.4(b)(1) and (5) of the Act.<sup>2/</sup>

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<sup>1/</sup> These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (2) Dominating or interfering with the formation, existence or administration of any employee organization; (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."

<sup>2/</sup> These subsections prohibit employee organizations, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; and (5) Violating any of the rules and regulations established by the Commission."

By a letter received May 24, 1985 the Board requested that its pre-Complaint statement of position serve as an Answer to the Charge (Exhibit C-2). In its Answer, the Board denies committing any violation of the Act and asserts that it did in fact negotiate with the Supervisors Association concerning all terms and conditions of employment for department heads/supervisors, including a stipend for their supervisory status, which was intended to cover all hours worked, including the week before and the week after the "regular" school year. The CPEA filed an Answer to the Charge on May 24, 1985, (Exhibit C-3) denying that it engaged in any conduct violative of the Act.

It appearing that the allegations contained in the Unfair Practice Charges may constitute unfair practices within the meaning of the Act, Complaints, Notices of Hearing, and an Order Consolidating Cases were issued on May 9, 1985. Hearings were then held in this matter on June 18 and August 29, 1985 in Newark, New Jersey, at which times the parties were given the opportunity to examine and cross-examine witnesses, present relevant evidence and argue orally. During the hearing, the CPEA moved to amend its previously filed Answer to also allege that the Unfair Practice Charge is barred by the six-month statute of limitations provided in N.J.S.A. 34:13A-5.4 (1T-102, 103).<sup>3/</sup>The Board also joined in that

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<sup>3/</sup> All transcript notations from the transcript of the hearing conducted on June 18, 1985, are designated as 1T-1, etc.; transcript notations from the hearing on August 29 are designated as 2T-1, etc.

motion. Pursuant to N.J.A.C. 19:14-3.3, I permitted the Respondents to amend their Answers on the record. At the close of hearing all parties filed post-hearing briefs the last of which was received on October 18, 1985.

In its post-hearing brief, the Board modified its defense to the Charge, and now acknowledges that it negotiated with the CPEA concerning the stipend for Rinaldi as a "guidance counsellor" during the two weeks immediately before and immediately after the regular school year. Similarly, the CPEA claims that the "guidance counsellor" stipend negotiated between the Board and the CPEA includes Rinaldi because he allegedly performs guidance counsellor work during the two weeks in question.

Thus, the primary issue in this matter is whether the Board and the CPEA improperly negotiated the stipend for Rinaldi as a unit member of the CPEA's non-supervisory unit.

Upon the entire record I make the following:

Findings of Fact

1. The Cliffside Park Board of Education is a public employer within the meaning of the Act and is subject to its provisions.

2. The Cliffside Park Education Association and the Cliffside Park Department Heads/Supervisors Association are employee representatives within the meaning of the Act and are subject to its provisions.

3. The Cliffside Park Department Heads/Supervisors Association is the recognized exclusive negotiations representative of the collective negotiations unit described in the 1982-84 and 1984-86 contracts (Exhibits J-5, J-8) with the Board as:

Department Heads/Supervisors--H.S.  
Department Head--Child Study Team.

The Supervisors Association's unit has included the title Director of Guidance since the unit's inception in 1982 (1T-9). Prior thereto, since at least 1975 the Director of Guidance title was included in the teachers unit represented by the CPEA (1T-9), as were all other department head titles.<sup>4/</sup>

4. The recognition clauses of the 1982-84 and 1984-86 agreements between the Board and the CPEA (Exhibits J-7 & J-6 respectively) describe the teachers unit as follows:

"(B) All certified personnel under contract or on leave, as specified below: teachers, guidance counsellors, coordinator of Cooperative Industrial Education, school psychologists, librarians, nurses, special subject teachers, special class teachers, social workers. (C) Unless otherwise indicated, the term "teacher" when used in this agreement, shall refer to all recognized employees represented by the Association in the negotiating unit as above defined."

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<sup>4/</sup> As a result of a previous decision involving these parties, Cliffside Park Bd. of Ed., D.R. No. 83-10, 8 NJPER 540, (¶ 13248 1982), (hereafter, "Cliffside Park I"), the department heads were found to be statutory supervisors and therefore were removed from the teachers unit on September 3, 1982.

The CPEA Negotiated for Rinaldi

The CPEA concluded its negotiations with the Board for the 1984-86 agreement (Exhibit J-6) in May or June, 1984 (1T-33, 227). Article V. Section F of that agreement provides:

"Salaries for full-time guidance counsellors in the high school and middle school shall be the same as for a teacher on the same step and salary classification, plus \$1,453.00 for the 1984-85 school year and \$1,583.00 for the 1985-86 school year. (emphasis mine).

The guidance department (including Rinaldi and the counsellors) works an additional twenty minutes or so every day beyond the teachers' work day, as well as one week after school closes and one week immediately before school opens (1T-58-59, 94, 107).<sup>5/</sup>

Mr. Venti, the President of the CPEA and Chairman of its negotiating committee for the last three contracts, testified that the purpose of the stipend for guidance counsellors was mainly to provide them with additional compensation for the extra two weeks before and after the school year and that the stipend has been part of the CPEA negotiated agreement for many years (1T-106, 107).

Mr. Venti indicated in direct testimony that since 1983, the CPEA has made individual proposals in the course of collective negotiations, and Mr. Rinaldi has been included in such individual proposals in the context of his serving as guidance counsellor with

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<sup>5/</sup> The witnesses differed in their accounts of how many minutes beyond the regular teachers' workday the guidance department works. Twenty minutes is the smallest estimate. Precisely how long beyond the work day is not relevant.

respect to the week before and the week after the school year (1T-114). However, Venti testified that the Board has indicated that its willingness to negotiate with the CPEA is premised on the Board's belief that Mr. Rinaldi functions as a guidance counsellor during this period (1T-125).

The 1984-86 agreement between the Board and the CPEA also provides for a representation fee to be collected from among non-members (J-7, Article XIV, Section B). Rinaldi testified that he received a letter dated October 4, 1984 from Mr. Joseph Venti, President of the CPEA, in which the CPEA claimed to represent Mr. Rinaldi's position and therefore, the CPEA is entitled to a representation fee (1T-30). Rinaldi testified that he has received a similar letter every year since 1982 (1T-68-69) and recalls that one indicated that the claim for a representation fee was because he "served as a counsellor," which Rinaldi assumed was a mistake (1T-30-31).

Venti testified on cross-examination that the basis for the CPEA collecting a representation fee from Rinaldi is that "he functions as a guidance counsellor with respect to the week before and the week after [the school year]" (T-118).

On the basis of the witnesses' uncontradicted testimony, I find that the CPEA and the Board negotiated certain terms and conditions of employment, specifically the stipend for Rinaldi in the 1984-86 agreement. I further specifically find that the CPEA sought and received a representation fee from Rinaldi to the extent that he is alleged to be a guidance counsellor.

The Board Refused to Negotiate with  
the Supervisors Association for  
certain compensation for Rinaldi

Soon after the CPEA concluded negotiations with the Board for its 1984-86 agreement, the Supervisors Association commenced negotiations for its successor agreement. The Supervisors Association started at the end of May and completed its negotiations before school closed (1T-33).

The latter negotiations resulted in the 1984-86 contract between the Board and the Supervisors Association which was signed by the parties on March 25, 1985 (Exhibit J-5). That agreement provides under Article IV "Salary and Differentials" for the following compensation:

Salaries for Department Heads/Supervisors in the High School shall be the same as for a teacher on the same step and salary classification of the Cliffside Park Education Association Salary Guide for 1984-85, plus \$2,600 for the stipend as Department Heads/Supervisors.

Salaries for Department Heads/Supervisors in the High School shall be the same as for a teacher in the same step and salary classification of the Cliffside Park Education Association Salary Guide for 1985-86, plus \$2,834 for the stipend as Department Heads/Supervisors. (Exhibit J-5).

Schedule A appended to J-5 is the 1984-85 Teachers Salary Guide and Schedule B is the 1985-86 Teachers Salary Guide. It is undisputed Rinaldi is paid all appropriate compensation under the guide as referred to in the Supervisors Association collective negotiations agreement (1T-47,48). He also receives the \$2600 supervisors stipend as provided for in Article IV of the 1984-86 Supervisors' agreement (Exhibit J-5; 1T-38).

Additionally he received a stipend of \$1453 in 1984-85 as a guidance counsellor stipend (1T-38, 39).

Rinaldi testified that it was the "guidance counsellor stipend" which he receives which the Supervisors Association tried to negotiate (T-38).

Rinaldi's testimony concerning the \$1453 "guidance counsellor stipend" is somewhat vague and he appeared to be confused. However, I find, based upon his testimony, that the stipend from which he receives the \$1453 was a product of negotiations between the Board and the CPEA, and although the Supervisors Association's negotiations team attempted to negotiate an increase in that stipend for Rinaldi as the Director of Guidance, they were told by the Board that they could not negotiate that stipend (1T-38-46). Rinaldi's testimony on this point can be summed up in the following:

Q. If they [the Board] don't take that [the guidance counsellor's stipend of \$1453] away and your position is, you're entitled to teacher's salary plus the guidance counsellor's additional compensation, plus the stipend, that's then been negotiated by you and on your behalf by the Supervisors Association. Is that correct?

A. That's what's negotiated...(T-44-45)[earlier]...They chose not to pay me [the guidance counsellor's stipend], I guess it would be a question of negotiation. If they say, well, you're not a counsellor, we can't pay you \$1400, okay, fine. Then the question would be, well, since the Board is determining supervisor's salary by teacher's salary plus stipend, I would expect my salary would be determined by counsellor's salary plus stipend (T-43).



Rinaldi testified that while he was a member of the CPEA's unit, his salary was negotiated as the teachers' salary plus the differential for Department of Guidance. He testified that after 1982 the Supervisors Association negotiated "teacher salary" plus stipend (1T-10).

In reality, the fact is that since its inception, the Cliffside Park Supervisors Association chose to treat the compensation negotiated for the certificated staff as a "given"--whether, in Rinaldi's case, it is called teacher's base plus guidance counsellor stipend, or it is called guidance counsellor's base salary--and negotiate a stipend for the supervisory responsibilities in addition thereto (T-38-46).

In its negotiations in May 1984 for the 1984-86 contract, the Supervisors Association chose to diverge from the above formula by proposing an increase in the guidance counsellor base (i.e., teacher salary plus guidance counsellor "stipend") for Rinaldi, in addition to the supervisors stipend of \$2600 (1T-13, 36, 38, 45, 46, 55, 68).

Rinaldi testified that he was a member of the Supervisors Association's negotiating team during negotiations for the 1984-86 agreement (1T-35-36, 50-51). He testified that the issue of compensation for his employment for the two weeks in question was raised during negotiations and the Board responded that it could not discuss that with the Supervisors Association, that that was "CPEA negotiating time." (1T-36).

Palumbo, the head negotiator for the Supervisors Association negotiations for the 1984-86 contract, testified that the subject of an increase in Mr. Rinaldi's stipend was raised in negotiations, and the Board responded that it "would not negotiate that topic with the Supervisors Association--that that was CPEA negotiating time. We were cut off immediately. We could not further discuss that issue" (T86--87).

Palumbo further testified that the PSA also attempted to present a proposal for the head of child study team inasmuch as she also works additional time beyond the 180-day school year, and the Board took a similar position; that is, that that compensation was negotiated with the CPEA, and not the Supervisors Association (T-97).

Thus, I find that the Board refused to negotiate the guidance counsellor stipend with the Supervisors Association.

Rinaldi is a Supervisor  
During the 2-week Period

Vincent Rinaldi is the Director of Guidance, and has held that title since 1975 (1T-8). Mr. Rinaldi testified that he works the entire calendar year, except for 23 days vacation and except those days on which school is closed (1T-11, 12, 18).<sup>6/</sup> He has a

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<sup>6/</sup> The compensation which Mr. Rinaldi receives for the time he works during July and August, as well as his 23 days paid vacation, are negotiated outside of the collective negotiations process between the Board and the Supervisors Association. Rather, Mr. Rinaldi negotiates compensation for that time period directly with the Superintendent (1T-16, 36, 50, 64, 67). The Supervisors Association has made no attempt to negotiate Rinaldi's compensation for July and August, (1T-89-92), and neither has the CPEA (1T-122-123).

10-month individual employment contract with the Board for the period September 1 through June 30 (1T-13, 14; 2T-19).

The four guidance counsellors and Rinaldi work two weeks longer than the teachers' work year: one week after teachers leave, and one week before school opens (1T-10, 12, 13). Other department heads do not work during these two weeks (1T-11). During the summer, including the two weeks in question, the principal, vice principal, the cooperative industrial education director and secretarial and attendance personnel are also working (1T-12).

Rinaldi testified that he works under a job description "Director of Guidance" (Exhibit J-1)<sup>7/</sup> and performs the duties listed therein (1T-15). Those duties include: coordinating, directing and evaluating the members of the guidance staff in the performance of their duties; making recommendations concerning the appointment and retention of guidance staff; preparing and administering the department's budget; and planning, developing, implementing and evaluating various guidance programs (Exhibit J-1).

The Director of Guidance reports to and is evaluated by the High School Principal (1T-77). While the principal is ultimately responsible for the high school guidance department all year, Rinaldi has direct supervisory responsibility for the department in accordance with Exhibit J-1 (2T-12).

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<sup>7/</sup> Superintendent Colegreco testified that the title might have been changed to "Supervisor of Guidance" (2T-11).

The last guidance counsellor was hired in the middle or late 1970's (1T-23) and all four of the guidance counsellors are tenured (1T-25). Rinaldi never recommended that an increment be withheld and never wrote a letter of reprimand for any of his employees (1T-24). He evaluates guidance counsellors, using the guidance counsellor evaluation/observation form (Exhibit J-4)(1T-25).

There is one written evaluation submitted each year which must be submitted by June 1 (1T-25, 63). Rinaldi does not do formal observations of guidance counsellors because it is Board policy to respect the student's right to privacy and confidentiality (1T-26, 133). Rinaldi works in close proximity to guidance counsellors--they have adjacent offices in a line in the guidance suite. Therefore, his evaluation procedure is an on-going process all year, both before and after the submission of the formal evaluation form (1T-26, 27, 28, 63, 84). He also relies on feedback from students or parents to know whether counsellors are doing a good job (1T-27).

Superintendent Colegreco testified that Rinaldi performs work listed under the guidance counsellor's job description (J-2) in addition to functioning as Director of Guidance (2T-12). In addition to being in charge of the department, Rinaldi also has direct involvement with counselling students. Rinaldi testified that he reorganized the department so that the 10th, 11th and 12 grade student body is divided up alphabetically among three of the four counsellors, and the assigned counsellor stays with the same

students through graduation (1T-20). The fourth counsellor and Rinaldi are responsible for the 9th grade students, which includes the orientation process (1T-20).

Rinaldi acts as liaison between the guidance department and Principal and Vice Principal concerning class schedules.

Gunderson, the High School Principal, testified that Rinaldi is responsible for the entire guidance operation, including the supervision of the guidance counsellor's, at all times (1T-78, 82). Rinaldi testified that the duties of the guidance counsellors and his own during the two weeks in question are merely an extension of the rest of the work year--that the duties performed during those time periods are identical (1T-60-62). His testimony indicates that he runs the guidance department all year long (1T-15, 28), and that although certain activities are mandated by the calendar, he can make no distinction between duties performed during the regular school year and duties performed during the "extra two weeks" (1T-15) or work performed during the summer (1T-28).

Rinaldi testified that during the summer, he continues to operate the guidance department. He sends records to colleges, handles mail, phone calls, inquiries from parents, takes care of new registrations, gets ready for opening in September, including oversees finalizing the master schedules, assigns the Cooperative Industrial Education classes and straightens out schedule conflicts (1T-15, 18).

During the week immediately before school opens, the guidance counsellors report back the Monday before Labor Day (1T-16). During that week Rinaldi is responsible for securing the summer school results attending to any problems related thereto, including ascertaining whether seniors have sufficient credits to graduate, planning for schedule changes and balancing of classes (1T-16-17, 20-21).

On the first day back for counsellors (during the last week in August) Rinaldi meets with the counsellors as a group and assigns scheduling conflicts for them to resolve (1T-19; 134-140). Upcoming workshops, and school records are also discussed (T-22).

Although Superintendent Colegreco testified that during the two-week period immediately before and after the school year, Rinaldi is primarily involved with schedule changes, and that his duties are not "strictly supervisory" (2T-4-7), he also testified that the extra two-weeks are not extra-curricular in nature, they are a required part of Rinaldi's job (2T-13-14). The Superintendent also testified that the two weeks in question are also part of the guidance counsellor's work year, it is not considered extra-curricular activity, and they are required to work during that time (1T-34, 78).<sup>8/</sup>

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<sup>8/</sup> The guidance counsellors testified to generally the duties performed by the department during the two weeks and those characterizations conform to Rinaldi's description (T-128-131).

Based upon these findings, I find that Rinaldi's two-week summer work is intended to be, and in fact is, part of his overall duties as Director of Guidance. Thus he is functioning as a supervisor during that two-week period, just as he does the rest of the year.

#### ANALYSIS

##### CO-85-42-125 (Charge against the Board)

The Supervisors Association alleges that the Board wrongfully negotiated certain terms and conditions of employment with the CPEA concerning Vincent Rinaldi, the Director of Guidance. Specifically, the Supervisors Association alleges that the Board included Rinaldi in the negotiated agreement with the teachers as a guidance counsellor and negotiated a stipend for him as a guidance counsellor. Additionally, the Supervisors Association alleges that the Board refused to negotiate that guidance counsellor stipend with it.

The Board defends the charge by claiming that Rinaldi is performing only guidance counsellor duties during the weeks immediately before and after the school year, that he is not a supervisor during that period, and therefore, the stipend negotiated with the CPEA for guidance counsellor work during that period was properly negotiated with the CPEA.

N.J.S.A. 34:13A-5.3 provides that:

Representatives designated or selected by public employees for the purposes of collective negotiations by the majority of the employees in a unit appropriate for such purposes...shall be the exclusive

representative for collective negotiations concerning terms and conditions of employment of the employees in such unit...(b) any changes or modifications in terms and conditions of employment are made only through negotiations with the majority representative ... (emphasis mine)

Thus, an employer who violates the above provision of the Act, either by negotiating unit members' terms and conditions of employment with an organization other than the majority representative and/or by refusing to negotiate terms and conditions with the majority representative, commits a violation of N.J.S.A. 334:13-5.4(a)(1) and (a)(5). Therefore, in determining whether a violation has been committed, I first determined whether Mr. Rinaldi was a member of the supervisors' unit. I found that he is a member of the Supervisor Association's unit including the two weeks in the summer, thus the Board has violated subsections 5.4(a)(1) and (a)(5) of the Act.

In Cliffside Park I, the Director found that department heads in this district play a significant role in the hiring and evaluation of the non-supervisory teaching staff: he found that they also schedule classes and make assignments, and prepare the budget for their respective departments. They are part of the management team. The Director concluded that:

"Based on the functions they perform, particularly in the observation, evaluation, and recommendation process, the department head's in this instance are statutory supervisors and that, for collective negotiations purposes, they must be separate from the teachers they supervise."  
8 NJPER at 541.



Moreover, the Director specifically rejected the CPEA's argument raised in that matter that the department heads could remain in the teacher's unit to the extent that they also teach. Specifically, the Director rejected the applicability of Ocean Twp. Bd/Ed, P.E.R.C. No. 82-9, 1 NJPER 446 (¶ 12198 1981) which holds that department chairpersons, can be covered by a stipend negotiated by another organization for extra-curricular activities. In Cliffside Park I, the Director found that unlike an extra-curricular activity, the non-supervisory duties of the department heads are integrally related to their overall job function, and cannot be separated for negotiations purposes. Further, the Director found that such an inclusion in the unit with non-supervisory professional would "inevitably lead to a conflict of interest which unit separation would avoid." The Director's findings specifically included the Director of Guidance Cliffside Park I 8 NJPER at 542, fn. 3

I do not find Rinaldi's duties to be significantly different during the two-week period immediately before and after the regular school year. Rinaldi, the Principal and the Superintendent all indicated in their testimony that Rinaldi is in charge of the guidance department all year. During the two-week period he continues to make assignments to his staff, and supervise their activities. Moreover, the guidance counsellors are present during this period. Evaluations of the guidance counsellors are submitted in early June, but the evaluations are based upon the performance of the guidance counsellors for the entire year.

Rinaldi does perform certain duties during the two-week period which could be accurately characterized as exclusively non-supervisory in nature or only "guidance counsellor" work. But, as the Director of Representation expressed in Freehold Regional Board of Education, D.R. 78-41, 4 NJPER 182 (¶ 4090 1978):

It is not unusual for supervisors to perform non-supervisory tasks among their other duties. Nor is it unusual to find that a particular employee's duties are primarily non-supervisory in nature and that only a certain portion of those duties are supervisory. In determining the status of employees performing both supervisory and non-supervisory functions, the Commission has adopted a policy of excluding the employee from the unit as a supervisor within the meaning of the Act, unless other circumstances present in the case meet the standards of established practice, prior agreement or special circumstances. 4 NJPER at 183-184.

It is impossible for me to believe that someone the guidance department staff regards as their immediate superior for the entire school year suddenly changes hats and becomes a peer during the two-weeks of summer. The potential for conflict of interest still exists.

In Board of Education of West Orange v. Wilton, 57 N.J. 404 (1971), the New Jersey Supreme Court found that it would be inappropriate to include supervisors with those employees whose work they are duty-bound to appraise and evaluate for the employer, and that such inclusion would inevitably lead to a conflict of interest.

Here, I reject the suggestion that the work performed by Rinaldi during the two-week period is either extra-curricular in nature or that it is merely guidance counsellor work. Even assuming,

arguendo, that he performs no supervisory duties during that two-week period, I find that his inclusion in the same unit with he guidance counsellors for purposes of collective negotiations even for that limited two-week period would engender a potential for conflict of interest for the reasons expressed by the Director in Cliffside Park I.

Moreover, the recognition clause of the collective negotiations agreement covering non-supervisory certificated personnel specifically provides that the CPEA represents only full-time guidance counsellors. Even if Mr. Rinaldi was performing only guidance counsellor's work for the two-week period in the summer, that role could hardly be categorized as "full-time."

Therefore, given the language of the respective recognition clauses of the CPEA's agreement and the Supervisors Association's agreement, I find that Vincent Rinaldi at all times material herein<sup>9/</sup> is in the position of Director of Guidance, is a department head and is therefore a member of the collective negotiations unit of department heads represented by the Cliffside Park Department Heads/Supervisors Association.

The Commission has previously found that, where an employer unilaterally guesses the unit status of an employee to be outside the

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<sup>9/</sup> While the Supervisors Association has not yet attempted to negotiate terms and conditions of employment for Mr. Rinaldi's work during July and/or August, it would appear that the PSA has the right to make such demands on his behalf.

scope of a particular collective negotiations unit, it commits a violation of the Act if that unilateral determination later proves to be erroneous. See Passaic Co. Reg. H.S. District #1, P.E.R.C. No. 77-19, 3 NJPER 34 (1976).<sup>10/</sup> Applying this case to the instant matter, I find that the Board erroneously determined that Mr. Rinaldi's two-week summer work was covered under the CPEA's agreement, and therefore, the Board unlawfully refused to negotiate extra compensation for that period with the Supervisor's Association.<sup>11/</sup> Thus, I find that the Board violated N.J.S.A. 34:13A-5.4(a)(5) and derivatively, (a)(1) by its refusal to negotiate terms and conditions of employment, specifically, the compensation for the extra two-weeks work in the summer, with the exclusive representative of the Director of Guidance, namely, the Supervisor's Association.

CO-85-43-126 (Charge against the CPEA)

I also find that the Cliffside Park Teacher's Association violated subsection 5.4 (b)(1) of the Act, by its insistence that it continued to represent the Director of Guidance for negotiations of

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<sup>10/</sup> The Commission observed in Passaic County Regional, supra, that the preferable course of action would be for the employer who has a good-faith doubt concerning an employee's unit status would be to file a unit clarification petition with the Commission.

<sup>11/</sup> It appears that the Board had little foundation upon which to reach such a conclusion, given the Director's specific contrary finding in Cliffside Park I concerning the impermissibility of department heads remaining in the teachers unit to the extent that they also perform non-supervisory duties, such as teaching.

his stipend for so-called guidance counsellor work, in the face of the Director's earlier decision that the Teachers' Association may not represent department heads to the extent that they perform non-supervisory duties.

While the CPEA initially denied that it negotiated with the Board on behalf of Rinaldi specifically, its President admits that the CPEA demanded and received a representation fee from Rinaldi. The Association President stated that the basis of the fee is that it claims to represent Rinaldi for his guidance counsellor duties.

In Town of Kearny, P.E.R.C. No. 81-134, 7 NJPER 339 (¶ 12153 1981), the Commission found that an employee organization commits a violation of N.J.S.A. 34:13A-5.4(b)(1) when it continues to assert itself as the representative of employees whom the Commission has removed from its negotiations unit. See also, Bayonne Board of Education, P.E.R.C. No. 78-60, 4 NJPER 160 (¶ 4077 1978).

For the reasons stated above, I find that the CPEA violated N.J.S.A. 34:13A-5.4(b)(1) by continuing to assert a representational claim to the Director of Guidance after that position was removed from the unit by the Commission in 1982.<sup>12/</sup>

#### The Statute of Limitations Issue

Both the Board and the CPEA allege that the instant charge is untimely.

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<sup>12/</sup> This is not to suggest that every erroneous claim by an organization to represent employees violates the Act. Here, however, the CPEA had already unsuccessfully litigated the issue of unit inclusion of supervisors to the extent that they perform non-supervisory duties. Cliffside Park I.

N.J.S.A. 34:13A-5.4(c) provides that:

...no complaint shall issue based upon any unfair practice occurring more than 6 months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge....

The Supervisors Association filed the instant Charges against the Board and the CPEA on August 16, 1984. The unrefuted testimony of the Supervisors Association's chief negotiator indicates that the Board and the Supervisors Association began negotiations for the 1984-86 agreement in May, 1984, and that it was during those negotiations that the Board refused to discuss Rinaldi's stipend for the extra two-weeks with the Supervisors Association negotiators. Since this Charge was initiated just two-months after the commencement of those negotiations, I find that the Supervisors Association's Charge is well within the statutory six-month time limit, and is timely filed.

As to the Charge filed against the CPEA, I find that that Charge asserts an allegation that the CPEA continuously asserted a representational claim to Mr. Rinaldi's as a "guidance counsellor" since 1982. The CPEA negotiated a collective negotiations agreement with the Board for 1982-84 and for 1984-86, the latter having been negotiated in May, 1984, just three months prior to the filing of the instant Charge. The CPEA has been asserting a representational claim to Mr. Rinaldi, as evidenced by its collection of a representation fee from him every year since 1982, both before and after the filing of the Charge, and as recently prior to the hearing as October,

1984. Therefore, the Supervisors Association alleges, and I find, that the violation is continuous.

The CPEA also asserts that the doctrine of laches should be applied to the instant matter. While the Commission has not specifically applied laches to claims of representational rights, the Commission has on numerous occasions found that an employee organization which has "slept on its rights, for a significant period of time," may not seek to include previously excluded employees in its negotiations unit by a unit clarification proceeding. See generally, Clearview Reg. Bd/Ed., D.R. No. 78-2, 3 NJPER 248 (1977), Wayne Bd./Ed., D.R. No. 80-6, 5 NJPER 422 (¶ 10221 1979), aff'd. P.E.R.C. No. 80-94, 6 NJPER 54 (¶ 11028 1980), Bergen Pines County Hospital, D.R. No. 80-20, 6 NJPER 61 (¶ 11034 1980). More specifically, in Rutgers, The State University, D.R. No. 84-19, 10 NJPER 284 (¶ 15140 1984), the Director, in applying the above general principles, held that an employee organization sleeps on its rights, if it signs a successor collective negotiations agreement with the employer without having presented a representational claim to the disputed title, (in that case, newly created titles) prior thereto. Compare, Union County Reg. H.S. District #1, D.R. No. 83-22, 9 NJPER 228 (¶ 14106 1983), State of New Jersey, P.E.R.C. No. 80-65, 5 NJPER 538 (¶ 10277 1979) aff'g D.R. No. 80-8, 5 NJPER 454 (¶ 10229 1979). Here, the Supervisors Association was recognized by the Board as the exclusive representative of the supervisors unit in or about December 1982. Thereafter, the Supervisors Association negotiated its first

agreement with the Board covering all department heads. The Supervisors Association attempted to resolve the problem across the table in negotiations with the Board for the successor contract in May, 1984, but without success. The Supervisors Association then promptly filed the instant unfair practice Charge prior to the execution of the successor contract.

Based upon the foregoing, I find that the Supervisors Association has not slept on its rights and the doctrine of laches should not be applied. Further, the Supervisors Association is not seeking to negotiate over additional positions or new bargaining unit work; it is seeking a determination that it has the right to represent all aspects of the terms and conditions of employment for supervisory titles it already represents.

#### CONCLUSIONS

1. The Cliffside Park Board of Education violated N.J.S.A. 34:13A-5.4 (a)(1) and (5) by its refusal during the negotiations for the 1984-85 agreement, to negotiate the compensation of the Director of Guidance for work performed during the two weeks in the summer with the majority representative, Cliffside Park Department Head/Supervisors Association. The Board also violated subsection 5.4 (a)(1) by negotiating with the CPEA for Rinaldi's employment compensation during the two-week summer period.

2. The Cliffside Park Education Association violated N.J.S.A. 34:13A-5.4 (b)(1) by asserting itself as the majority representative of the Director of Guidance for the duties he performs



during two weeks in the summer, and negotiating with the Board for certain of Guidance Director Rinaldi's terms and conditions of employment, including the stipend and representation fee. Thus, the CPEA interfered with Rinaldi's rights under the Act.

3. The allegation of a violation of N.J.S.A. 34:13A-5.4 (a)(2) should be dismissed, since Charging Party has not proven that the Board has dominated or interfered with the formation, existence or administration of an employee organization. 13/

4. The allegations of a violation of N.J.S.A. 34:13A-5.4 (a)(7) and (b)(5) should be dismissed since there is no evidence that either the Board or the CPEA violated the Commission's Rules.

#### RECOMMENDED ORDER

I recommend that the Commission Order:

A. That the Board cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of their rights guaranteed by the Act by refusing to negotiate compensation with the Supervisors Association for the two-week period worked immediately before and after the school year;

2. Refusing to negotiate with the Supervisors Association concerning compensation for the Director of Guidance for the two-week period worked immediately before and after the school year.

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13/ While the Board's actions may have provided some incidental financial benefit to the CPEA, I do not find that this constituted intentional assistance, or that the Board's actions constitute domination or interference with the formation, existence or administration of the CPEA as contemplated by the Act.

3. Negotiating with the CPEA on behalf of Vincent Rinaldi for work he performs during the aforesaid period.

4. Collecting a representation fee from Rinaldi and transmitting same to the CPEA.

B. That the CPEA cease and desist from:

1. Interfering with Vincent Rinaldi in the exercise of his rights guaranteed by the Act by claiming to represent him, and by negotiating terms and conditions of his employment, specifically, a stipend for work performed during the two-week period immediately before and after the regular school year.

2. Demanding that the Board deduct a representation fee from Vincent Rinaldi's salary.

C. That the Board take the following affirmative action:

1. Negotiate in good faith with the Cliffside Park Supervisors Association concerning compensation for the Director of Guidance for that period of time he worked immediately before and after the regular school year since May, 1984.

2. Negotiate upon demand with the Supervisors Association, concerning compensation for the Director of Guidance for the period of time immediately before and after the regular school year in future years.

3. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A". Copies of such notice on forms to be provided by the Commission shall be posted immediately upon receipt thereof and, after being

signed by the Respondents' authorized representative, shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

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

D. That the CPEA take the following affirmative action:

1. Refund to Vincent Rinaldi all monies received from him from the date of the filing of the Charge on August 16, 1984, to the present,<sup>14/</sup> as a result of the application of the representation fee provision of its 1984-86 collective negotiations agreement to Rinaldi, together with twelve percent (12%) interest on such monies collected during the period August 16, 1984, through January 1, 1986, and 9.5 percent (9.5%) interest on such monies collected during the period January 2, 1986, through the present.<sup>15/</sup>

2. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "B". Copies of such notice on forms to be provided by the Commission shall be posted immediately upon receipt thereof and, after being

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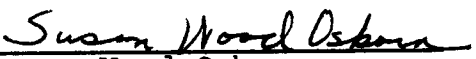
14/ N.J. Court Rules R. 4:42-11.

15/ The Charging Party requested as a remedy that the representation fee monies be returned from the date of the filing of the instant charge. Therefore, I did not consider any remedy beyond that period.

signed by the Respondent's authorized representative, shall be maintained by it for at least sixty (60) consecutive days.

Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

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

  
\_\_\_\_\_  
Susan Wood Osborn  
Hearing Examiner

Dated: September 10, 1986  
Trenton, New Jersey

# NOTICE TO ALL EMPLOYEES

## PURSUANT TO

AN ORDER OF THE

## PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

## NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining or coercing department heads in the exercise of the rights guaranteed to them by the Act by refusing to negotiate with Cliffside Park Supervisors Association concerning compensation for work performed by department heads, and specifically the Director of Guidance, during the two-week period immediately before and after the regular school year.

WE WILL cease and desist from refusing to negotiate with the Cliffside Park Supervisors Association concerning compensation for the work performed by the Director of Guidance during the aforesaid period.

WE WILL cease and desist from negotiating compensation with the Cliffside Park Education Association for work performed by the Director of Guidance during the aforesaid two-week period.

WE WILL cease and desist from deducting a CPEA representation fee from the salary of the Director of Guidance and transmitting same to the Cliffside Park Education Association.

WE WILL negotiate with the Cliffside Park Supervisors Association concerning compensation for work performed by the department heads, including the Director of Guidance, during the aforesaid two-week period beginning in June, 1984, through the present, and for work performed during the aforesaid period in the future.

Cliffside Park 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 James Mastriani, Chairman, Public Employment Relations CN-429, 495 W. State Street, Trenton, New Jersey 08625 Telephone (609) 292-6780

# NOTICE TO ALL EMPLOYEES

## PURSUANT TO

AN ORDER OF THE

## PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

## NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining or coercing the department heads, and specifically the Director of Guidance, in the exercise of the rights guaranteed to them by the Act, by negotiating compensation for work performed during the two-week period immediately before and after the "regular" school year, and by demanding and collecting a representation fee from the Director of Guidance in conjunction thereto.

WE WILL cease and desist from negotiating compensation for the Director of Guidance in conjunction with work performed during the aforesaid period.

WE WILL cease and desist from demanding a representation fee from the Director of Guidance.

WE WILL refund all representation fees collected from the Director of Guidance during the period beginning August 16, 1984, through the present, together with interest.

\_\_\_\_\_  
(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.**

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