

P.E.R.C. NO. 90-81

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STANHOPE BOROUGH BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-89-161

STANHOPE EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employer Relations Commission finds that the Stanhope Borough Board of Education violated the New Jersey Employer-Employee Relations Act when it unilaterally changed its method of determining the initial salary guide placement of new employees. The Complaint was based on an unfair practice charge filed by the Stanhope Education Association.

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Charging Party.

Appearances:

For the Respondent, Rand, Algeier, Tosti & Woodruff, Esqs.
(Ellen S. Bass, of counsel)

For the Charging Party, John W. Davis, UniServ
Representative, NJEA

DECISION AND ORDER

On December 13, 1988, the Stanhope Education Association filed an unfair practice charge against the Stanhope Borough Board of Education. The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1),(3),(5) and (7),^{1/} when it

^{1/} 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. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage 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. (7) Violating any of the rules and regulations established by the commission."

unilaterally changed its method of determining the initial salary guide placement of new employees. The charge alleges in particular that the negotiated salary guides tied compensation to years of teaching experience; that salary guide compressions had resulted in unit members being placed according to conversion charts on lesser steps of the guide relative to their credited years of experience; that once the Board determined the number of credited years of experience for new employees, their salary guide placement conformed to the conversion charts; and that the Board deviated from this pattern in September 1988 when it placed a new employee with three years of credited experience on step 4 of the guide.

On March 14, 1989, a Complaint and Notice of Hearing issued. On March 22, the Board filed its Answer. It asserts that it had not agreed to abrogate its discretion under N.J.S.A. 18A:29-9 to determine initial salary guide placement and that its past practice was to place new hires on the salary guide without reference to conversion charts.

On May 15, 1989, Hearing Examiner Susan Wood Osborn conducted a hearing. The parties examined witnesses and introduced exhibits. They waived oral argument, but filed post-hearing briefs by June 26, 1989.

On October 31, 1989, the Hearing Examiner issued her recommended decision. H.E. No. 90-22, 15 NJPER 682 (¶20277 1989). She concluded that the Board violated subsections 5.4(a)(1) and (5) when it deviated from its past practice of first determining how

many years of experience to credit and then placing new hires on the salary guide accordingly. She recommended dismissal of the alleged violations of subsections 5.4(a)(3) and (7).

On November 17, 1989, the Board filed exceptions. It asserts that the Hearing Examiner erred in inferring certain facts and in finding a past practice of tying salary guide placement to credited years of experience.

On November 20, 1989, the Association filed a letter urging adoption of the recommended decision.

We have reviewed the record. The Hearing Examiner's findings of fact (H.E. at 3-13) are generally accurate. We incorporate them with these modifications and additions.

We modify finding no. 2. We accept its finding that before the 1983 compression, salary guide movement correlated to credited years of experience (T19). The charge alleged, and the Answer did not deny, that before 1983 salary guides were tied to credited years of teaching experience. For each year of service each employee went up one step. Thus, for example, an employee with two years of credited experience would move up to step 3 the next fall. The record, however, does not reveal the initial salary guide placement of employees who had experience elsewhere and who were hired before 1982-83.

We elaborate on finding no. 5. The Hearing Examiner credited Charney's testimony that in the 1986 negotiations the parties discussed using the 1982-83 conversion chart to determine

initial salary guide placement (T30-T32). Charney testified that the parties agreed to use the 1982-83 and 1986-88 conversion charts for the "purposes of hiring, for the purposes of determining a person's amount of seniority or amount of experience...." He further testified:

We were in the process of condensing the guide one more step so that it was discussed that it would be necessary to go back to the '82-'83 guide in order to -- if someone new were brought in. As a matter of fact, that was brought up as a specific example, that if someone were brought in their placement would have to be determined by use of the '82-'83 steps. [T31]

He testified that the parties agreed that the 1982-83 steps would be used in determining salary guide placement (T31). The Board negotiators could not recall this discussion (T43, T66-T69) and the Hearing Examiner did not find that an agreement was reached. Given the contract's silence and the conflicting testimony, we will not find an agreement either.

We accept finding no. 7's recitation of Board policy (J-5). This policy contemplates that for purposes of salary guide placement, new teachers may get full credit or less than full credit for previous years of teaching experience. We also accept the first sentence in finding no. 7. The record does not reveal how the Board calculated the years experience it credited to new employees (T94). It does appear that teachers got no credit for substitute or half-time teaching (T35) and that teachers often got less than full credit for years taught at other schools (R-1). One teacher who had taught in the Stanhope system got less than full credit. The first

sentence of finding no. 7 is not inconsistent with the testimony of Board witnesses, as recounted in finding no. 8, that other variables besides the credited years of experience were also considered in determining salary guide placement.

We add to finding no. 8 that Board member Patricia Sherrer corroborated Flynn's testimony (T65-T79).

We modify and supplement finding no. 9. J. Halbach, a female, taught for 11 years in the Stanhope system. We do not know (T20-T22; T94; T99) and will not infer that all employees were credited with a certain number of years of experience and then placed on the guide accordingly. We do know that this happened with at least two employees, Rupff and Moscatello.

When he was interviewed, Evan Rupff was shown the salary guide by then superintendent John Ammon and then principal Bob Herman. Rupff had three years of New Jersey teaching which they credited, but his substitute and half-time teaching was not credited (T36-37). He was placed on step two of the 1987-88 salary guide, the location of other teachers with three years experience.

When Christine Moscatello was hired, she was also shown the salary guide by Ammon and Herman. She was shown where she would be placed (step 1) (T38). Ammon explained that while she was being credited with two years experience, the guide had been compressed so she would be placed on step one instead of step three (T39-T40).

We add to finding no. 11 that Skinner had scheduled an interview with another district (T87; T133). Skinner was credited

with three years of experience (T52; T120). Skinner is the only employee -- new hire or not -- whose step on the salary guide (4) matches her years of actual experience (4) and exceeds her years of credited experience (3) (T109; T135).

The Appellate Division has held that initial placement on a salary guide is mandatorily negotiable. Belleville Ed. Ass'n. v. Belleville Bd. of Ed., 209 N.J. Super. 93 (App. Div. 1986). The Court rejected a contention that N.J.S.A. 18A:29-9 preempts negotiations. Accord Eastern Camden Bd. of Ed., P.E.R.C. No. 80-158, 6 NJPER 348 (¶111174 1980); Dennis Tp. Bd. of Ed., P.E.R.C. No. 80-157, 6 NJPER 334 (¶111167 1980).

The Association does not claim that the Board has repudiated a contract provision on initial salary guide placement. The parties did not adopt contract language on that issue. The employer was neither bound to follow a formula nor licensed to do whatever it wanted. However, N.J.S.A. 34:13A-5.3 provides that proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established. The question is whether the employer has changed a working condition without first negotiating with the Association. Hunterdon Cty. Freeholder Bd. v. CWA, 116 N.J. 322, 338 (1989). Under all the circumstances, the answer is yes.

The employer has an official policy entitled Placement on the Salary Guide. That policy ties placement to years of credited

teaching experience. The policy states that teachers may be given full credit for prior teaching experience and implies that the employer has discretion to give teachers less than full credit. It does not contemplate giving more than full credit.

The record contains two specific case histories on how this policy had been applied. Rupff and Moscatello were expressly placed on the salary guide according to their credited years of experience.

The record does not contain other specific case histories showing how an individual teacher's initial placement was determined. There is general testimony that other factors besides credited years of experience were considered, but the Association was never told that the employer had abandoned its announced policy and every previous hiring appeared to be consistent with the policy. The Association agreed that the policy permitted the employer to discount the new hire's actual years of experience and therefore to lower the salary step; the Association had no reason to suspect that the employer wasn't doing exactly that.

What makes Skinner different from all the employees hired before her is that she was the first one placed on a higher salary guide step than even full credit would have warranted. Her unilateral placement openly violated the announced policy and therefore violated subsections 5.4(a)(1) and (5). The employer was obligated under subsection 5.3 to negotiate before placing Skinner

on a higher salary guide step than her credited years of experience warranted.^{2/}

ORDER

The Stanhope Borough Board of Education is ordered to:

A. Cease and Desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them under the Act, particularly by unilaterally changing the practice of not placing teachers on the salary guide at steps higher than those appropriate to their credited years of experience.

2. Refusing to negotiate in good faith with the Stanhope Education Association before placing employees on higher salary guide steps than that appropriate to their credited years of experience.

B. Take this affirmative action:

1. Negotiate in good faith over Debra Skinner's salary guide placement.

2. Freeze Debra Skinner's salary until it discharges its obligation under B.1.

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 shall, after being signed by the

^{2/} Absent exceptions, and any supporting evidence, we adopt the Hearing Examiner's recommendation to dismiss those portions of the Complaint alleging violations of subsections 5.4(a)(3) and (7).

Respondent's authorized representative, be posted immediately and 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.

The remaining allegations of the Complaint are dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

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

DATED: Trenton, New Jersey
February 28, 1990
ISSUED: March 1, 1990

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 employees in the exercise of their rights under the Act, particularly by unilaterally changing the practice of not placing teachers on the salary guide at steps higher than those appropriate to their credited years of experience.

WE WILL cease and desist from failing to negotiate in good faith with the Stanhope Education Association before placing employees on higher salary guide steps than that appropriate to their credited years of experience.

WE WILL negotiate in good faith over Debra Skinner's salary guide placement.

WE WILL freeze Debra Skinner's salary until we discharge our negotiations obligation.

Docket No. CO-H-89-161

STANHOPE BOR. BD. OF ED.

(Public Employer)

Dated: _____

By: _____

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 Street, CN 429, Trenton, NJ 08625-0429 (609) 984-7372

APPENDIX "A"

H.E. NO. 90-22

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

In the Matter of

STANHOPE BOROUGH BOARD OF EDUCATION,

Respondent,

-and-

Docket Nos. CO-H-89-161

STANHOPE EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Commission find that the Stanhope Board of Education violated §5.4(a)(1) and (5) of the Act when it unilaterally changing the method of placing new teachers on the negotiated salary guide. By hiring a new teacher on a higher step than one to which she was entitled by her experience, the Board changed the past practice of correlating initial placement to credit teaching experience.

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.

STATE OF NEW JERSEY
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Appearances:

For the Respondent

Rand, Algeier, Tosti & Woodruff, Esqs.
(Ellen S. Bass, of counsel)

For the Charging Party

New Jersey Education Association
(John W. Davis, UniServ Representative)

HEARING EXAMINER'S REPORT AND RECOMMENDED DECISION

On December 13, 1988, the Stanhope Education Association ("Association") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission"). The Association alleges that the Stanhope Borough Board of Education ("Board") violated subsections 5.4(a)(1), (3), (5) and (7) ^{1/} of the New

^{1/} 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; (3) discriminating in

Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") by unilaterally changing its method of placing new teachers on the negotiated salary guide.

A Complaint and Notice of Hearing issued on March 14, 1989. The Board filed an Answer to the Complaint denying an unfair practice. The Board admits hiring a new teacher with three years experience at step four of the guide, but denies there was a past practice of correlating guide placement to teaching experience. The Board also asserts that it has statutory discretion under N.J.S.A. 18A:29-9 to unilaterally determine initial guide placement. Further, the Board contends that under New Jersey Dept. of Human Services, P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984), the charge alleges, at most, a contract violation and not an unfair practice.

I conducted a hearing on May 15, 1989, at which the parties submitted exhibits and examined witnesses.^{2/} The parties waived

1/ Footnote Continued From Previous Page

regard to hire or tenure of employment or any term or condition of employment to encourage or discourage 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; (7) Violating any of the rules and regulations established by the Commission."

2/ The transcripts of the hearing shall be referred to as "T-". Commission exhibits will be referred to as "C-"; jointly submitted exhibits will be referred to as "J-"; Charging Party's exhibits will be referred to as "CP-"; and Respondent's exhibits will be referred to as "R-".

closing arguments but filed post-hearing briefs by June 26, 1989.

Based upon the entire record I make the following:

FINDINGS OF FACT

1. The Association is the exclusive negotiations representative of the Board's teaching staff. The Board and the Association are parties to a series of collective negotiations agreements covering the teachers, the most recent of which covers 1988-89 through 1989-90. Each contract provides at Article XIX, Salaries, that teachers' salaries shall be in accordance with salary schedules appended to the contracts. All contracts are silent concerning initial placement on the guide (J-1, J-2, J-3).

2. Until 1983, contracts contained 19-step salary guides. The number of years credited teaching experience correlated directly to the employee's step on the salary guide. Teachers credited with no experience started at step 1 of the guide; teachers credited with 2 years experience started at step 2 of the guide, and so on. Each September, teachers advanced one step on the guide until they reached maximum. (T-8)

3. In 1983, the parties negotiated a compression of the salary guide from 19 steps to 14 steps (T13-15). The parties included a "conversion chart" in the 1983-86 contract (J-3), showing movement of teachers from their step on the 1982-83 guide to the appropriate step on the 14-step 1983-84 guide. The conversion chart follows:

	<u>1982-83</u>		<u>1983-84</u>
Step	1	New Step	1
	2		1
	3		1
	4		2
	5		3
	6		4
	7		5
	8		6
	9		7
	10		8
	11		8
	12		9
	13		10
	14		10
	15		11
	16		12
	17		12
	18		13
	19		14

Since guide placement would no longer reflect the number of years credited experience or service in the district, the parties added a note to the conversion chart indicating "tenure years and seniority years will not be diminished by this conversion." (T-14). The salary schedule appended to the contract contains a footnote, "Placement on the salary guides shall not affect in any manner the years of service in the district for purposes of tenure, seniority or benefit accrual." (J-3). During negotiations for the 1983-85 contract, the parties did not discuss how initial new hires would be placed on the guide (T-29).

4. In negotiations for the 1986-88 contract the parties agreed to a second guide compression reducing the guide from 14 steps in 1985-86 to 13 steps in 1986-87 and back to 14 steps in 1987-88. In essence teachers moved back a step in 1986-87 and then forward a step in 1987-88. The 1986-88 contract includes the following conversion chart:

1985-86 Step	1986-87 Step	1987-88 Step
1	1	1
2-3	2	2
-	-	3
4	3	4
5	4	5
6	5	6
7	6	7
8	7	8
9	8	9
10	9	10
11	10	11
12	11	12
13	12	13
14	13	14

This conversion chart notes, "Tenure and Seniority shall not be affected by this conversion." (J-2).

William Charney, a member of the Association Negotiations Committee, explained his own movement on the guides as an example of how the conversion charts work. Charney was on step 4 of the 1982-83 guide. Using the conversion chart in the 1983-86 contract, he moved to step 2 in 1983-84. In 1984-85 he advanced to step 3; in 1985-86 he advanced to step 4. Using the conversion chart in the 1986-88 contract, he moved back to step 3 in 1986-87, then advanced to step 4 in 1987-88. In 1988-89, he moved to step 5 (T22-23).

5. Negotiations for the 1986-88 contract were lengthy. The parties negotiated about almost every sentence in the contract and agreed to numerous language changes (T41-T42; T66-T67). During one negotiations session, the parties discussed whether to include a chart in the 1986-88 contract. The Association felt it was necessary to show both placement of new hires and movement of existing staff on

the guide (T-29).^{3/} The Board negotiators agreed to include the chart to clarify for the Board and the teachers how step movement would work.^{4/}

6. Although there was no step compression in the 1988-90 contract (J-1), the guide also contained a chart showing step movement of each employee from the 1987-88 step to the 1988-89 step and then from the 1988-89 step to the 1989-90 step. Since there was no guide compression, this chart shows only that employees move ahead one step each year. (J-1, p. 24).

7. The record does not reveal how the Board decided the number of years experience to credit a new hire in placing him/her on the guide. The Board's Policy Manual contains the following statement of Board policy (adopted in 1974) concerning guide placement:

Placement on the Salary Guide

Professional employees newly appointed to a position in this district may be given full credit for each year of full time public school teaching experience in the same discipline for

^{3/} Charney also testified that during negotiations, a discussion arose concerning the necessity of also using the 1982-83 conversion chart to determine initial salary placement (T30-32). While I credit Charney's testimony that such a discussion took place, the record does not reveal whether the parties agreed on that issue.

^{4/} Robert Flynn, a member of the Board's negotiations team, testified he did not recall any discussion concerning placement of new hires (T-43). Patricia Sherrer, also a member of the Board's committee, did not recall any discussion about the purpose of including the conversion chart in the contract (T66-T69).

which they were employed. Experience as a private school teacher or as a teacher of a related subject will be considered on a case-by-case basis by the Board upon the recommendation of the Superintendent...In order to advance one step on a guide, an employee must have served at least five months of the prior fiscal year with the district (J-5).

8. According to Board Member Flynn, there was no formula for placing new hires on the guide. Ammon, the superintendent until 1988, interviewed applicants and presented his recommendations first to the Board's instruction and curriculum committee and then to the full Board. His recommendations included a specific recommendation for step placement on the salary guide. The Board reviewed the Superintendent's recommendations and ratified his hiring decisions. According to Flynn, Ammon negotiated starting salary with each new hire. Ammon's decision about where to place new teachers on the guide was not based solely on teaching experience, but was also based on the need to fill the position and the quality of the candidate. The Board never asked Ammon how much experience he was crediting a new teacher in guide placement. The Board's objective was to get the best candidate for the position for the least amount of money (T54, T58-T59, T60, T70, T71) .

9. The record traces the initial guide placement of all 14 teachers hired by the Board between 1982 and 1988. The record details their pattern of placement on the guide. ^{5/}

In November, 1982, the Board hired A. Puleo on step 2 of the guide. Puleo had one year prior experience. I infer that the Board gave Puleo credit for the one-year experience, and appropriately^{6/} him on step 2.

In September, 1983, the Board hired Kopperl. Kopperl had eight years experience, and was placed on step 5 of the 1983-84 guide. If the Board had credited all of his eight years experience, Kopperl would have been placed on step 6 of the 1983-84 guide. I infer that Kopperl was credited with seven years experience. ^{7/}

In September, 1983, the Board hired J. Mekler. She had four years experience, and was placed at step 1. If the Board had

^{5/} The Board document R-1, prepared by present Superintendent Ripatrizone, lists each teacher, his/her date of hire, the length of prior teaching experience, and the step on the guide at which the new hire was placed. The final column indicates the step on which each new hire would be placed if he/she was given full credit for prior experience. As no Board documents exist to indicate the number of years experience credited, Ripatrizone reconstructed the information using other Stanhope employees' guide placement (T94). The Board has acknowledged, and I find, that this final column is inaccurate, and I do not credit it.

^{6/} A teacher with one year experience, i.e., one that started teaching in 1981-82, would have moved to step 2 on the 1982-83 guide.

^{7/} That is, a Stanhope teacher having completed seven years teaching by the end of 1982-83 would, using the conversion chart, move from step 7 on the 1982-83 guide to step 5 on the 1983-84 guide.

credited all four years, Mekler would have been placed on step 2 of the 1983-84 guide, using the conversation chart. I infer that Mekler was credited with less than her four years experience (either none, one, two or three years).^{8/}

The Board hired S. Pointier in December 1, 1983. She had 12 years experience, and was hired at step 7 of the compressed 1983-84 guide. Had the Board credited her with all 12 years experience, she would have been placed on step 9 of the 1983-84 guide. Since the Board placed her on step 7 of the 1983-84 guide, I infer that it credited her with 9 years experience.^{9/}

Arnold-Hrobosky and J. Polizois were hired in the fall of 1984. Each had three years experience and were hired at step 2 of the 1984-85 guide. In placing Arnold-Hrobosky and Polizois at step 2, the Board might have credited them each with one, two or three years experience.^{10/}

^{8/} A Stanhope teacher having completed one, two or three years by the end of 1982-83 would, using the conversion chart, move to step 1 of the 1983-84 guide.

^{9/} A Stanhope teacher completing 9 years by the end of 1982-83 would have moved from step 9 on the 1982-83 guide to step 7 on the 1983-84 guide.

^{10/} Using the conversion chart, teachers completing one, two or three years by the end of 1983 would move from 1983-84 step 1 to 1984-85 step 2 in September 1984. A teacher with three years credited experience as of September 1984 would have started in 1981 at step 1, moved to step 2 in 1982-83, moved to step 1 in 1983-84, and moved to step 2 in 1984-85.

Scognamiglio was hired in September, 1984 with 1 year experience. He was placed on step 2 of the 1984-85 guide. I infer that he was given full credit for his one year experience.^{11/}

J. Halbach was hired in September, 1985. He had 11 years experience, and was hired at step 5 of the 1985-86 guide. If the Board had given Halbach full credit for his 11 years experience, he would have been placed at step 9 on the 1985-86 guide.^{12/} I infer that he was given credit for seven years experience^{13/}

J. Lund was hired October 1, 1985 with 9 years experience. She was hired at step 5. Had she been credit with the nine years, she would have been placed on step 7 of the 1985-86 guide.^{14/} I infer that the Board credited Lund with seven years experience.^{15/}

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- ^{11/} A Stanhope teacher completing one year by the end of 1983-84 would move from step 1 on the 1983-84 guide to step 2 on the 1984-85 guide.
- ^{12/} A Stanhope teacher with 11 years experience would have been on step 9 in 1985-86, step 8 in 1984-85, step 7 in 1983-84, with 9 years experience as of September, 1983.
- ^{13/} A Stanhope teacher completing seven years by the end of 1984-85 would have been on step 4 in 1984-85, step 3 in 1983-84, and, applying the conversion chart, on Step 5 in 1982-83.
- ^{14/} A Stanhope teacher completing nine years by the end of 1984-85 would have had seven years experience by the end of 1982-83, and using the conversation chart, would have moved from Step 7 of the 1982-83 guide to step 5 on the compressed 83-84 guide, then to step 6 of the 1984-85 guide, and then to step 7 of the 1985-86 guide.
- ^{15/} A Stanhope teachers completing seven years by the end of 1984-85 would have five years experience by the end of 1982-83, and moved from step 5 of the 1982-83 guide to step 3 on the compressed 83-84 guide, then to step 4 of the 1984-85 guide, and then to step 5 of the 1985-86 guide.

Grube was hired in November, 1985, with two years private school experience. As he was hired on step 1, I conclude he was given no credit for prior experience.

McKeever was hired September 1, 1986 with 14 months private school experience. As he was also started at step 1, I conclude he was credited with no experience.

Evan Rupff was hired in September, 1987. He had three years full-time experience. When he was hired Rupff was told he was being given credit for his three years experience, but because of the guide compression, would be started at step 2 on the 1987-88 guide (T36-37). Using the conversion chart, Rupff was correctly placed.^{16/}

Ms. Zarr was hired in January, 1987, with 13 years experience. She was hired at step 4 on the 1986-87 guide. If the Board had credited her with all of her 13 years experience, she would have started at step 9 on the 1986-87 guide^{17/} As she was placed at step 4, I infer that the Board gave her credit for eight years teaching experience. ^{18/}

^{16/} Teachers with three years experience would have started in 1984-85 at step 1, moved to step 2 in 1985-86, stayed on step 2 in 1987-88.

^{17/} That is, a 13-year teacher would have started in 1973-74, and would have been at step 10 in 1982-83, moved to step 8 in 1983-84, moved to step 9 in 1984-85, moved to step 10 in 1985-86, and (using the conversion chart in J-2), would have moved to step 9 in 1986-87.

^{18/} A Stanhope teacher beginning on step 1 in 1978 would be on step 4, using the conversion charts, by 1986-87.

Christine Moscatello was hired in November, 1987, and placed on step 1 of the 1987-88 guide. She had two years teaching experience. During her interview with Superintendent Ammon and then Principal Ripatrizone, she was told that she was being given credit for her two years experience but because of the guide compression, step 1 included a series of previous steps (T40-41).

10. No grievances had ever been filed with regard to guide placement (T103).

11. Louis Ripatrizone, the former principal, was appointed superintendent in July, 1988. The only candidate he hired was Debra Skinner. Skinner applied for the position of teacher for handicapped students, a difficult position to fill. After advertising extensively, the Board received 13 applications for this position. After interviewing nearly all applicants, Ripatrizone felt Skinner was "head and shoulders" above the other applicants and could best meet the needs of this class of lower level perceptually impaired students.

Skinner, with four years experience, would not accept the position for less than \$23,500. Ripatrizone found that step 4 of the 1987-88 guide^{19/} was closest to Skinner's demand. In placing Skinner on step 4, Ripatrizone's considered the difficulty of obtaining a qualified candidate for the position and Skinner's qualifications, including her experience. Ripatrizone recommended

^{19/} Negotiations for the 1988-90 contract had not yet been completed.

Skinner's appointment and placement on step 4 to the Board. The Board approved Skinner's appointment. (T80, T85, T88, T90, T120)

ANALYSIS

The Commission has previously determined that initial placement on a negotiated salary guide is mandatorily negotiable and is not statutorily pre-empted by N.J.S.A. 18A:29-9. Eastern Camden Bd. of Ed., P.E.R.C. No. 80-158, 6 NJPER 348 (¶111174 1980). Dennis Tp. Bd. of Ed., P.E.R.C. No. 80157, 6 NJPER 334 (¶111167 1980), Cinnaminson Bd. of Ed., P.E.R.C. No. 78-46, 4 NJPER 79 (1978), aff'd in part, App. Div. Docket No. A-268277 (6/1/79), pet. for cert. den. 81 N.J. 341 (1979); East Orange Bd. of Ed., P.E.R.C. No. 77-60, 3 NJPER 126 (1977).

The Association contends that the Board's placement of Skinner at step 4 of the 1988-89 salary guide constituted a unilateral change in the past practice of initial guide placement. The Board argues that there was no past practice of correlating teaching experience to guide placement, but rather, the practice had been that the Board determined initial guide placement.

Terms and conditions of employment can either be set forth in the parties' agreement or found in the parties' past practice. Galloway Tp. Bd. of Ed., v. Galloway Tp. Ed. Assn., 78 N.J. 25, 48 (1978). Generally, a past practice defining a term and condition of employment is entitled to the same status as a term and condition of employment defined by statute or by the provisions of a collective agreement. Where the agreement is silent or ambiguous on the

particular issue in dispute, then past practice controls. County of Sussex, P.E.R.C. No. 83-4, 8 NJPER 431 (¶13200 1982); Rutgers, The State University, P.E.R.C. No. 82-98, 8 NJPER 300 (¶13132 1982; Barrington Bd. of Ed., P.E.R.C. No. 81-122, 7 NJPER 240 (¶12108 1981), appeal dismissed App. Div. Docket No. A-4991-80 (1982). Here, there is no provision in the parties' current or expired collective agreements which controls the placement on the salary guide for new employees. The parties' practice concerning initial guide placement is key to the issue of whether there was a unilateral change.

A past practice is a term and condition of employment which is not enunciated in the parties' agreement but arises from the mutual consent of the parties, implied from their conduct. Caldwell-West Caldwell Bd. of Ed., P.E.R.C. No. 80-64, 5 NJPER 536, 537 (¶10276 1979), aff'd in part, rev'd in part 180 N.J. Super. 440 (1981).

In this case, the Board's own written policy on guide placement permitted it to give new teachers "full credit for each year of full time public school teaching experience." The logical inference from this--and one on which the Association relied -- is that placement on the guide would be controlled by the Board's determination of teaching experience. That is, the Board could decide to give the candidate up to full credit for prior experience. Once the Board determined how many years experience to credit a new teacher, the policy then suggests that the Board must

place the teacher on the guide accordingly. While this written Board policy, adopted in 1974, was still in effect, the Board's actual practice of initial guide placement was based on other factors. In reality, at least since 1983, Superintendent Ammon was negotiating starting salary, i.e., initial guide placement, directly with new teachers, using criteria other than that set forth in the Board policy guide, including quality of the candidate and need to fill the position. The Board's objective in these individual negotiations with teacher candidates was to "get the best candidate at the least money."

A past practice should demonstrate "not only a pattern of conduct but also some kind of mutual understanding, either expressed or implied." United Transportation Union v. St. Paul Union Depot Co., 434 F.2d 220, 75 LRRM 2595 (8th Cir. 1970).

Whether prior conduct establishes a working practice under the Act depends upon consideration of the facts and circumstances of the particular case. Among the factors one might reasonably consider would be the mutual intent of the parties, their knowledge of and acquiescence in the prior acts, along with evidence of whether there was joint participation in the prior course of conduct, all to be weighed with the facts and circumstances in the perspective of the present dispute (Id. at 2597).

It can hardly be said that there was any mutual understanding between the parties that the practice was other than correlating initial guide placement to credited teaching experience. The record does not establish that the Association knew that the Board had changed its method of initial guide placement.

Until Skinner was hired, all teachers were hired at a step at or lower than their credited experience. Skinner was the first candidate hired at a step higher than possible credited experience. Given the continuing written Board policy keying guide placement to credited experience, there was no basis for the Association to know that the Board had changed its practice. Thus, I do not find that there was an express or implied mutual understanding between the parties to stop correlating guide placement to teaching experience.

Further, the guide compression does not change the Board's obligation to continue the past practice of correlating guide placement to teaching experience. The evidence shows that the Board did use the conversion chart in considering where to place new teachers. It advised Rupff and Mostatello that it was crediting their respective prior teaching experience, but because of the guide compression, they were being placed lower on the guide.

Accordingly, I find that a past practice of correlating salary guide placement to credited teaching experience existed.

N.J.S.A. 34:13A-5.3 requires that "[p]roposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established." In other words, employers may not unilaterally alter prevailing terms and conditions of employment because such changes circumvent the statutory duty to bargain Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Assn., 78 N.J. 25, 48 (1978). The duty to bargain is not limited to the period of negotiations for a new agreement;

"...it applies at all times..." (Galloway at 49), including "prior to implementing a proposed change in an established practice governing working conditions which is explicitly or impliedly included under the terms of the parties' agreement." New Brunswick Bd. of Ed., P.E.R.C. No. 78-47, 4 NJPER 84 (¶4040 1978), mot. for recon. den., P.E.R.C. No. 78-56, 4 NJPER 156 (¶4073 1978), aff'd App. Div. Dkt. No. A-2450-77 (4/2/79). Here, the Board was obligated to negotiate with the Association prior to changing the established practice of placing new teachers in accordance with credited teaching experience, unless it can show the Association waived its right to negotiate.

The Board argued in its post-hearing brief that the Association's many years of silence on the guide placement issue constitutes a waiver. A waiver can come in different forms, but must be clear and unequivocal. Elmwood Park Bd. of Ed., P.E.R.C. No. 85-115, 11 NJPER 366 (¶16129 1985). Where an employee organization declines the opportunity to negotiate after being notified of proposed changes or if it has routinely permitted the employer to make similar changes, it may have waived its right to negotiate over what would otherwise be mandatorily negotiable subjects. South River Bd. of Ed., P.E.R.C. No. 86-132, 12 NJPER 447 (¶17167 1986), aff'd App. Div. Dkt. No. A-5176-85T6 (2/10/87); Rutgers University, P.E.R.C. No. 82-98, 8 NJPER 300 (¶13132 1982).

The Association did waive its right to negotiate the number of years of prior experience a new teacher was to be credited. It

left that to the Board's discretion. Once the Board determined how many of a candidate's years experience to credit (up to the full years), past practice then dictated placing the employee on the appropriate guide step in accordance with the credited years service. The Association did not waive its right to negotiate about a change in initial guide placement based upon that credit. It is true that the Association never grieved the Board's decisions concerning guide placement for new teachers. No doubt the Association believed the Board was operating in a consistent manner with its own policy; that is, to first determine how much prior teaching experience to credit, and then place the teacher on the guide accordingly. Until 1988 when the Board hired Skinner, new teachers were always given full credit or less for prior experience, and placed accordingly. Accordingly, I find that the Association did not waive its right to negotiate about the Board's change in initial guide placement.

I find that the Board violated 5.4(a)(5) of the Act when it unilaterally changed the method of placing new employees on the guide. I am sympathetic to the Board's legitimate interest in placing Skinner at the higher step on the guide than her experience permitted: it sought to obtain a highly qualified candidate for a hard-to-fill position. But under the Act it was obligated to address its concerns with the majority representative before

changing the past practice of initial guide placement keyed to credited experience.^{20/}

The Board also argues that the Association's charge should be dismissed under New Jersey Dept. of Human Services, P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984), because the charge alleges, at most, a contract violation and not an unfair practice. I disagree. The charge alleges a change in the parties past practice of placing initial hires on the guide in correlation with prior credit teaching experience. As noted above, the contract is silent on this issue, and no such contract violation is cited. Therefore, I do not find that Human Services applies.

The Association also alleged that the Board violated N.J.S.A. 34:13A-5.4(a)(3). In order to establish that the Board violated subsection (a)(3) of the Act by changing the guide placement method, the Association has to show animus (anti-union motive) as the basis for the change and that protected activity was a motivating factor in the Board's action. Bridgewater Tp. v. Bridgewater Public Works Assn., 95 N.J. 235 (1984). The Association offered no evidence animus nor evidence that the Board's action was taken in retaliation for any protected activity. Therefore, the §5.4(a)(3) allegation must be dismissed.

^{20/} There is nothing in the record that would indicate that its concerns could not have been addressed through negotiations with the Association. But even if they had not been, the Board may have had the right to unilaterally change the guide placement formula after it had negotiated with the Association to impasse. Rather than do this, it unilaterally changed the guide placement method, thus violating the Act.

Accordingly, based upon the entire record and the above analysis, I make the following:

CONCLUSIONS OF LAW

The Board violated 5.4(a)(5) and derivately, (a)(1) of the Act when it unilaterally changed the past practice of placing new teachers on the salary guide in correlation to their credited prior teaching experience.

The Board did not violate 5.4(a)(3) of the Act.

RECOMMENDED ORDER

I recommend that the Commission order the Stanhope Board of Education to cease and desist from:

Interfering with, restraining or coercing employees in the exercise of their rights under the Act by changing existing terms and conditions of employment, including the past practice of placing new teachers on the salary guide in correlation to credited prior teaching experience, without first negotiating such changes with the Stanhope Education Association.

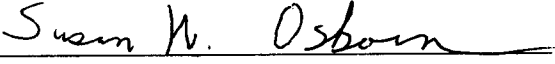
I recommend that the Commission order the Stanhope Board of Education to take the following affirmative action:

1. Freeze Debra Skinner's current salary
2. Negotiate an appropriate future guide placement for her with the Stanhope Education Association.
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 thirty (60) consecutive days. Reasonable steps shall be taken to insure that such notices are not altered, defaced or covered by other materials.

4. Notify the Chairman of the Commission within ten (10) days of receipt what steps the Respondent has taken to comply herewith.

I recommend that the Commission order that the alleged violation of §5.4(a(3) be dismissed.



Susan Wood Osborn
Hearing Examiner

Dated: October 31, 1989
Trenton, New Jersey