

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RED BANK BOROUGH BOARD
OF EDUCATION,

Respondent,

-and-

Docket No. CO-80-146-45

RED BANK TEACHERS' ASSOCIATION,

Charging Party.

SYNOPSIS

In an unfair practice proceeding, the Commission adopts the recommendations of a Commission Hearing Examiner that one aspect of a charge against the Board of Education be dismissed and that a second aspect be upheld. The Commission dismissed that portion of the complaint alleging that the Board's unilateral adoption of salary guides constituted a violation of the Act. The total circumstances of the case, including the failure of the Association to submit a Memorandum of Agreement to its membership, its introduction of new issues into negotiations after executing a memorandum and its failure to submit guides or to accept guides prepared by the Board, which were consistent with the terms of the memorandum, led to that conclusion. However, the Commission did find that the Board violated the Act by unilaterally reducing the work year and the compensation for a school nurse and ordered that she be made whole for her loss and that her work year be restored to 12 months.

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RED BANK TEACHERS' ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Metzler Associates
(Dr. Stanley C. Gerrard, Labor Consultant)

For the Charging Party, Chamlin, Schottland, Rosen,
Cavanagh & Kelly, Esqs.
(Mr. Michael D. Schottland, of Counsel)

DECISION AND ORDER

An unfair practice charge was filed with the Public Employment Relations Commission by the Red Bank Teachers' Association ("Association") on December 3, 1979 alleging that the Red Bank Borough Board of Education ("Board") violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. Specifically, the Association alleges that the Board violated subsections 5.4(a)(1), (2), (5) and (6) of the Act when, on October 26, 1979, it unilaterally adopted and implemented salary guides, notwithstanding the fact that a June 21, 1979 memorandum of agreement between the parties provided that guides were to be "mutually agreed upon"; when it refused to negotiate teacher

evaluation procedures; and when it unilaterally and without negotiations with the Association reduced the work year of the non-degree nurse from 12 to 10 months with a pro-rata reduction in pay.

It appearing to the Commission's Director of Unfair Practices that the allegations of the charge, if true, might constitute a violation of the Act, a Complaint and Notice of Hearing was issued on December 17, 1979. Hearings were held on January 21 and 24, 1980 before Commission Hearing Examiner Alan R. Howe at which the parties were given an opportunity to present evidence, to examine and cross examine witnesses, and to argue orally. The parties filed briefs by March 3, 1980 and on April 17, 1980 the Hearing Examiner issued his Recommended Report and Decision,^{1/} a copy of which is attached hereto and made a part hereof.

The Association filed exceptions to the Hearing Examiner's Report on April 28, 1980 in accordance with the Commission's Rules. Additionally, the Commission granted the Association's request for oral argument before the Commission. This was held on May 20, 1980.

The Hearing Examiner found that the Board's action in reducing the length of the work year and the salary of the non-degree nurse violated subsections (a)(1) and (5) of the Act.

^{1/} H.E. No. 80-41, 6 NJPER ____ (¶ _____ 1980).

The Board did not except to the Hearing Examiner's findings of fact, conclusions of law and recommended remedy regarding this issue. N.J.A.C. 19:14-7.3 provides that the failure to file exceptions shall constitute a waiver. Our review of the record indicates that the Hearing Examiner's findings and conclusions are amply supported and we hereby adopt them.

We also adopt the Hearing Examiner's findings of fact and conclusions of law regarding the Board's alleged failure to negotiate regarding teacher evaluation procedures. The memorandum of agreement, as found by the Hearing Examiner, fully resolved this issue and the Board's action did not constitute a violation of the Act. We, therefore, dismiss this aspect of the Complaint.

We also adopt, again noting the absence of exceptions, the Hearing Examiner's findings of fact and conclusions of law regarding the alleged subsection (a)(2) and (6) violations. The Association failed to adduce any evidence to support these alleged violations and they will be dismissed in their entirety.

As a final preliminary matter, we adopt the Hearing Examiner's findings and conclusions that the Board's action in sending a memo to all teaching staff members dated October 26, 1979 announcing the Board's adoption of salary guides did not constitute an independent violation of subsection (a)(1). We agree with the Hearing Examiner that the memo did not interfere with, restrain or coerce employees in their exercise of statutorily guaranteed rights, except to the extent that it may have also been a violation of subsection (a)(5) as discussed, infra. Thus, we will dismiss the alleged independent subsection (a)(1) violation.

We turn now to what is the major issue in this case: the Board's adoption of salary guides absent the "mutual agreement" between the parties called for in their memorandum of agreement.

The issue of unilateral implementation is a sensitive one, particularly in the public sector where public employees generally do not enjoy the legal right to strike. We acknowledged the difficulty of this issue in our first decision on this subject, In re City of Jersey City, P.E.R.C. No. 77-58, 3 NJPER 122 (1977):

We agree with the Hearing Examiner that the City did engage in good faith negotiations regarding terms and conditions of employment throughout the negotiations process. A fundamental and inherent part of this conclusion is our finding that the City conducted itself in these negotiations in such a way as to evidence a desire to reach an agreement with Local 246. In a factual setting such as this one and even recognizing the significance of the absence of the statutory right of public employees to strike in terms of the relationship between the parties, we cannot accept what we regard as the extreme position of requiring agreement between the parties before a public employer can implement its last best offer at the expiration of an existing agreement. Although we are not completely comfortable with this situation, we believe that it is an accurate reflection of legislative intent and that any other interpretation would require amendatory legislation. We are satisfied that in this case the public employer would be justified in implementing its last best offer.

3 NJPER at 124 (footnotes omitted).

Notwithstanding the difficulty, we thus concluded that there are circumstances under which a public employer may be justified in

implementing without a mutual agreement. We reaffirm that position.^{2/}

The question to be decided here is whether, given all the facts, the Board's action in adopting salary guides violated the Act. Succinctly stated, the record reveals that these parties commenced negotiations in October 1977 for a successor agreement to commence on July 1, 1978; that they utilized a scattergram prepared by the Board and executed by both parties on November 30, 1977, as the basis for these negotiations;^{3/} that the scattergram listed 77 individuals including the non-degree nurse; that negotiations continued from October 1977 through all of 1978 and until June 21, 1979 when a memorandum of understanding was signed by the parties; that during that time the parties engaged in mediation, fact-finding, post-fact-finding conciliation and, ultimately, yet more conciliation with the assistance of the Commission's Director of Conciliation; that the memo provided for average increases of \$1000, \$1100 and \$1200 respectively, inclusive of increments, for each of the three years of the agreement;^{4/} that salary guides were to be mutually agreed upon; that all items not included in the memorandum were deemed withdrawn; and that the parties would recommend the terms of the memorandum for ratification by their constituencies.

The record further reveals that the Association never

^{2/} In one other case, this one involving Rutgers and the AAUP, we concluded that the facts justified the action of the University in implementing a grievance procedure regarding promotional decisions absent two-party agreement. In re Rutgers, The State University, P.E.R.C. No. 80-114, 6 NJPER 180 (¶11086 1980).

^{3/} The scattergram indicates the number and distribution of teachers, both horizontally and vertically on the salary guide.

^{4/} The memo also provided for a number of other improvements and alterations in terms and conditions of employment. There is no dispute regarding these additional items.

submitted the memorandum to its membership for ratification and has failed to submit guides to the Board which are consistent with the memorandum, notwithstanding the Board's request for such guides and the Board's submission to the Association of guides which were consistent with the memorandum. In the absence of proposals from the Association, the Board, on October 10, 1979, requested the Association to review the Board's proposed guides and to indicate acceptance or any proposed changes. The Association responded without addressing the guides and with a request for a meeting with the Board's Negotiating Committee. In apparent response, the Board then adopted these guides on October 16, 1979.

The thrust of the Association's exceptions to the Hearing Examiner's Report and at oral argument, in addition to disagreeing with our Jersey City decision, supra, herein reaffirmed, involves an alleged error in the scattergram. Essentially, the Association argues that the scattergram was in error because it did not indicate the movement of teachers from the 16th to the 24th step, called "supermax", of the guide. Thus, the cost of the guides submitted by the Association exceed those prepared by the Board by an amount which approximates the costs associated with the movement of teachers from the 16th to the 24th steps of the guide.

We reject the Association's argument that the scattergram was in error. First, scattergrams generally are static, reflecting the distribution of individuals at the time they are prepared. They assume regular movement of all individuals on the scattergram from step to step over the term of the agreement; an assumption which ignores such factors as teacher retirement and non-renewal and receipt of advanced degrees but which provides a fixed base for the parties' negotiations. Second, the memorandum clearly provides that the increases per teacher of \$1000, \$1100 and \$1200 respectively over its three years are inclusive of increments. Movement to a supermax step is no different from movement from the second to the third step of the guide. Third, this was the scattergram that the parties agreed would be the basis for negotiating and costing out the agreement. Fourth, and perhaps most significantly, the scattergram itself refers to movement to supermax, stating that two people will go to supermax in 1978-79. Thus, it can hardly be claimed that the parties forgot or were not aware of or had overlooked the supermax step. Finally, this record contains no evidence to support the Association's claim. This simply does not appear to be a real issue.

Having rejected the Association's contention that an "error" in the scattergram meant that the parties had failed to reach an agreement, we shall consider whether the Board's action in adopting salary guides on October 16, 1979 constituted a violation of the Board's duty to negotiate. We conclude that it did not. An agreement had been reached on all items except the guides in

June 1979 for a three year agreement effective 1978-79, 1979-80, and 1980-81. The first year covered by the agreement had ended and the parties were well into the second year. The Association had failed to submit the memorandum to the membership for acceptance (or rejection) as provided by the memorandum. The Association had introduced new issues into the negotiations, notwithstanding the terms of the memo and a letter from the Association president to the Board's president on August 5, 1979 stating that salary guides were the only issues. The Association had failed to submit guides to the Board which were consistent with the memo and had failed to either accept or propose changes to guides prepared by the Board which were consistent with the terms of the memo.

Based upon the totality of the parties' conduct, we conclude that the Board did not commit an unfair practice when it adopted the new guides in October of 1979. The Association's own conduct in these negotiations, as revealed in the record, obviated the Board's obligation to continue the status quo with regard to the salary guides.^{5/} The parties were well into the second year

^{5/} The Association also argued that even if the Commission reaffirmed the Jersey City decision, as we have, an employer should not be permitted to unilaterally implement its last offer without a compelling need for such action at that time. Although we find this argument to have some merit, we do not believe that this argument warrants a finding that the Board committed an unfair practice in the face of the totality of both parties' conduct.

In our prior cases we have not explicitly referred to the existence of "compelling reasons" as a factor in analyzing the employer's actions in unilaterally altering the status quo following the exhaustion of dispute resolution procedures. However, we did find in both the Rutgers case, supra and in Jersey City, supra that compelling reasons did exist for the employer's actions at that point in time. We also note that the Public Employment Relations Board in New York State does require a compelling need as a justification for unilateral implementation. See, e.g., Colroes City School District and Colroes Teachers Association, Local #2579, 12 PERB 3113 (1979).

of the three-year period to be covered by the agreement, and the teachers had been without a salary increase for over two years. The parties' tentative agreement had been reduced to a memorandum some four months earlier, which memorandum was to be submitted for ratification by the Association to its membership and had not. Agreement had been reached on all items including the total amount of the salary increase; it was only the distribution of that increase on the scattergram which remained at issue. The Board's unilateral implementation was really only its adoption of the salary guides it had prepared to conform to the memo in the absence of the Association's submission of such guides. The Association had instead injected new demands into the negotiations which were to be limited to that issue. The total circumstances thus do not justify a finding that the Board's actions constituted a violation of N.J.S.A. 34:13A-(a)(5) when it adopted the salary guides and we shall dismiss that aspect of the (a)(5) allegation against the Board.

ORDER

Based upon the above, IT IS HEREBY ORDERED that:

A. The Respondent 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 reducing the work year and compensation of such employees as Louise C. Ricci without prior notice to or negotiations with the Red Bank Teachers' Association.

B. The Respondent Board take the following affirmative action:

1. Forthwith restore the status quo ante with respect to Louise C. Ricci by restoring her to a 12-month work year as soon as possible and thereafter maintain the status quo unless and until a change in the work year and/or compensation for Louise C. Ricci has been negotiated in good faith with the Red Bank Teachers' Association.

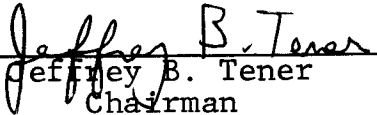
2. Forthwith make payment to Louise C. Ricci of all monies due her for the 1979-80 school year based upon her 1978-79 annual salary of \$13,600.

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

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

C. That the subsections (a)(2) and (6) allegations be dismissed in their entirety and that the subsection (a)(5) allegations be dismissed as they relate to the Board's implementation of the salary guides and the alleged failure to negotiate regarding teacher evaluation procedures.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Hartnett and Parcels voted for this decision. Commissioners Hipp and Newbaker abstained. Commissioner Graves voted in favor of that portion of the decision finding a violation with regard to Louise Ricci but voted against the dismissal of the other subsection (a)(5) charges.

DATED: Trenton, New Jersey
July 10, 1980
ISSUED: July 11, 1980

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL NOT interfere with, restrain or coerce our employees in the exercise of the rights guaranteed to them by the Act, particularly by unilaterally reducing the work year and compensation of such employees as Louise C. Ricci without prior notice to or negotiations with the Red Bank Teachers' Association.

WE WILL forthwith restore the status quo ante with respect to Louise C. Ricci by restoring her to a 12 month work year as soon as possible and WE WILL thereafter maintain the status quo unless and until a change in the work year and/or compensation for Louise C. Ricci has been negotiated in good faith with the Red Bank Teachers' Association.

WE WILL forthwith make payment to Louice C. Ricci of all monies due her for the 1979-80 school year based upon her 1978-79 annual salary of \$13,600.00.

RED BANK BOROUGH BOARD OF EDUCATION

(Public Employer)

Dated _____

By _____
(Title)

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

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with Jeffrey B. Tener, Chairman, Public Employment Relations Commission, 429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.

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

In the Matter of

RED BANK BOROUGH BOARD OF EDUCATION,

Respondent,

- and -

Docket No. CO-80-146-45

RED BANK TEACHERS' ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Board violated Subsections 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act when it unilaterally reduced the work year of the non-degreed Nurse from 12 months to 10 months with a pro-rata reduction in salary for the 1979-80 school year without prior notice or negotiations with the Association. The Hearing Examiner recommended restoration of the status quo ante as of July 1, 1980 with back pay to the Nurse based upon her annual salary before the unilateral change. Further, the status quo was to be maintained thereafter unless and until a change in the work year and/or compensation was negotiated in good faith with the Association.

The Hearing Examiner recommended dismissal of charges that the same Subsections of the Act, supra, were violated when the Board unilaterally adopted and implemented its salary guides for the 1978-79, 1979-80 and 1980-81 school years on October 16, 1979. Negotiations had commenced in October 1977 and continued through 1978 with a Memorandum of Agreement being executed by the parties on June 21, 1979, following exhaustion of the Commission's "impasse" procedures. Notwithstanding that the Memorandum of Agreement provided that salary guides were to be "mutually agreed upon," the Hearing Examiner concluded that the Board was justified in resisting efforts by the President of the Association to have the Board accept his proposed salary guides which were \$4,446 in excess of the total agreed upon salary settlement for the three years in question. The Hearing Examiner, in reaching this conclusion relied upon the Commission's decisions in City of Jersey City, P.E.R.C. No. 77-58, 3 NJPER 122 (1977) and Rutgers, The State University, P.E.R.C. No. 80-114 (1980).

Finally, the Hearing Examiner recommended dismissal of a charge that the Board violated Subsection 5.4(a)(1) when its President on October 26, 1979 sent a memo to all teaching staff advising them of the Board's action in unilaterally implementing its own salary guides, supra.

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

RED BANK BOROUGH BOARD OF EDUCATION, ^{1/}

Respondent,

- and -

Docket No. CO-80-146-45 ^{2/}

RED BANK TEACHERS' ASSOCIATION,

Charging Party.

Appearances:

For the Red Bank Borough Board of Education
Metzler Associates
(Stanley C. Gerrard, Labor Consultant)

For the Red Bank Teachers' Association
Chamlin, Schottland, Rosen, Cavanagh & Kelly, Esqs.
(Michael D. Schottland, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

The above docketed Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on December 3, 1979 by the Red Bank Teachers' Association (hereinafter the "Charging Party" or the "Association") alleging that the Red Bank Borough Board of Education (hereinafter the "Respondent" or the "Board") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (hereinafter the "Act"), in that the Respondent, inter alia, on October 26, 1979 unilaterally adopted and then implemented its own salary guides, purportedly based upon a Memorandum of Agreement executed by the parties on June 21, 1979, notwithstanding that the said Memorandum

1/ As corrected at the hearing.

2/ The Unfair Practices Charges docketed as CE-79-30-43 and CO-79-337-44 were withdrawn by the Respondent and Charging Party, respectively, at the commencement of the hearing.

of Agreement provided that a salary guide was to be "mutually agreed upon," and further, that the Respondent has since the execution of the Memorandum of Agreement, supra, refused to negotiate "procedures for teacher evaluation," and finally, that the Respondent unilaterally, and without negotiations with the Association, changed the work year for the non-degreed Nurse from 12 months to 10 months with a pro-rata reduction in pay, all of which is alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1), (2), (5) and (6) of the Act. ^{3/}

It appearing that the allegations of the Unfair Practice Charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on December 17, 1979. Pursuant to the Complaint and Notice of Hearing, hearings were held on January 21 and January 24, 1980 in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Both parties filed post-hearing briefs by March 3, 1980.

An Unfair Practice Charge having been filed with the Commission, a question concerning alleged violations of the Act, as amended, exists and, after hearing, and after consideration of the post-hearing briefs of the parties, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

Upon the entire record the Hearing Examiner makes the following:

FINDINGS OF FACT

1. The Red Bank Borough Board of Education is a public employer within the meaning of the Act, as amended, and is subject to its provisions.
2. The Red Bank Teachers' Association is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.
3. Negotiations for a successor agreement to the collective negotiations agreement, which expired June 30, 1978, commenced in October 1977.

^{3/} These Subsections prohibit employers, their representatives or agents from:

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

"(6) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

4. The basis for commencement of negotiations for the salary provisions of a successor agreement was a "scattergram," which was prepared by the Board and executed by the representatives of the parties on November 30, 1977 (CP-1). An examination of the "scattergram" discloses that there were 76 teachers distributed vertically between Steps 1 and 16, and 24, and further, horizontally between "BA" and "MA + 30." Of six teachers at Step 16 it was anticipated that two of these would advance to Step 24 in the 1977-78 school year. Further, the non-degreed Nurse was also included on the "scattergram."

5. Following many negotiations sessions in 1977, 1978 and 1979, which included mediation and fact-finding, a Memorandum of Agreement was entered into on June 21, 1979 with the assistance of James Mastriani of the Commission's staff. ^{4/} It is undisputed that the Memorandum of Agreement provided that all items not specifically incorporated within it were deemed withdrawn, and further, that the parties agreed to recommend the terms of the Agreement "for ratification to their respective constituencies."

6. The first indication of activity by the parties following the execution of the Memorandum of Agreement on June 21, 1979 ^{5/} was a letter from Allan O. Dyer, the President of the Association, to Stephen M. Popper, the President of the Board, under date of August 5 wherein Mr. Dyer stated that the only outstanding issue was "agreement on salary schedules" and requested a meeting (CP-6). ^{6/} This request for a meeting was declined under date of August 15 in a Board communication to Mr. Dyer, which stated that it would be more expeditious for the Association to present first proposed salary schedules to its negotiator (CP-3).

^{4/} Although four versions of the Memorandum of Agreement were received in evidence, the Hearing Examiner, in view of the relevant testimony, attaches no significance or materiality to several variations, which appear on page 4 (compare page 4 of Exhibits C-2, CP-2, CP-5 and CP-19). Based on a comparison of each of the said copies of page 4 it is clear that a "salary guide" was "to be mutually agreed upon" and that it was to be based upon an average expenditure of \$1,000, \$1,100 and \$1,200 per teacher for the respective school years 1978-79, 1979-80 and 1980-81. Further, it is clear that the salary guides were to be constructed on the basis of 77 employees as set forth in the "scattergram" (CP-1). Finally, it is clear that the percentages of increase for each of the three school years were calculated at 6.3%, 6.5% and 6.75%, respectively.

^{5/} All dates hereinafter are 1979 unless otherwise indicated.

^{6/} The Hearing Examiner thus rejects Mr. Dyer's belated attempt to raise the issues of "mileage" and "evaluation procedures" as additional prerequisites to the consummation of the Memorandum of Agreement (see R-1). It is noted that para. 8 of the Memorandum of Agreement states that teacher evaluation procedures "shall be in conformance with statute and the rules and regulations of the...Dept. of Education as may finally be determined by judicial authority." (Emphasis supplied).

7. Shortly prior to September 26 Mr. Dyer submitted to the office of the Superintendent of the Board proposed salary guides for the three school years in question: 1978-79 (R-6); 1979-80 (R-7) and 1980-81 (R-8). Under date of September 26 the Superintendent responded by letter to Mr. Dyer, pointing out discrepancies in the total expense to the Board for the three school years in question, i.e., Mr. Dyer's figures exceeded the agreed upon amount by \$4,446 (CP-4). In testimony at the hearing Mr. Dyer essentially conceded an error in his proposed salary guides for the first two school years and further agreed that the basic problem was in the 1980-81 school year where the discrepancy between the figures on his proposed salary guide (R-8) differed with those of the Board by approximately \$3,400 (see also, CP-8).

8. Thereafter, on October 1 Mr. Dyer requested a "closed session" with the Board October 2 to resolve "outstanding items" (CP-8 and CP-9), which request was declined on October 3 (CP-10). ^{7/}

9. Under date of October 10 the Superintendent sent to Mr. Dyer two copies of the Board's proposed salary guides, which had been discussed at a public meeting the previous evening, and requested that Mr. Dyer review the salary guides and indicate in a letter either his acceptance or any proposed changes by 12:00 noon on October 12 (CP-12). ^{8/} Mr. Dyer responded by letter to the Superintendent on October 11, in which he requested a meeting with the Board's Negotiating Committee (CP-13). ^{9/}

10. Notwithstanding that Mr. Dyer sent a "mailgram" to the Board on October 15, requesting that the Board refrain from adopting salary guides unilaterally (CP-14), the Board at a special meeting on October 16 ratified the Memorandum of Agreement ^{10/} and adopted its proposed salary guides for the school years 1978-79, 1979-80 and 1980-81 (CP-15).

^{7/} The Board at a "work session" on October 2 rejected Mr. Dyer's proposed salary guides for the reason that they were \$4,446 in excess of the agreed upon expenditures in the Memorandum of Agreement (CP-11).

^{8/} The Board's proposed salary guides for the three school years in question were received in evidence as Exhibit CP-17.

^{9/} This response by Mr. Dyer did not indicate acceptance or propose any corrections to the Board's proposed salary guides (footnote 8, supra).

^{10/} As of the hearing, the Association had not ratified the Memorandum of Agreement.

11. Under date of October 26 Mr. Popper, the President of the Board, sent a memo to all "Teaching Staff" advising them of the Board's action on October 16 and enclosing a check representing the monies due under the salary guides adopted by the Board (CP-16). 11/

12. Louise C. Ricci, the non-degreed Nurse, was called in by the Superintendent on June 14 and told that instead of working 12 months per year, as she had since 1967, she would henceforth be working 10 months and would be off during two months in the Summer. This action was taken by the Superintendent on behalf of the Board, notwithstanding that the Association had not been given prior notice nor did the Board request negotiations with the Association in this regard. The Board's decision was promptly implemented in September 1979 and Ricci's annual salary was reduced from \$13,600 to \$12,200. 12/

THE ISSUES 13/

1. Did the Respondent Board violate Subsections (a)(1) and (5) of the Act when, without prior notice or negotiations with the Association, it unilaterally reduced the work year of the non-degreed Nurse from 12 months to 10 months for the 1979-80 school year with a pro-rata reduction in annual salary? If so, what shall the remedy be?

2. Did the Respondent Board violate Subsections (a)(1) and (5) of the Act when it unilaterally adopted its proposed salary guides for the school years 1978-79, 1979-80 and 1980-81 on October 16, 1979, notwithstanding that said salary guides had not been "mutually agreed upon"?

3. Did the Respondent Board independently violate Subsection (a)(1) of

11/ Catherine D. Cadman, the Chairman of the Board's Negotiating Committee testified that the reason for the Board's action of October 16, unilaterally implementing its salary guides, was because of its being in the position of having teachers working after June 21 and not being paid according to the Memorandum of Agreement. She also testified that the Board concluded that the negotiations were at a "stalemate."

12/ The Superintendent acknowledged that no notice to the Association or negotiations with it preceded the unilateral change in the work year and salary for the non-degreed Nurse.

13/ The Charging Party urges that there is an "issue" as to whether or not the Board violated the Act by refusing to negotiate a teacher evaluation procedure (Charging Party's Brief, pp. 1, 2, 7-9). The Hearing Examiner will, however, not consider this in view of the fact that teacher evaluation procedures were fully resolved in the parties' Memorandum of Agreement (see, e.g., CP-2 and footnote 6, supra). Further, there is no issue before the Hearing Examiner with respect to the work day of teachers since that matter was also settled in the Memorandum of Agreement (see, e.g., CP-2, para. 6a).

Act when its President sent a memo to all "Teaching Staff" on October 26, 1979 advising them of the Board's action of October 16, 1979, supra?

DISCUSSION AND ANALYSIS

The Respondent Board Violated Subsection (a)(5) Of The Act, And Derivatively Subsection (a)(1), ^{14/} When Without Prior Notice Or Negotiations With The Association, It Unilaterally Reduced The Work Year And Compensation Of The Non-Degreed Nurse For The 1979-80 School Year

The Hearing Examiner finds and concludes that the Respondent violated Subsections (a)(1) and (5) of the Act when it unilaterally, without prior notice to or negotiations with the Association, reduced the work year of the non-degreed Nurse from 12 months to 10 months accompanied by a pro-rata reduction in salary: Piscataway Township Board of Education and Piscataway Township Principals Association, P.E.R.C. No. 77-65, 3 NJPER 169 (1977), aff'd. and enf'd., 164 N.J. Super. 98 (App. Div. 1978).

As indicated in Finding of Fact No. 12, supra, Ricci was told by the Superintendent on June 14 that instead of working 12 months per year, as she had been since 1967, she would be off two months during the Summer of 1979 and would thereafter work a 10-month year. Effective September 1979 Ricci's annual salary was reduced by \$1400. As pointed out in the Charging Party's Brief (pp. 3-5), the Superintendent acknowledged that Ricci was in the collective negotiations unit and was included within the ongoing negotiations and, further acknowledged that no notice was given to the Association of the contemplated changes in Ricci's work year or salary when the Memorandum of Agreement was executed on June 21. Ricci testified without contradiction that there was no discussion of a reduction in her salary in connection with the contemplated change and that she did not learn of it until she received her first paycheck in September, at which time she brought it formally to the attention of the Association.

The Respondent's contention that the Superintendent and the Board were justified in their action because there was no Summer School for pupils during July and August, and that Ricci voluntarily accepted a two-month vacation from work, is rejected. ^{15/} Piscataway, supra, makes clear that the length of the work year, and its concomitant compensation, are terms and conditions of employment

14/ See Galloway Township Board of Education, P.E.R.C. No. 77-3, 2 NJPER 254, 255 (1976).

15/ See Respondent's Brief, pp. 12, 13.

within the meaning of the Act. Consequently, both must be the subject of mandatory negotiations with the Association as majority representative before being implemented (164 N.J. Super. at 100, 101). Individual "negotiations" clearly undermine the majority representative and the purposes of the Act and cannot be tolerated.

On the matter of remedy, the Respondent will be ordered to make payment to Ricci of monies due her for the 1979-80 school year based upon an annual salary of \$13,600. ^{16/} Further, the Respondent will be ordered to cease and desist from making any future changes in Ricci's work year or salary until the matter has been fully negotiated with the Association.

The Respondent Board Did Not Violate Subsections (a)(1) and (5) Of The Act When It Unilaterally Implemented Its Salary Guides On October 16, 1979, Notwithstanding That The Memorandum Of Agreement Provided That They Be "Mutually Agreed Upon"

The Hearing Examiner finds and concludes that the Respondent Board did not violate Subsections (a)(1) and (5) of the Act when on October 16, 1979 it unilaterally ratified the Memorandum of Agreement and adopted its proposed salary guides for the school years 1978-79, 1979-80 and 1980-81, notwithstanding that the Memorandum of Agreement provided in para. 14 that salary guides were to be "mutually agreed upon" (see, e.g., CP-2, p. 4). ^{17/}

In so finding and concluding, the Hearing Examiner first notes that collective negotiations for a successor agreement to that which expired June 30, 1978 commenced in October 1977 and that on November 30, 1977 the parties executed a "scattergram," (CP-1), which formed the basis for negotiations (see Findings of Fact Nos. 3, 4, supra). Extensive negotiations between the parties continued from late 1977 through 1978 and the first six months of 1979. After an impasse was declared in 1978, mediation, fact-finding and conciliation followed, which finally resulted in a Memorandum of Agreement on June 21, 1979. (See Finding of Fact No. 5, supra, and C-2, pp. 2, 3). The said Memorandum of Agreement provided for "ratification"

^{16/} The propriety of the back pay order herein follows directly from the decision of the Commission and the Appellate Division in Piscataway, supra, the latter relying upon the Supreme Court's decision in Galloway Township Board of Education v. Galloway Township Ass'n. Educational Secretaries, 78 N.J. 1 (1978).

^{17/} There was no evidence adduced at the hearing that the Board refused to reduce a negotiated agreement to writing and sign it. Thus, the Hearing Examiner will recommend that the alleged Subsection (a)(6) violation be dismissed, infra.

by the parties and set forth the average raises for each of the three years in question, including the percentages of increase for each year, which was consistent with the 1977 "scattergram". ^{18/}

Following an acknowledgement by Mr. Dyer on August 5 that the only outstanding issue was "an agreement on salary schedules" and his request for a meeting, the Board stated that it would be more expeditious for the Association to present its proposed salary guides to its negotiator (Finding of Fact No. 6, supra). Thereafter, time elapsed until shortly prior to September 26 when Mr. Dyer submitted to the Superintendent proposed salary guides for the three school years 1978-81, to which the Superintendent responded that Mr. Dyer's figures exceeded the agreed upon amount by \$4,446 (Finding of Fact No. 7, supra). ^{19/} The Board rejected Mr. Dyer's proposed salary guides at a "work session" on October 2 and on October 3 declined Mr. Dyer's request for a "closed session" (see Finding of Fact No. 8, supra). On October 10 the Superintendent sent Mr. Dyer the Board's proposed salary guides, which had been discussed at a public meeting the previous evening, and requested that he review them and indicate his acceptance or any proposed changes by 12:00 noon on October 12 (see Finding of Fact No. 9, supra). Mr. Dyer's response was a letter to the Superintendent on October 11 requesting a meeting with the Board's Negotiating Committee and, following a further request by Mr. Dyer that the Board refrain from adopting salary schedules unilaterally, the Board on October 16 ratified the Memorandum of Agreement ^{19a/} and adopted its proposed salary guides (see Findings of Fact Nos. 9, 10, supra).

Both parties have addressed themselves to the Commission's decision in City of Jersey City and Local 246, P.E.R.C. No. 77-58, 3 NJPER 122 (1977). Although recognizing certain factual distinctions between the instant case and that of Jersey City, infra, the Hearing Examiner draws upon the essence of that case in holding that the Respondent Board did not violate the Act by its actions of October 16 when it ratified the Memorandum of Agreement and unilaterally adopted its proposed salary guides for the three school years in question.

^{18/} The Hearing Examiner rejects as non-persuasive the evidence of the Charging Party that there was an error in the "scattergram." The testimony of Mr. Dyer and Ms. Cadman has been fully considered.

^{19/} Mr. Dyer conceded at the hearing that the basic problem was the 1980-81 school year where the discrepancy was approximately \$3400 (see Finding of Fact No. 7, supra; cf., Charging Party's Brief, p. 12, indicating that there was an additional "major problem" with respect to the 1979-80 school year). The Hearing Examiner concludes that the problem, to the extent it existed, was in the 1980-81 school year.

^{19a/} As of the hearing, the Association had not ratified the Memorandum of Agreement (Finding of Fact No. 5 and footnote 10, supra).

Additionally, the Hearing Examiner cites the most recent Commission decision construing Jersey City, namely, Rutgers, The State University, P.E.R.C. No. 80-114, 6 NJPER ___ (1980) where no violation of the Act was found when the employer unilaterally implemented its own grievance procedure following two post fact-finding negotiations sessions. The Commission, in noting that the determination of "Whether an impasse has been reached is a difficult judgment to make...", stated:

"...We will not utilize a mechanical counting of the number of bargaining sessions but will look to the totality of the negotiations history in all post fact-finding unilateral implementation matters..." (Slip p. 4) (Emphasis supplied).

In the case at bar, the Respondent Board did not literally implement its "last best offer," but did unilaterally institute its proposed salary guides after the lapse of almost four months from the execution of the Memorandum of Agreement on June 21. This was done against the backdrop of good faith efforts on the part of the Board to obtain from Mr. Dyer proposed salary guides consistent with the total dollars negotiated and agreed upon on June 21. ^{20/}

Based upon Jersey City and Rutgers, supra, the Hearing Examiner agrees with the Respondent that, under the circumstances of the Commission's "impasse" procedures having been thoroughly exhausted, further efforts on the part of the Board to negotiate with Mr. Dyer on behalf of the Association "...would not have been productive." ^{21/}

For all of the foregoing reasons the Hearing Examiner will recommend dismissal of this aspect of the Charge.

The Respondent Board Did Not Independently Violate Subsection (a)(1) Of The Act By The President's October 26, 1979 Memo To All "Teaching Staff"

The Hearing Examiner finds and concludes that the Respondent Board did not independently violate Subsection (a)(1) of the Act when its President sent a memo addressed to the "Members of the Teaching Staff" under date of October 26, 1979. This memo (CP-16) contained nothing more than the President's statement that:

^{20/} A comparison of the Board's proposed salary guide for the 1980-81 school year (CP-17, p. 3) with Mr. Dyer's proposed salary guide for that year (R-8) indicates that the differences were de minimis.

^{21/} Respondent's Brief, p. 9. See also, footnote 11, supra, with respect to the Board's position vis-a-vis its teachers.

"In spite of the Board of Education's best efforts, the Teacher Negotiating Committee has not presented the Board with salary guides that reflect the understanding of the June 21st Agreement. The Board has been very mindful of the fact that teachers have not been receiving monies due them from the June 21st agreement. It was in an effort to give you monies to which you are entitled that the Board voted to adopt salary guides which they believe are reasonable and equitable."

The memo concluded with a statement that a check was being enclosed representing the monies due the teaching staff based upon the salary guides adopted by the Board on October 16.

Nothing contained in the foregoing memo from the Board's President could conceivably have interfered with, restrained or coerced the teaching staff in the exercise of the rights guaranteed to them by the Act. The Board at that point clearly had a "legitimate and substantial business justification" ^{22/} in communicating with its staff regarding the payment of monies calculated by it to be due.

Therefore, the Hearing Examiner will recommend dismissal as to the alleged independent Subsection (a)(1) violation of the Act.

* * * *

Upon the foregoing, and upon the entire record in this case, the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

1. The Respondent Board violated N.J.S.A. 34:13A-5.4(a)(5), and derivatively 5.4(a)(1), when, without prior notice or negotiations with the Association, it unilaterally reduced the work year of the non-degreed Nurse, Louise C. Ricci, from 12 months to 10 months for the 1979-80 school year with a pro-rata reduction in annual salary.
2. The Respondent did not violate N.J.S.A. 34:13A-5.4(a)(5) when it unilaterally adopted its proposed salary guides for the school years 1978-79, 1979-80 and 1980-81 on October 16, 1979.
3. The Respondent Board did not independently violate N.J.S.A. 34:13A-5.4(a)(1) when its President sent a memo to all Teaching Staff on October 26, 1979.

22/ New Jersey Sports and Exposition Authority, P.E.R.C. No. 80-73, 5 NJPER 550 (1979).

4. The Respondent Board did not violate N.J.S.A. 34:13A-5.4(a)(2) and (6) since the Association failed to adduce any supporting evidence.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER:

A. That the Respondent 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 reducing the work year and compensation of such employees as Louise C. Ricci without prior notice to or negotiations with the Red Bank Teachers' Association.

B. That the Respondent Board take the following affirmative action:

1. Forthwith restore the status quo ante with respect to Louise C. Ricci by restoring her to a 12-month work year as of July 1, 1980 and thereafter maintain the status quo unless and until a change in the work year and/or compensation for Louise C. Ricci has been negotiated in good faith with the Red Bank Teachers' Association.

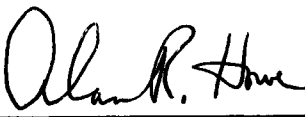
2. Forthwith make payment to Louise C. Ricci of all monies due her for the 1979-80 school year based upon an annual salary of \$13,600.

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

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

C. That the Subsection (a)(2) and (6) allegations be dismissed in their entirety.

Dated: April 17, 1980
Trenton, New Jersey



Alan R. Howe
Hearing Examiner

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL NOT interfere with, restrain or coerce our employees in the exercise of the rights guaranteed to them by the Act, particularly, by unilaterally reducing the work year and compensation of such employees as Louise C. Ricci without prior notice to or negotiations with the Red Bank Teachers' Association.

WE WILL forthwith restore the status quo ante with respect to Louise C. Ricci by restoring her to a 12-month work year as of July 1, 1980, and WE WILL thereafter maintain the status quo unless and until a change in the work year and/or compensation for Louise C. Ricci has been negotiated in good faith with the Red Bank Teachers' Association.

WE WILL forthwith make payment to Louise C. Ricci of all monies due her for the 1979-80 school year based upon an annual salary of \$13,600.

RED BANK BOROUGH BOARD OF EDUCATION

(Public Employer)

Dated _____

By _____

(Title)

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

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with Jeffrey B. Tener, Chairman, Public Employment Relations Commission, P.O. Box 2209, Trenton, New Jersey 08625 Telephone (609) 292-6780