P.E.R.C. NO. 90-34

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

UPPER PITTSGROVE TOWNSHIP
BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-88-218

UPPER PITTSGROVE EDUCATION
ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the Upper Pittsgrove Township Board of Education violated the New Jersey Employer-Employee Relations Act when it unilaterally increased the workload of teachers employed at the Upper Pittsgrove School and when it pressured employees to agree to or acquiesce in the waiver of their contractual rights. The Complaint was based on an unfair practice charge filed by the Association.

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UPPER PITTSGROVE EDUCATION
ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Horovitz, Perlow, Morris & Baker, Esqs. (John P. Morris, of counsel)

For the Charging Party, Selikoff & Cohen, Esqs. (Steven R. Cohen, of counsel)

DECISION AND ORDER

On February 29 and November 9, 1988, the Upper Pittsgrove Education Association ("Association") filed an unfair practice charge and an amended charge against the Upper Pittsgrove Township Board of Education ("Board"). The charge, as amended, has three counts alleging 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), (2) and (5).[1/] The first count has been

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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. (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."

withdrawn. The second count alleges that the Board unilaterally increased teacher workload by adding an eighth period at Upper Pittsgrove School and by making other changes. The third count alleges that the Board has eliminated compensation for certain teaching assignments during the regular school day.

On August 27, 1988, a Complaint and Notice of Hearing issued.

On September 12, 1988, the Board filed an Answer denying the allegations of the second count and asserting, as separate defenses, that the second count was untimely and centered on a managerial prerogative. The Board never formally answered the allegations in the amendment, but the parties fairly and fully litigated the Board's contention that it had a contractual defense.

On December 7, 1988 and January 25, 1989, Hearing Examiner Arnold H. Zudick conducted a hearing. The parties examined witnesses and introduced exhibits. They filed post-hearing briefs by March 29, 1989.

On June 30, 1989, the Hearing Examiner issued his report. H.E. No. 89-44, 15 NJPER 429 (¶20179 1989). With respect to the second count, he found that the Board had violated subsections 5.4(a)(1) and (5) by unilaterally adding the eighth period and by pressuring two employees to waive a contractual stipend for intramural coaching. He recommended an order requiring the Board to post a notice of its violations and to negotiate in good faith over compensation for the workload increase for 1987-88 and 1988-89 and over the proposed workload and compensation for 1989-90, and to pay

the intramural stipend for 1987-88 and 1988-89 if it had not done so already. He declined to recommend a return to the 1986-87 schedule. With respect to the third count, he found that the Board had compensated employees in accordance with the collective negotiations agreement.

On July 19, 1989, the Association filed an exception. It asks that the Board be ordered to return to the 1986-87 schedule.

On July 20, 1989, the Board filed exceptions. It asserts that the charge was untimely and that it did not have a duty to negotiate over the workload increase absent a demand from the Association. The Association filed a response.

We have reviewed the record. The Hearing Examiner's findings of fact (H.E. at 4-22) are thorough and accurate. We incorporate them. We specifically adopt his finding (footnote 10) that an NJEA field representative did not tell the Superintendent that it was okay to change from an unstructured workday to an eight period day.

No exceptions have been filed to the recommended dismissal of the third count or to the recommended finding that the Board illegally pressured two teachers to waive the contractual stipend for intramural activities. We accept these recommendations.

The second count was filed within six months of the work schedule change. It was timely under N.J.S.A. 34:13A-5.4(c). The Association did not acquiesce in the change and was not required to demand negotiations after the change. Instead, as demonstrated by

the cases cited by the Hearing Examiner (H.E. at 22-23), it was up to the employer to initiate negotiations before this change. See also N.J.S.A. 34:13A-5.3; Hunterdon Cty. Freeholder Bd. v. CWA, 116 N.J. 322 (1989) aff'g App. Div. Dkt. No. A-5558-86T8 (3/21/88), aff'g P.E.R.C. No. 87-35, 12 NJPER 768 (¶17293 1987) and P.E.R.C. No. 87-150, 13 NJPER 506 (¶18188 1987); Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25, 48 (1970).[2/] Not having done so, the Board violated subsections 5.4(a)(1) and (5).

Under all the circumstances of this case, we order the Board to negotiate in good faith over compensation for the workload increase for teachers for 1987-88, 1988-89 and 1989-90. If, after 90 days, the Board has not fully discharged its obligation to negotiate in good faith, we order the Board to restore the affected teachers to their pre-increase workload level. We delay the restoration of the status quo to minimize any possible interference with student schedules.

ORDER

The Upper Pittsgrove Township Board of Education is ordered to:

1. Cease and desist from:

A. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the

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2/ Salem City Bd. of Ed., P.E.R.C. No. 84-153, 10 NJPER 439 (¶15196 1984) is not on point. In that case, no change in the underlying term and condition of employment -- an uninterrupted lunch period -- had been demonstrated.

Act, particularly by unilaterally increasing the workload of teachers employed at the Upper Pittsgrove School and by pressuring employees to agree to or acquiesce in a waiver of their contractual rights.

B. Failing to negotiate in good faith with the Association on behalf of the teachers at the Upper Pittsgrove School over a workload increase and over a proposal to eliminate the intramural stipend.

2. Take this action:

A. Negotiate in good faith with the Association over compensation for the workload increase for Upper Pittsgrove School teachers for 1987-88, 1988-89 and 1989-90. If, after 90 days, the Board has not fully discharged its obligation to negotiate in good faith, we order the Board to restore the affected teachers to their pre-increase workload levels.

B. Negotiate in good faith with the Association before changing the teachers' workload.

C. Pay the contractual stipend (Article 4, Section N) to the appropriate employees for 1987-88, 1988-89 and 1989-90 if it has not already done so.

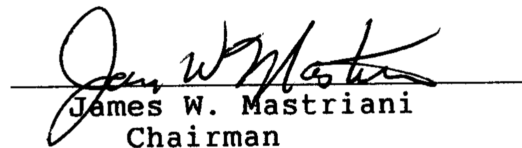
3. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice on forms to be provided by the Commission shall be posted immediately upon receipt thereof and, after being signed by the Respondent's authorized representative,

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.

The third count of the Complaint is dismissed.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

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

DATED: Trenton, New Jersey
October 27, 1989
ISSUED: October 30, 1989

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 our employees in the exercise of the rights guaranteed to them by the Act, particularly by unilaterally increasing the workload of teachers employed at the Upper Pittsgrove School and by pressuring employees to agree to or acquiesce in a waiver of their contractual rights.

WE WILL cease and desist from failing to negotiate in good faith with the Association on behalf of the teachers at the Upper Pittsgrove School over a workload increase and over a proposal to eliminate the intramural stipend.

WE WILL negotiate in good faith with the Association over compensation for the workload increase for Upper Pittsgrove School teachers for 1987-88, 1988-89 and 1989-90. If, after 90 days, we do not fully discharge our obligation to negotiate in good faith, we will restore the affected teachers to their pre-increase workload levels.

WE WILL negotiate in good faith with the Association before changing the teachers' workload.

WE WILL pay the contractual stipend (Article 4, Section N) to the appropriate employees for 1987-88, 1988-89 and 1989-90 if we have not already done so.

Docket No. CO-H-88-218

Upper Pittsgrove Tp. 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. 89-44

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

In the Matter of

UPPER PITTSGROVE TOWNSHIP
BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-H-88-218

UPPER PITTSGROVE EDUCATION
ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends the Commission find that the Upper Pittsgrove Township Board of Education violated the New Jersey Employer-Employee Relations Act when it failed to negotiate over the increase in teacher workload for 1987-88 and 1988-89, and when it failed to negotiate over a proposal to eliminate a contractual stipend and required employees to either agree to or acquiesce in the waiver of their contractual stipend.

The Hearing Examiner also recommended that the Commission find that the Board did not repudiate its collective agreement.

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
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

UPPER PITTSGROVE TOWNSHIP
BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-88-218

UPPER PITTSGROVE EDUCATION
ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Horuvitz, Perlow, Morris & Baker, Esqs.
(John P. Morris, of counsel)

For the Charging Party, Selikoff & Cohen, Esqs.
(Steven R. Cohen, of counsel)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on February 29, 1988, and amended on November 9, 1988, by the Upper Pittsgrove Education Association ("Association"") alleging that the Upper Pittsgrove Township Board of Education ("Board") violated subsections 5.4(a)(1), (2) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").[1/] In the original Charge

1/ These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with,

Footnote Continued on Next Page

the Association alleged in Count I that the Board unilaterally discontinued the policy of awarding compensation for "perfect" and "near-perfect attendance"; and alleged in Count II that the Board unilaterally increased the employees' workload by going from a seven to an eight-period day, increased the "intra-scholastic" coaching and club periods from 30 to 42 minutes per day, and eliminated compensation of $175 per school year for "intra-scholastic" coaching and club advisorships. In the Amended Charge the Association alleged as Count III that the Board refused to pay the extra compensation due certain employees for additional assignments performed during the school day, misdesignated job titles to avoid paying the proper compensation for certain tittles, and refused to negotiate over the effect of the restructured workday and to correctly compensate unit members performing additional assignments during the school day.

The Association seeks a remedy restoring the attendance program and compensating eligible employees according to the program, plus interest; and restoring the _status quo ante_ at the Upper Pittsgrove School and properly compensating affected employees, plus interest.

1/ Footnote Continued From Previous Page

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."

A Complaint and Notice of Hearing (C-1) was issued on August 29, 1988. The Board filed an Answer (C-2) on September 12, 1988 denying that it violated the Act. The Board asserted several affirmative defenses including that the allegations were barred by the statute of limitations; that the charges in Count I were moot, and the charges in Count II concerned managerial prerogatives; that no request for negotiations was made by the Association regarding any impact from the allegations set forth in Count II; and that the Association should be estopped from attempting to negotiate the issues in Count II, by way of an unfair practice charge after it had completed collective negotiations.[2/]

Hearings were conducted on December 7, 1988 and January 25, 1989.[3/] Shortly after the hearing commenced, the parties entered into a stipulation regarding the attendance program and the Association then withdrew Count I of the Charge (1T6-1T7).[4/] Both parties filed post-hearing briefs by March 29, 1989.

2/ In its post-hearing brief the Association noted that the Board had not filed an Amended Answer concerning Count III, and in a footnote argued that pursuant to N.J.A.C. 19:14-3.1, the allegations should be deemed true. No formal motion was made in that regard, and since the issues in Count III were fully and fairly litigated, those issues will be decided on their merit.

3/ The transcripts from December 7 and January 25 will be referred to as "1T" and "2T" respectively.

4/ The stipulation provides:

> The parties stipulate that the attendance policy providing for compensation for perfect and near perfect attendance as

Footnote Continued on Next Page

Based upon the entire record I make the following:

Findings of Fact

1. During the 1986-87 school year there was a seven-period workday at the Upper Pittsgrove School.[5/] (CP-5; 1T103-105; 2T7, 2T23-2T24, 2T26). Although there was no bell system that year, and a loose time structure particularly in the afternoon, there were seven subject periods (including homeroom but excluding lunch (CP-5)) that had to be worked (2T7, 2T23-2T24).

The parties' 1984-87 collective agreement, J-2, did not specifically set forth the schedule or hours of a workday. The teachers' workday was 8:15 a.m.-3:15 p.m. with contact time running from 8:30-3:00 (2T39-2T40).[6/] Article 16, Section G of J-2 only provided for a 30-minute duty free lunch.

4/ Footnote Continued From Previous Page

set forth in items four and five of Count one of CO-H-88-218, which is the Charge in this matter, and the criteria in the attached document [Exhibit J-3] entitled "Professional Staff Attendance Awards Program" shall be considered as an addendum to J-1 [the parties 1987-1990 collective agreement](1T6).

5/ The record shows that there are three schools, the Daretown School, Monroeville School, and the Upper Pittsgrove School, in the district represented by the Board. This Charge only concerns the Upper Pittsgrove School (1T12).

6/ The teachers' contact time with students was from 8:30-3:00 (2T39-2T40, R-2). Since Article 16, Section E of J-2 required the teachers to report to school 15 minutes prior to the students' arrival and to remain for 15 minutes after they left, the teacher workday was 8:15-3:15.

During 1986-87 periods 1, 2, 3, 5, 6 and 7 were 45 minutes long. Lunch occurred between periods 4 and 5. Period 4 began at 11:00 a.m. and theoretically ended at 11:45. Period 5 began at 12:45, which meant an hour (11:45-12:45) was available for lunch (CP-5). In practice, however, period 4 ended early, and the "lunch period" ranged between 11:30-12:45 give or take five to ten minutes on either end (1T110, 1T123; 2T25).

In 1986-87 and prior years, the "lunch period" included more than students and teachers eating lunch. After eating lunch, which occurred during the first 20 to 40 minutes of the lunch period (1T123, 2T25), three or more teachers coached (on a voluntary/unassigned basis) intramural sports five days a week (2T12),[7/] other teachers had an assigned lunch supervision duty (supervising students),[8/] and the remaining teachers (those not coaching or supervising students) used the remainder of the "lunch period" for planning time, correcting papers, and disciplining and/or tutoring students (1T123, 2T31). Teachers in the last category were not actually assigned duties at that time (2T41).

7/ Intramural was defined as sports program occurring during the regular school day (1T15, 1T62, 2T23).

8/ Lunch supervision duty was assigned on a rotating basis (2T31), but teachers coaching (or assisting) in intramural sports were not assigned to lunch duty on the day (or days) they had intramurals (2T44). Three teachers, Walls, Adams and Wentzell, coached intramurals five days a week (2T12). The record does not establish which teachers assisted those coaches or how many days of the week they provided such assistance.

Article 4, Section J of J-2 provided the following additional compensation for teachers coaching intramural sports:

> J. The Board shall pay, in addition to the teacher's salary, the rates listed as follows per intramural sport program conducted by the teacher, as agreed to in his individual employment contract.
>
> | | |
> |---|---|
> | 1984-85 | $130.00 |
> | 1985-86 | $140.00 |
> | 1986-87 | $150.00 |

Section J also provided for compensation to teachers who assisted intramural coaches.

> If, on occasion, additional assistance is needed, such additional assistance shall be approved in advance by the Chief School Administrator. Said additional assistance shall be paid at the rate of $10.00 per session.

But there was no additional compensation provided for in J-2 for lunch supervision or any of the other activities performed during the long lunch period.

In addition to coaching intramural sports, some teachers also coached extracurricular activities, which often included the same sports coached in the intramural program. Extracurricular activities occurred after the regular school day (1T15, IT23; 1T62). Article 4, Section M of J-2 provided the following additional compensation for teachers coaching extracurricular activities.

> M. The stipend per session for approved extra-curricular activities shall be as follows:
>
> | | |
> |---|---|
> | 1984-85 | $12.00 per session |
> | 1985-86 | $12.00 per session |
> | 1986-87 | $15.00 per session |

There were approximately 18 to 22 extracurricular sessions per academic year (1T111).

2. Early in the 1986-87 school year the Board realized that problems existed regarding the Upper Pittsgrove schedule that was in place that year. The Board had a problem scheduling students for math and reading, and the school day was not divided into exact periods. Teachers were able to hold a class beyond its established time period; there was no structure in the workday and complaints were made about why only some teachers received additional compensation for activities performed during the "lunch period" (2T5-2T7; 2T50). The Board made some adjustments to deal with immediate problems, but did not revise the 1986-87 schedule (2T7-2T8).

In May and/or June 1987 Judith Downham, Head Teacher at that time (a teaching principal as of September 1988), discussed the scheduling problems with Superintendent William Randazzo. As a result of that discussion Downham distributed a survey form to the teachers in May 1987 inquiring as to any problems they had experienced as a result of the schedule (2T8). After receiving the teachers' responses, Downham prepared a schedule for the 1987-88 school year intended to alleviate problems that existed in the 1986-87 schedule. The new schedule Downham proposed to Randazzo included an eighth period and only a 30-minute lunch period. Downham did not apprise the Association of the survey or of the Board's intent to establish a new schedule, nor did she advise the

Association that she was preparing a new schedule which included an eighth period (2T27-2T28).

In proposing the new schedule, Downham calculated the pupil/teacher contact time in the old schedule intending to avoid exceeding that total in the new schedule (2T9-2T10). Then she advised Randazzo that the biggest problem she found with the new schedule was the inability to conduct the intramural sports program during the lunch period (2T10). As a result of that concern Randazzo and Downham, in late May or early June 1987, met with teachers Walls and Adams, two of the three teachers coaching intramural sports, explained the new schedule to them, and offered them the opportunity to coach intramural sports on an unpaid basis during the eighth period, or to coach it after school at the appropriate contractual rate (2T10-2T11, 2T20-2T21). The two teachers were not interested in conducting the former intramural program after school, thus Downham scheduled intramurals for eighth period (2T11). Downham never advised the Association about the meeting with Walls and Adams, nor offered to negotiate with the Association over the workload assigned in the eighth period nor over the Board's stated intent to eliminate compensation for conducting the intramural program (2T29-2T30).

In the 1986-87 schedule, intramurals were conducted five days a week, but in 1987-88 they were only conducted mostly two days a week (1T130; 2T12). The remainder of the week the intramural coaches were assigned one day of study hall, one day of tutor time,

and one day of grade level planning time. In all, the intramural coaches in eighth period were assigned to be with students at least three days a week (2T12).

After the meeting with Walls and Adams, Downham, still in May or June, 1987, met with the teachers from the Upper Pittsgrove School and distributed a copy of the new schedule to them, but with no assignments listed in the eighth period, and copies of Exhibits R-1 and R-2.[9/] (2T13-2T14). Downham did not advise the Association of this meeting nor send the new schedule or R-1 and R-2 to the Association (2T27-2T28, 2T36-2T37).

After distributing the material, Downham asked the teachers to advise her of any problems with the proposed schedule. Three teachers had problems and Downham changed the schedule to correct those problems (2T16-2T18). She then distributed a new schedule

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9/ Exhibit R-1 prepared by Downham is entitled: "Positive Aspects of the Schedules" and lists certain alleged benefits with the new schedule.

Exhibit R-2, also prepared by Downham, is entitled: "Teacher-pupil contact time over a two week period." It lists the teacher/pupil contact time under the 1986-87 schedule as being 3195 minutes per two-week period which covers 8:30-3:00 plus specials and 1/2 hour for lunch. Then it lists the contact time under the 1987-88 schedule as being 3180 minutes per two-week period. However, the eighth period is not included in the calculation for 1987-88 (R-2, 2T15). In fact the calculation for 1986-87 went through the end of the seventh period which ended that year at 3:00 p.m. The calculation for 1987-88 also went through the end of the seventh period, but that year the seventh period ended at 2:18 p.m., thus the calculation for that year did not include contact time that also occurred between 2:18 and 3:00 p.m. (2T40).

which still reflected the eighth period as unscheduled. In late June 1987, Downham distributed a questionnaire to the teachers and students to see what they wanted available for the eighth period. Downham advised them that the eighth period would be scheduled in the fall (2T19).

During the first three days of school in September 1987 the students were asked to indicate what activities they wanted to participate in during eighth period and then the schedule was prepared and distributed to the teachers (2T19-2T20). During eighth period teachers were either assigned a club/activity function, a study hall, tutor time, or grade level planning time (2T12). The Board never negotiated with the Association over the new schedule (2T76).

In the first week of October 1987, John Gibison, an Association field representative, met with Randazzo about the restructured workday, the intramural program and the assignments for the eighth period. Gibison and Randazzo discussed whether it was appropriate for the Board to restructure the workday even if it did not increase the workday. At the end of that discussion Gibison told Randazzo he would send him some case law on the subject, and by letter of October 7, 1987 (CP-1), Gibison did send Randazzo the

material (1T16-1T17, 1T33).[10] Although in May 1987 Downham had told Walls and Adams that they would not be paid extra for their intramural coaching during eighth period, during the 1987-88 school year those coaches, pursuant to Article 4, Section N of J-1 (the 1987-90 agreement) were in fact eventually paid $175 per year for the intramural coaching (2T42, 2T52-2T55).[11]

3. J-1, like J-2, did not specifically set forth the schedule or hours of a workday. The teachers' workday in 1987-88 was still 8:15 a.m.-3:15 p.m. with contact time running from 8:30-3:00 (R-2, 1T89, 2T40). Article 16, Section E of J-1 still required teachers to report 15 minutes before the students, and to remain 15 minutes beyond the students, and Article 16, Section G of J-1 still provided for a 30-minute duty free lunch.

In 1987-88 there were seven 42-minute periods and one 40-minute period, plus the 30-minute lunch (1T124). There was also a bell system signaling the end of each period.

10/ Although Randazzo testified that the Board never negotiated with the Association over the new schedule (2T76), he tried to explain or attempt to justify the Board's action in unilaterally changing and implementing the eighth period schedule by testifying that Gibison told him that since the Board changed from an unstructured workday to a structured eight-period workday, it was okay (2T64-2T65, 2T77). In light of Randazzo's admission that he did not negotiate with the Association over the new schedule however, I do not credit Randazzo's testimony regarding Gibison's alleged comments as proof that Gibison agreed to the change or negotiated over it.

11/ Article 4, Section N of J-1 provides:

> The Intramural Sports Coach shall receive, in addition to a regular salary, an additional stipend of one hundred seventy-five (175) dollars per year, for the life of this Agreement.

Article 4, Section N of J-1 provided $175 per year for intramural coaching for each year of the Agreement. But unlike Article 4 of J-2 which also provided for $10 per session for intramural assistants, Article 4 of J-1 did not contain any language providing a per session rate for intramural assistants.

In addition to providing a stipend for intramural coaching, J-1 also provided stipends for extra-curricular activities. Article 4, Section A(2) of J-1 provided:

> The stipends and/or salaries for Extra-Curricular Activities, as approved by the Board, are set forth in Schedule Guide B, which is attached hereto, and made a part hereof.

Article 4, Section J of J-1 provided:

> As may be agreed to in an individual employment contract, the Board shall pay, in addition to the teacher's salary, the rates set forth in Schedule B for those sports and activities listed therein.

Schedule B of J-1 provides:

> Schedule B
>
> Pursuant to Article IV, Section J of this Agreement, the Board shall pay the following rates, during the term of this Agreement, for those sports and activities which shall take place after the school day, as approved by the Board, and listed hereunder.

Interscholastic Sports (including Cheerleading)	$175.00 per year
Sports Assistant	20.00 per session
Student Government Moderator	175.00 per year
O.M. Co-ordinator	400.00 per year
O.M. Coach	300.00 per year
O.M. Judge	25.00 per day

Safety Patrol	150.00 per year
Dance Manager (organize & supervise)	50 per dance
Chaperone	20.00 per event

During 1987-88 some confusion arose regarding the amount of extra-curricular compensation for assistant coaches. J-2 had provided a per session fee for all extra-curricular activities. But J-1 schedule B did not contain the same language. It only provided a per session rate for "sports assistant." Linda Dantinne, Association President, was also an assistant coach for girls basketball during 1987-88. She worked eight extra-curricular sessions and submitted a voucher for $160 ($20 per session). The Board, however, sent Dantinne a letter (CP-10) explaining that she was not a sports assistant and could not be compensated under that provision in Schedule B. Instead, the Board explained that an Assistant Coach should be compensated at $175 per year under the Interscholastic Sports section in J-1. Thus, she received an additional $15 for the year (1T151-1T155).[12/] There was no

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12/ CP-10 was dated April 29, 1988 and said:

> There have been some misconceptions regarding the duties of "Sports Assistant" under Schedule B of the Agreement, inasmuch as the category "Assistant Coach" is not included, and ambiguity between the numbers of sessions for Boys' and Girls' Extra-curricular Basketball. Therefore, the Board has decided that, for this year only, you should be paid a total of $175.00 for the execution of your duties as Assistant for the Girls' Basketball team, for the 1987-88

Footnote Continued on Next Page

definition of a sports assistant in J-1, nor was one negotiated (1T150, 1T156).

4. Gene Battersby was a negotiations consultant who assisted the Association in negotiating J-1 (1T60-1T61). Presumably, at a negotiations session on April 22, 1987, which Battersby attended, the parties reached a tentative agreement on a Schedule B attachment to J-1 (1T64, 1T82, CP-3). On April 30, 1987 Battersby prepared a consultant report (CP-3) which indicated that

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12/ Footnote Continued From Previous Page

school year. You will be receiving a check in the amount of $15.00 with your next paycheck representing the difference between your voucher and the amount shown in Schedule B for Interscholastic Sports.

Please be advised that in the future a Sports Assistant will be interpreted to be a person who monitors the halls and student behavior during home games only, and is not the same as an Assistant Coach.

A similar letter (CP-11) was sent to employee Harry Adams on April 29, 1988. It says:

The enclosed check for $175.00 is for your execution of the duties as Sports Assistant for the Boys' Basketball team during the 1987-88 school year. The Agreement (including Schedule B) between the Upper Pittsgrove Education Association and the Upper Pittsgrove Board of Education does not include the category of "Assistant Coach". Due to misconceptions concerning the duties of Sports Assistant, the Board feels that, for this year only, an "Assistant Coach" should be paid the same as a Head Coach. Therefore, the Board has agreed that you will be paid $175.00 under the category of Interscholastic sports, rather than $20.00 per session as indicated on your voucher.

Please be advised that in the future, a Sports Assistant will be interpreted to mean a person who monitors the halls and student behavior during home games only, and should not be misinterpreted to be the same as an assistant coach.

negotiations resulted in an offer of an entirely new Schedule B to cover extracurricular activity sponsorships, most of which received significant raises or which were never even paid before.

Between April 22 and May 11, 1987 Battersby prepared a document (CP-2) to review with the Association's negotiations team during the day on May 11 (1T82). It refers to Schedule B and a number of extracurricular positions that were open for negotiations at that time (1T68-1T70). The relevant part of CP-2 appears as follows:

Schedule B

			87-88	88-89	89-90
	NOW	ASS'N	B'RD	B'RD	B'RD
IntraScholastic Sports & Cheerleading	150	200	175 ok**	?	?
Sports Asst.	10/session	20/ses.	15/sess ok**	?	?
O.M. Coach	--	400***	350	300[+] ok	
O.M. Judges	--	40	25/day ok**	?	?
Safety Patrol	150	++ 150	++ 150 ok**		
Dance Asst.	15	20	20[ii]		
*Extra Curr.	15	25	20[ii]		
Dance Manager	--	--	$50 ok		
Student Council Sponser	--	--	$175 ok		

**Both items were circled on original copy.
***For coordinator.
[+]For other four coaches.
[++]No dance.
[ii]One item circled.

When Battersby prepared Schedule B of CP-2 it did not include the underline of the word "Intra," the asterisk next to "Extra Curr.," nor the circling and "ok's" next to the dollar amounts. Those marks were placed on CP-2 by other Association officials (1T70, 1T84) presumably during the negotiations on the evening of May 11 or at the session on July 10, neither of which Battersby attended (1T70, 1T82, 2T51-2T53). Battersby, nevertheless, testified about some of those markings (1T71-1T76).

On the evening of May 11 the Association's negotiations team, without Battersby, met with the Board's team and the parties reached a tentative agreement on all but one item in Schedule B (1T64-1T65). Rocco Carri, the Board's chief negotiator, was expected to prepare a final draft of what had been negotiated (1T65). Battersby, however, did not see a draft of the negotiated Schedule B, and the first time he saw Schedule B of J-1 was in November 1987 after J-1 was ratified (1T56-1T66). He did not believe that Schedule B of J-1 was entirely consistent with what he had negotiated (1T66) because, for example, he had not negotiated over the introductory paragraph language in Schedule B of J-1 (1T79). But Battersby was not at the evening negotiations session on May 11 nor at a session on July 10 at which Schedule B was further negotiated (1T82-1T83, 2T51, 2T53).

5. Neither Battersby nor Carrie were present at the July 10 negotiations session (2T51, 2T56). Present for the Board were Randazzo, Board Secretary Constance Ford, Board Member Jerry Haig and possibly Board President Ken Newkirk (2T51, 2T95). Present for the Association were employees Connie Nowasacki, Grace Moore, and Association Negotiations Chairperson, John Huster (2T52, 2T95). All of the terminology and pay rates of Schedule B were discussed at that session (2T53, 2T96).

Subsequent to July 10, Board representatives prepared a Memorandum of Understanding (CP-6) and J-1 with Schedule B attached for signature on September 25, 1987 (2T97). The only part of J-1 not available on September 25 was Schedule A, the salary guides (1T138, 2T55).

On September 25 CP-6 was signed by Huster for the Association and by Newkirk for the Board.[13/] That same day Huster

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13/ CP-6 provides as follows:

MEMORANDUM OF UNDERSTANDING

The Upper Pittsgrove Board of Education representative and the representative of the Upper Pittsgrove Township Education Association agree as follows:

1. Duration of a new Agreement will be from July 1, 1987, to June 30, 1990.

2. All issues previously resolved will be included in the new Agreement.

3. Schedule A's for the 1987-88, 1988-89 and 1989-90 years

Footnote Continued on Next Page

and Nowasacki and Newkirk and Ford also signed J-1 for their respective sides (CP-6, J-1). Randazzo was present when CP-6 was

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13/ Footnote Continued From Previous Page

will be developed by the negotiators for both parties - Rocco Carri for the Board and Gene Battersby for the Association - which will reflect new money on the agreed upon scattergram of September 1, 1986, (34.2 F.T.E. Teachers) as follows:

1987-88 9.0% increase of 1986-87 aggregate
1988-89 9.5% increase of 1987-88 aggregate
1989-90 9.5% increase of 1988-89 aggregate.

4. All language in the 1986-87 Agreement, unless changed above, will remain the same.

5. All proposals not resolved in 1-3 above will be dropped without prejudice by the parties.

6. Representatives of the parties will submit this understanding to their respective groups and will recommend ratification.

7. This Memorandum is subject to the ratification of the Board of Education and the Association.

SIGNED s/R. H. John Huster 9/25/87
R. H. John Huster
Negotiations Chairman
Upper Pittsgrove Education Association

SIGNED s/Kenneth F. Newkirk Jr. 9/25/87
Kenneth F. Newkirk, Jr., President
Upper Pittsgrove Township Board of Education

DATED: September 25, 1987

signed, but neither Gibison, Battersby, Linda Dantine,[14/] nor Randazzo were present when J-1 was signed (1T32, 1T101-1T102, 1T166, 2T81). Schedule B was attached to J-1 when it was signed by all parties (2T97).[15/]

On October 6, 1987 Dantinne sent the following letter (CP-7) to the Board.

> The Association is very pleased that a Memorandum of Understanding has been signed by both parties in an effort to bring about a quick and satisfactory contract settlement. We are looking forward to ratification as soon as the salary guides have been completed. When the Association has ratified the

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14/ Dantine became the Association's Acting President in June 1987 and President in September 1987. She was not, however, on the Association's negotiations team that negotiated J-1 (1T146-1T147), she did not see CP-2 until after the Association ratified J-1 (1T158), and she was not present when CP-6 and J-1 were signed (1T166).

15/ Ford was the only one of the four signers of J-1 called to testify at this hearing. She testified that Schedule B was attached to J-1 when she and Newkirk signed that document (2T97). Ford also explained that she could not recall whether she was present when Huster and Nowasacki signed J-1, but the Association did not call Huster or Nowasacki to establish that Schedule B was not attached to J-1 on September 25 when they signed it. There was no evidence to contradict Ford, thus I credit her testimony. Furthermore, I infer from Ford's testimony and the lack of any evidence to the contrary, that Schedule B was attached to J-1 when Huster and Nowasacki signed that document. On cross-examination Dantinne testified that she has never asked Nowasacki if Schedule B was attached to J-1 when she signed it (1T161). Gibison, on cross-examination, also testified that he never did anything to determine whether Schedule B was attached to J-1 on September 25 (1T31-1T32). I do not credit their testimony. A significant issue in this case was whether Schedule B was attached to J-1 on September 25, 1987. I do not believe that the Association President and its UniServ representative would simply fail to question the Association's signers on that point.

> contract, I will notify the Board so that you may schedule your own ratification meeting.

Although she made reference to completing the salary guides (Schedule A), Dantinne made no reference in CP-7 to any need to complete Schedule B.

On October 27, 1987 the Association held a ratification meeting. Gibison was not at that meeting (1T31), but Battersby and Dantinne who did attend, explained that J-1 was not available at the ratification meeting (1T98, 1T140-1T141). Nevertheless, the Association ratified the memorandum of understanding, the "Agreement language," and the salary guides on that date (CP-4). When asked on cross-examination what "Agreement language" was ratified by the Association on October 27 Dantinne testified it was the "TOK" language (1T159). When asked what the TOK language was, Dantinne testified:

> Answer: It must be the agreement that was signed by the Association's negotiations representative.
>
> Question: J-1?
>
> Answer: Okay.
>
> Question: Correct?
>
> Answer: Yes.
>
> (1T160-1T161).

Thus, even though a copy of J-1 may not have been available on October 27, I find that on that date the Association ratified J-1 and that J-1 included Schedule B as it did on September 25, 1987.

By letter of October 28, 1987 (CP-4) Dantinne informed the Board of the Association's ratification. CP-4 states:

> On behalf of the Association, I am pleased to inform the Board that the Association ratified the Memorandum of Understanding, the Agreement language, and the Salary Guides (see attached copies) on October 27, 1987. The Association anxiously looks forward to a speedy ratification by the Board and notification thereof.
>
> The Association would then request that the retroactive pay please be paid in a separate check. Thank you.

Although Dantinne testified that she did not intend CP-4 to be a ratification of Schedule B or J-1 (1T161, 1T167), she never said that in CP-4 and I do not credit her testimony to prove that assertion.[16/]

6. By memorandum of November 18, 1987 (CP-8), Randazzo notified the staff as follows:

> RE: PAYMENT FOR EXTRA-CURRICULAR POSITIONS
>
> Teachers have been recommended for remuneration for extra-curricular positions which involve activities and/or responsibilities that are not normally part of their scheduled pupil contact time.
>
> Teachers will not be recommended for compensation for assignments where major components of execution are completed during the normally contracted workday.

16/ During cross-examination Dantinne contradicted herself, thus raised a question about the reliability of her testimony. She first admitted that "Agreement language" in CP-4 referred to the TOK language and that the TOK language was J-1 (1T160-1T161), but then she testified that when she wrote CP-4 it was not intended to refer to J-1, but only to refer to the agreement language in the Memorandum of Understanding (1T166-1T167). I do not credit the latter testimony. The earlier testimony regarding J-1 was an admission against interest, and I credit that testimony to show that CP-4 was notice of the Association's ratification of J-1 which included Schedule B.

As a result of CP-8 and questions concerning Schedule B, Dantinne wrote a letter to Newkirk (CP-9) on December 8, 1987, requesting a meeting between the parties' negotiations teams to resolve questions related to payment for extra-curricular activities and Schedule B (1T143-1T145). Although the matter was not entirely resolved, the Board did pay employees for intramural coaching consistent with Article 4, Section N of J-1, and for extracurricular coaching consistent with Schedule B (2T42, 2T52-2T55).

ANALYSIS

The Board violated the Act by unilaterally increasing the employees' workload and threatening not to pay them for certain duties performed during eighth period.[17/] But it did not violate the Act by paying employees for intramural sports and after school activities in accordance with J-1 and Schedule 'B." The Board did not repudiate the collective agreement.

Workload Increase - The Restructured Workday

Workload is a mandatory subject of negotiations, and the unilateral assignment of an additional duty period for a previously unassigned time period is an unlawful increase in workload. _Burlington Cty. Coll. Faculty Ass'n v. Bd. of Trustees_, 64 _N.J._ 10

17/ The Charge was timely filed. The workload change occurred in September 1987 and the original Charge was filed on February 29, 1988, well within the six-month statute of limitations. Although the conversation with Walls and Adams occurred in May/June 1987, the Board did not implement what it said it would do until September 1987. On that basis I find that incident timely.

(1973); In re Maywood Bd. of Ed., 168 N.J. Super. 45, 59 (App. Div. 1979); In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12 (App. Div. 1977); Red Bank Bd. of Ed. v. Warrington, 138 N.J. Super. 564 (App. Div. 1976); Kingwood Tp. Bd. of Ed., P.E.R.C. No. 86-85, 12 NJPER 102 (¶17039 1985); Ramsey Bd. of Ed., P.E.R.C. No. 85-119, 11 NJPER 372 (¶16133 1985), aff'd App. Div. Dkt. No. A-4836-84T1 (2/6/86); East Newark Bd. of Ed., P.E.R.C. No. 82-123, 8 NJPER 373 (¶13171 1982); Dover Bd. of Ed., P.E.R.C. No. 81-110, 7 NJPER 161 (¶12071 1981), aff'd App. Div. Dkt. No. A-3380-80T2 (3/16/82); Newark Bd. of Ed., P.E.R.C. No. 79-38, 5 NJPER 41 (¶10026 1975), aff'd App. Div. Dkt. No. A-2060-78 (2/26/80). Buena Reg. Bd.Ed., P.E.R.C. No. 76-63, 5 NJPER 123 (¶10072 1979)(Buena Reg. I); Buena Reg. School Dist., P.E.R.C. No. 86-3, 11 NJPER 444 (¶16154 1985)(Buena Reg. II). See also Middletown Tp. Bd.Ed., P.E.R.C. No. 88-118, 14 NJPER 357 (¶19138 1988); Rahway Bd.Ed., P.E.R.C. No. 88-29, 13 NJPER 757 (¶18286 1987).

The record shows that during 1986-87 the only assigned duty during the long lunch period was lunch supervision on a rotating basis. Intramural coaching and disciplining/tutoring students was done on a voluntary basis. In 1987-88, however, the Board assigned the teachers to an additional duty period and intramural coaching/club activities, study hall, and tutor time were all newly assigned activities that resulted in a direct increase in assigned pupil contact time. The Board's assertion in R-2 that there was no increase in contact time in 1987-88 is misleading. That document did not include the newly assigned contact time in the eighth period.

While the Board was entitled to decide that an eighth period and restructured workday was necessary for the students, and that it wanted to provide intramurals to students on a formal or assigned basis, it was not entitled to unilaterally increase the workload of existing teachers by assigning them to an additional duty period to establish that goal. The Board could have, for example, hired additional teachers to ensure that no teacher had an increase in workload and contact time.

In Buena Reg. I the Commission held that although the employer had the right to increase pupil instructional time it was required to negotiate the workload increase.

> Whether the change is from a non-teaching, supervisory duty period or a preparation period, there is still a net increase in the number of teaching periods per day....The additional teaching period, unlike the other types of duty, generates further precedent and subsequent work in terms of additional class preparation, correction of tests and homework, preparation of report cards, other administrative paper work, etc. Accordingly, the Commission concludes that any decision which would result in a change in the number of classroom teaching periods per day must be negotiated as it directly relates to workload. 5 NJPER at 124.

In the same case, the Commission responded to the Board's argument that the change involved basic educational policy:

> ...[T]he present decision does not interfere with the Board's right to decide to increase pupil instructional time. However, once the Board decides to implement this decision by increasing the number of classroom teaching periods per day there is a change in workload which is mandatorily negotiable. The crucial point is that the Board still retains the ability to accomplish its objective of increasing pupil instructional time through numerous other methods, including the hiring of additional teachers,

> which do not affect the working conditions (i.e., workload) of its employees. The Board also is free to propose as a mandatorily negotiable subject a change from a duty period to an additional teaching period in negotiations for a successor agreement and has no obligation to give in on this point. 5 NJPER at 124.

By unilaterally increasing teacher workload the Board violated subsection 5.4(a)(5) of the Act. The burden was on the Board to negotiate over the workload increase prior to making the change. The Association was not obligated to demand negotiations after the Board implemented the change. The Board must cease from again unilaterally increasing the teachers workload, and negotiate with the Association over what if any additional compensation the teachers should receive for 1987-88 and 1988-89.[18/] Additionally, the Board must negotiate with the Association over the teacher workload and any additional compensation for 1989-90.[19/]

18/ Although Article 4, Section N of J-1 already provides a stipend for intramural coaches for 1987-90, the Association is not prevented from seeking additional compensation for intramural coaches due to the unilateral increase in their workload and pupil contact time. The Association, of course, is also entitled to negotiate over additional compensation for all other teachers affected by the workload increase. See Rahway, 13 NJPER 757.

19/ Although the Association requested a return to the status quo, I am not recommending that result here. The record shows that the 1986-87 schedule created some instability that affected the scheduling of math and reading and occasionally caused some disruption in the instructional time. Two years have passed since the schedule in CP-5 was operative and its reimplementation now might cause too much disruption. Since the parties may still be able to negotiate over workload and compensation prior to the start of the 1989-90 school year, there is no need for a status quo order at this time, I defer any further decision on the status quo request to the Commission.

Although the Association alleged in its post-hearing brief that by restructuring the workday the Board also violated the Act by shortening the lunch period, the Board did not violate the Act by only providing the employees with a thirty-minute lunch. Both J-2, and Article 16, Section G of J-1 only provided for a thirty-minute lunch. Even though the Board may have provided for a longer lunch period in the past, the employees were not entitled to anything more than what they had contracted for which was thirty minutes for lunch. See N.J. Sports and Exposition Authority, P.E.R.C. No. 88-14, 13 NJPER 710 (¶18264 1987). Since the prior practice of giving more than a thirty-minute lunch was contrary to the clear terms of the agreement, it cannot supersede or negate the wording of the agreement. New Brunswick Bd.Ed., P.E.R.C. No. 78-47, 4 NJPER 84 (¶4040 1978), mot. for recon. den. 4 NJPER 156 (¶4073 1978); Randolph Tp. School Bd., P.E.R.C. No. 81-73, 7 NJPER 23 (¶12009 1980). Thus, by providing for a thirty-minute lunch the Board merely implemented the terms of J-1, and the Commission has consistently held that an employer has met its negotiations obligation when it acts pursuant to its collective agreement. Pascack Valley Bd.Ed., P.E.R.C. No. 81-61, 6 NJPER 554, 555 (¶11280

1980); Bound Brook Bd.Ed., P.E.R.C. No. 83-11, 8 NJPER 439 (¶13207 1982).[20]

Payment for Intramural Activities

The Board violated subsections 5.4(a)(1) and (5) of the Act by circumventing its negotiations obligation with the Association and by intimidating Walls and Adams by seeking their consent to assign them to coach intramurals during eighth period without receiving their stipend. The Board's subsequent compliance with Article 4, Section N of J-1 does not excuse its earlier illegal acts. The Board was obligated to negotiate with the Association over the workload change and whether intramural coaches should continue receiving a stipend. By requiring Walls and Adams to choose whether they wanted to perform the former intramural coaching after school with pay or in eighth period without pay, the Board unfairly and illegally pressured the employees into agreeing to or acquiescing to waive their contractual stipend. Even if the Board had no unlawful motive, its actions had the tendency to interfere with Walls' and Adams' protected rights and violated its negotiations obligation to the Association.

20/ The fact that the Board did not violate the Act by implementing a thirty-minute lunch in 1987-88 and 1988-89 should not be confused with the Board's unlawful action of unilaterally increasing the employees' workload. The Association is entitled to negotiate over compensation and workload as discussed above, but is not entitled to negotiate or renegotiate over increasing the duty-free lunch period since that is covered by J-1 through June 1990. Of course, the Board could agree to reopen negotiations over the length of the lunch period.

<u>The Collective Agreement - Intramural and After School Compensation - Contract Repudiation</u>

In Count III of the Charge the Association alleged that the Board refused to pay employees the proper compensation for certain activities and misdesignated some job titles to avoid paying the proper compensation. In reality, however, the Association was contesting certain wording and dollar amounts in Schedule B of J-1, and asserted that Schedule B was never agreed to, signed or ratified by the Association. In its post-hearing brief the Association alleged that it never agreed to a flat rate, as opposed to a per session rate, for after school sports.

J-1 with Schedule B attached was received into evidence as a joint exhibit as the parties' 1987-1990 collective agreement (1T5-1T6). The compensation levels for intramural coaches in Article 4, Section N and for after school activities in Schedule B are clear on the face of the agreement. Since J-1 with Schedule B was admitted into evidence as the parties' current collective agreement, without reservation, the Board did not have the burden of proving that the Association agreed to the language and amounts in Schedule B. The admission of the document without any reservation creates that inference. To the extent that the Association disputes having agreed to the language in and the ratification of Schedule B, and disputes the clear wording and compensation levels in J-1, it had the burden to show that they appeared in J-1 or Schedule B by fraud or mistake. Since J-1 with Schedule B are written documents, the parol evidence rule is applied to prevent evidence outside the

wording of the agreement, including testimony and oral statements, from changing or contradicting the otherwise clear terms of the collective agreement. Casriel v. King, 2 N.J. 41 (1949); Atlantic Northern Airlines Inc. v. Schwimmer, 12 N.J. 293 (1953); Cherry Hill Bd.Ed. v. Cherry Hill Assoc. School Administrators, App. Div. Dkt. No. A-26-82T2, December 23, 1983; Raritan Tp. M.U.A., P.E.R.C. No. 84-94, 10 NJPER 147 (¶15072 1984) affirming H.E. No. 84-33, 10 NJPER 64 (¶15037 1983). Parol evidence is admissible, however, to aid in the interpretation of the agreement if necessary, or to show fraud or mistake.

The Association was given the opportunity to present parol evidence regarding the language in Schedule B, as well as evidence regarding its consent to and ratification of Schedule B. Nevertheless, after reviewing the entire record I find that the Association did not prove by a preponderance of the evidence that it did not agree to and ratify J-1 and Schedule B, or that the content of Schedule B in material part was based upon fraud or mistake.

The Association primarily relied upon Battersby's testimony and CP-2 to prove its case. But neither his testimony nor CP-2 were reliable to show fraud or mistake. Battersby was not at the negotiation sessions on May 11 and July 10 where negotiations on Schedule B were completed, thus, he could not have known whether the Association's negotiations team agreed to the paragraph language and amounts in Schedule B. Since J-1 and Schedule B were admitted into evidence without reservation it was not the Board's burden to prove

that the Association had agreed to Schedule B. The Association had the burden to prove fraud or mistake, but it did not present any member of its negotiations team who was present at the May 11 or July 10 sessions to prove that it had not agreed to the content of Schedule B.

Battersby was also not present on September 25 when Huster and Nowasacki signed J-1 thus he could not know whether Schedule B was attached to J-1 when they signed it. Similarly, CP-2 was not reliable because although Battersby prepared the original document, he did not place the "ok's" and circling of items on that document nor was he there when that was done. He admitted that those marks were placed on the document by a member of the Association's team either on May 11 or July 10. The Association, however, did not offer the testimony of that individual to explain the meaning of those markings and Battersby's testimony on those items is not reliable.

In its post-hearing brief the Association argued that Carri had agreed to give Battersby a final copy of Schedule B, but did not, and that Carri never discussed (presumably with Battersby) a flat rate for after school sports. That argument is without merit to prove any violation here. Neither Battersby nor Carri were at the July 10 negotiations session between the parties, thus neither had any personal knowledge as to the final wording agreed to in Schedule B. Carri did not have any obligation to negotiate with Battersby, or keep him informed, the Board's team had an obligation

to negotiate with the Association's team, and the two teams did in fact negotiate and reach an agreement on July 10.

In its brief the Association also argued that Randazzo admitted that J-1 was not in existence on September 25, 1987. That argument is not supported by the facts. Randazzo actually testified that he was not present when J-1 was signed and that Ford could testify about that document (2T80-2T81). He did testify that he was present when CP-6 was signed and he did not see J-1 at that time. Ford, however, testified that J-1 and Schedule B were present on September 25 and I have credited her testimony.

The Association also argued that Randazzo, who was present on July 10, admitted that the agreement reached on Schedule B was that reflected in CP-2. But even if CP-2 was the document agreed to on July 10, but for the difference between inter and intra, the opening paragraph, and the stipends for sports assistant and chaperone, the "ok" items on CP-2 appear in Schedule B.[21/] The only items in CP-2 that are not in Schedule B are Dance Assistant and Extra Curricular which did not have an "ok" next to them. Thus, on the face of CP-2 there does not appear to be an agreement on those two items. The Association was not able to obtain those items during negotiations and it cannot obtain them through an unfair practice charge.

21/ CP-2 provides $175 for Student Council Sponsor, but nothing for a "Student Government Moderator," and Schedule B provides $175 for Student Government Moderator and nothing for Student Council Sponsor. I believe the different terminology covers the same duties.

During the hearing the Association argued that the term "Intrascholastic" in CP-2 referred to intramural sports and Extracurricular on CP-2 referred to the after school sports. But I do not credit that explanation. First, Article 4, Section A(2) of J-1 specifically provides that Schedule B contained the stipends for extra-curricular activities. The Association did not question the accuracy of that clause. Second, Article 4, Section N of J-1 already provided $175 per year for intramural sports coach. There would be no purpose to make that same intramural stipend appear in Schedule B, plus it would be inconsistent with Article 4, Section A(2).[22/] I find that the term(s) intra or interscholastic referred to after school activities, and that the Board rejected the Association's "Extra/Curr." proposal in CP-2.

The Association also attempted to prove its case by showing that the Association had not signed J-1 with Schedule B on September 25 nor ratified it on October 27, 1987. Once again, the Board was not required to prove those items, the Association had the burden to prove them, but it failed to do so by a preponderance of the evidence.

22/ It is irrelevant to me that some of the duties in Schedule B, such as Student Government Moderator and Safety Patrol (2T86), have been or may be performed during the school day. Those items appear on both CP-2 and Schedule B, and nowhere else in J-1, and since the parties do not dispute the language in Article 4, Section A(2), I find that they both intended to treat those stipends as after school work even if it was work which might be performed during the day. That situation is distinguished from placing the same stipend in the body of J-1 and then again in Schedule B which is what the Association alleged occurred with the terms intramural and intrascholastic.

The only reliable evidence regarding the signing of J-1 was provided by Ford. She testified that Schedule B was attached to J-1 when she signed it on September 25. Although she did not recall whether she was present when Huster and Nowasacki signed it, their signatures clearly appear on J-1 dated for September 25. The Association did not present any reliable evidence to contradict Ford or to establish that Schedule B was not attached to J-1 on that date. Thus, I credited Ford's testimony and found that Schedule B was attached to J-1 on September 25.

Although the events of the ratification on October 27 were not clearly presented, on October 28 Dantinne sent CP-4 to the Board indicating its ratification of CP-6, the "Agreement Language," and Schedule A. Dantinne admitted that agreement language referred to the "TOK" language which was J-1. I previously found that J-1 included Schedule B.

But even if the "TOK" language Dantinne testified to really referred to the "ok" items in CP-2, all of the "ok" items appeared in Schedule B. Extra curricular and dance assistant were not "ok'd" in CP-2, thus they were properly excluded from Schedule B. Based upon the above evidence I found that J-1 with Schedule B was ratified by the Association.

With respect to CP-8, that document is not coercive, intimidating or otherwise unlawful on its face. The Board was entitled to rely on its interpretation of the collective agreement and inform the employees that teachers performing certain

assignments during the normal workday were not eligible for extra-curricular compensation. That letter does not restrict the employees or Association from filing a grievance or going to arbitration if they felt that certain school day assignments should be compensated under Schedule B. Even if the Board's interpretation is wrong, it is not a violation of the Act as long as J-1 provides a grievance procedure, which it does, and as long as the Board is willing to abide by that procedure. See Atlantic City, P.E.R.C. No. 86-121, 12 NJPER 376 (¶17146 1986) affirming H.E. No. 86-36, 12 NJPER 160 (¶17064 1986). There was no evidence here that the Board would not abide by the grievance procedure.

In sum, the Board did not unlawfully misdesignate job titles or repudiate the agreement. The employees are entitled only to the stipends set forth in J-1 and Schedule B as indicated.[23/]

The 5.4(a)(2) Allegation

Since there was no showing that the Board's unlawful workload increase and interference with Walls and Adams actually interfered with or dominated the formation, existence or administration of the Association, the 5.4(a)(2) allegation should be dismissed. See State of N.J. (Trenton State College), P.E.R.C.

23/ To the extent the Association questions the stipend for Assistant Coaches and claims they should be paid as a sports assistant under Schedule B, or any other duty the Association feels is covered by Schedule B, that is a matter for a grievance and arbitration, not for this hearing. State of N.J. (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

No. 88-19, 13 NJPER 720 (¶18268 1987), affirming H.E. No. 87-74, 13 NJPER 570 (¶18209 1987).

Conclusions of Law

A. The Board violated subsections 5.4(a)(1) and (5) of the Act by:

1. Unilaterally increasing the workload of teachers at the Upper Pittsgrove School by adding an eighth period and assigning additional duties to teachers employed at that school without first negotiating over workload increase and compensation with the Association.

2. Failing to negotiate with the Association over a proposal to eliminate the stipend for intramural coaching and circumventing the Association by requiring employees Walls and Adams to either agree to or acquiesce in a waiver of their contractual stipend.

B. The Board did not violate the Act by compensating employees as provided for in J-1 and Schedule B.

Based upon the above findings and analysis, I make the following:

Recommended Order

I recommend that the Commission ORDER:

A. That the Board cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly by unilaterally increasing the workload of

teachers employed at the Upper Pittsgrove School for 1987-88 and 1988-89, by requiring employees Walls and Adams to agree to or acquiesce in a waiver of their contractual rights, and by initially failing to implement the intramural stipend in J-1.

2. Failing or refusing to negotiate in good faith with the Association on behalf of teachers at the Upper Pittsgrove School over a workload increase and additional compensation related thereto prior to implementing the workload change, and failing to negotiate with the Association over a proposal to eliminate the intramural stipend.

B. That the Board take the following affirmative action:

1. Negotiate in good faith with the Association over compensation for the workload increase for Upper Pittsgrove School teachers for 1987-88 and 1988-89.

2. Negotiate in good faith with the Association over the proposed workload and compensation for Upper Pittsgrove School teachers for 1989-90.

3. Negotiate in good faith with the Association over any future changes in the teachers' workload or contractual rights prior to implementing any changes.

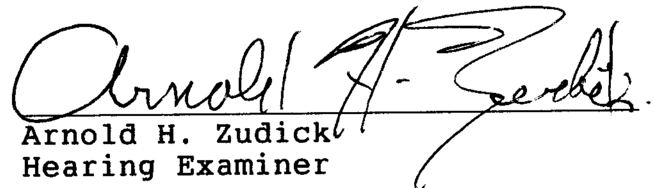
4. Pay the intramural stipend (Article 4, Section N) to the appropriate employees for 1987-88, and 1988-89 if it has not already done so.

5. 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.

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

C. That the remaining 5.4(a)(1) and (5) and the 5.4(a)(2) allegations be dismissed.



Arnold H. Zudick
Hearing Examiner

Dated: June 30, 1989
Trenton, New Jersey

Recommended Posting
Appendix "A"

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining or coercing our employees in the exercise of the rights guaranteed to them by the Act, particularly by unilaterally increasing the workload of teachers employed at the Upper Pittsgrove School for 1987-88 and 1988-89, by requiring employees Walls and Adams to agree to or acquiesce in waiving their contractual rights, and by initially failing to implement the intramural stipend.

WE WILL cease and desist from failing or refusing to negotiate in good faith with the Association on behalf of teachers at the Upper Pittsgrove School over a workload increase and additional compensation related thereto prior to implementing the workload change, and failing to negotiate with the Association over a proposal to eliminate the intramural stipend.

WE WILL negotiate in good faith with the Association over compensation for the workload increase for Upper Pittsgrove School teachers for 1987-88 and 1988-89.

WE WILL negotiate in good faith with the Association over the proposed workload and any additional compensation for Upper Pittsgrove School teachers for 1989-90.

WE WILL negotiate in good faith with the Association over any future changes in the teachers' workload or contractual rights prior to implementing any changes.

WE WILL pay the intramural stipend (Article 4, Section N) to the appropriate employees for 1987-88, and 1988-89 if we have not already done so.

Docket No. CO-H-88-218 UPPER PITTSGROVE TOWNSHIP BD. 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.