

H.E. NO. 93-4

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

In the Matter of

NEWARK BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-92-113

CITY ASSOCIATION OF SUPERVISORS &  
ADMINISTRATORS, LOCAL NO. 20,  
A.F.S.A./AFL-CIO,

Charging Party.

**SYNOPSIS**

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent Board did not violate Sections 5.4(a)(1) or (5) of the Act when it unilaterally abolished the position of Supervisor and thereafter created a new position of Central Office Supervisor with an extension of the workday of several hours since the parties thereafter negotiated the issue of compensation (the only issue open under the Act), which was still an open question at the time of the hearing. Also, the Board did not violate the same sections of the Act since the Charging Party failed to prove by a preponderance of the evidence that the Board's representatives entered into direct negotiations with the Supervisors (before their abolition) with respect to their terms and conditions of employment. Thus, the Complaint must be dismissed.

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.

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Appearances:

For the Respondent, Marvin L. Comick, General Counsel

For the Charging Party, Anthony P. Sciarrillo, Esq.

HEARING EXAMINER'S RECOMMENDED  
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on October 18, 1991, by the City Association of Supervisors & Administrators, Local No. 20, A.F.S.A./AFL-CIO ("Charging Party" or "CASA") alleging that the Newark Board of Education ("Respondent" or "Board") has 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. ("Act"), in that the Respondent has "circumvented" the officers, executive committee and the negotiating committee of CASA and has negotiated directly with its individual members over terms and conditions of employment; the Respondent has changed the length

of the work day of certain members of CASA's unit, namely, by directing certain supervisors to notify the Board by October 16, 1991, as to whether or not they would agree to extend their work day without an increase in compensation and, if not, to return to their last tenured position; further, these supervisors have been advised that they would be terminated as of October 18, 1991, and the requests of CASA and these supervisors for preferred eligibility lists based on seniority and certification have gone unanswered; all of which is alleged to be in violation of N.J.S.A. 34:13A-5.4(a)(1), (2), (3), (5) and (7) of the Act.<sup>1/</sup>

A Complaint and Notice of Hearing was issued on November 27, 1991. Following an extended adjournment, due in part to the illness of a principal witness, hearings were held on March 31, April 1 and April 2, 1992, in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Both parties argued

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<sup>1/</sup> These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative. (7) Violating any of the rules and regulations established by the commission."

orally (3 Tr 105-126) and relied upon their legal memoranda previously filed in an Interim Relief proceeding in this matter (see I.R. No. 92-11).

Upon the entire record, I make the following:

#### FINDINGS OF FACT

1. The Newark Board of Education is a public employer within the meaning of the Act, as amended.

2. The City Association of Supervisors & Administrators, Local No. 20, A.F.S.A./AFL-CIO is a public employee representative within the meaning of the Act, as amended.

3. Gerald A. Samuels has been employed by the Board for 32 years and currently holds the following positions with CASA: Executive Board, Grievance Chairperson and its Chief Negotiator since 1975 (1 Tr 17, 48, 49).

4. The current collective negotiations agreement between the parties is effective during the term July 1, 1991 through June 30, 1994. It is the successor agreement to that previously in effect from July 1, 1988 through June 30, 1991 (CP-1). The successor agreement to CP-1 had been negotiated and ratified by both parties as of the hearing date of March 31st but it had not yet been printed and formally executed. [1 Tr 18-20].<sup>2/</sup>

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<sup>2/</sup> Negotiations for a successor agreement to CP-1, supra, were initiated by Samuels in a letter to the Board under date of May 4, 1991 (CP-2; 1 Tr 18).

5. CASA is recognized by the Board as the exclusive representative of "all administrative and supervisory personnel," inter alia, Principals, Vice Principals, Instructional Directors, Instructional Assistant Directors, Instructional Supervisors, Central Office Coordinators, Department Chairpersons, Head Guidance Counselors and Curriculum Specialists (CP-1, p. 1; 1 Tr 20).

6. Although CP-1 describes many of the job positions/titles by name for which CASA is recognized as the majority representative under the Recognition Article, supra, the agreement does not specifically include the position of "Supervisor" nor does it delineate which positions are 12-month and which are 10-month within the school year. However, such a differentiation in the length of the year clearly exists (1 Tr 21).

7. Prior to November 1, 1991, the position of "Supervisor" was a "ten-month ten-day" position with a workday from 8:30 a.m. to 2:45 p.m. or 8:30 a.m. to 2:30 p.m., depending upon the school assignment. Subsequent to November 1, 1991, the newly created position of "Central Office Supervisor," infra, was likewise a "ten-month ten-day" position with a workday of 8:30 a.m. to 4:30 p.m. [1 Tr 21, 22].

8. Gene A. Foti, the Deputy Executive Superintendent of School Operations, had sent a memo to the Executive Superintendent, Eugene C. Campbell, on April 2, 1991, in which he recommended that the position of "Supervisor" be eliminated during the 1991-92 school year (R-1; 2 Tr 85-88). Foti had been influenced by the disparity

in hours that the Supervisors had worked, having concluded that under an "extended workday" they could share their day (till 4:30 p.m.) with their immediate superiors and plan for the next day (2 Tr 89, 90).

9. On June 25, 1991, the Board had intended to take formal action to abolish the position of Supervisor but it lacked a quorum. Official action abolishing the Supervisor position occurred when the Board acted on August 27, 1991, effective October 18, 1991. Those employees in the "Supervisor" position were thereafter given a new title, that of "Central Office Supervisor," with no changes in personnel occurring and no reduction in force. [1 Tr 23-26; CP-3].<sup>3/</sup>

10. On September 9, 1991, and again on October 10th, Anthony W. Salters, the Acting Executive Director of Human Resource Services, sent letter to the affected Supervisors, advising them of the Board's abolition of the position of Supervisor and the offer of employment as a Central Office Supervisor, with hours of 8:30 a.m. to 4:30 p.m., effective October 21, 1991, at the same salary (1 Tr 25-28; CP-3, CP-4).

11. The description of the position of Central Office Supervisor, including the same salary as Supervisor, the work year

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<sup>3/</sup> A slight discrepancy in the dates of formal action by the Board exists as between August 27 and October 22, 1991, but this difference is not material to the disposition of the issues in the instant case (see 1 Tr 22, 24, 25 and CP-3 v. CP-7, infra).

of ten-month ten-days and the hours of 8:30 a.m. to 4:30 p.m., was included in the Board's action of October 22, 1991 (1 Tr 38). The formal certification of this action of the Board was received in evidence (CP-7, p. 2; 1 Tr 37, 38).<sup>4/</sup> The position code for the "Supervisor" title, which had been "685," remained unchanged when the position of "Central Office Supervisor" was created (1 Tr 33, 34).

12. On November 8, 1991, Salters sent a letter to all of the affected Supervisors who were to be reassigned to the Board's Central Office as Central Office Supervisors, stating that a temporary restraining order, which had prevented the Board from implementing the position of Central Office Supervisor, had been vacated by the Commission, and that each Supervisor was to report to the Central Office on November 13, 1991. [CP-8 (a packet of 30 letters); 1 Tr 40, 41].

13. During the negotiations for a successor agreement to CP-1, which were concluded early in 1992, a "sidebar agreement" was reached between the Board and CASA wherein CASA recognized the Board's right to create the position of Central Office Supervisor, the only unresolved issue being that of CASA's demand that additional compensation be paid to the Central Office Supervisors

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<sup>4/</sup> However, according to Samuels, CASA has never received a formal "job description" or a "job announcement" for the newly created position of Central Office Supervisor from the Board. The Board is obligated to provide these under the parties' agreement. [CP-8; 1 Tr 45, 46].

from November 1st.<sup>5/</sup> Discussion between CASA and the Board on this issue is still "ongoing." [1 Tr 41-44, 73]. Samuels testified that the language employed (in the sidebar agreement) "...was very specific and all inclusive to ensure that Supervisors, Central Office Supervisors, would receive the same compensation as all other CASA Bargaining Unit members..." (1 Tr 44).<sup>6/</sup>

14. Patricia Alfano was, prior to September 1991, a Supervisor with Special Education, but she is now a Supervisor with Child Guidance. She received a copy of CP-3 but was never returned to her former tenured position. [1 Tr 88-90]. She also received CP-4 and was thereafter assigned to the position of Central Office Supervisor (1 Tr 91). Her duties as Central Office Supervisor were substantially the same as when she was Supervisor but her hours were changed from 8:30 a.m.--2:45 p.m. to 8:30 a.m.--4:30 p.m. She was never provided with a formal job description. [1 Tr 93-96].

15. Harry Lauer has also been a Supervisor in Child Guidance since September 1991, and, prior thereto, he had been a Supervisor in Special Education. After receiving copies of CP-3 and

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<sup>5/</sup> Thus, Samuels added: "...I'm saying the Board has the obligation to create a new title, (but) that those conditions which affect the membership are subject to negotiations..." (1 Tr 73).

<sup>6/</sup> On cross-examination, Samuels stated: "The only term and condition which applies to Central Office Supervisor that we have not agreed to, to the best of my recollection is the additional compensation to be paid to the Central Office Supervisor for the period effective November 1, 1991..." (1 Tr 74). (Emphasis supplied).



CP-4 he accepted the position of Central Office Supervisor on October 18, 1991. [1 Tr 101-104, 106]. His duties remained unchanged (1 Tr 106).

16. Charles Manzella has been an Assistant Director in Child Guidance and Placement since July 1991. On October 9, 1991, he was called to Foti's office where he was asked to brief three Supervisors in his division regarding a change in their working hours. [1 Tr 108, 109].<sup>7/</sup> The narrow purpose of the separate meetings with each of these three Supervisors was to advise them that they would be notified of their change in hours by mail (1 Tr 109-112).

17. James Forkan is a Supervisor in Child Guidance who also received CP-3 and CP-4. He met with Manzella on October 10, 1991, regarding the extension of the workday to 4:30 p.m. Forkan also had a discussion with Foti just prior to October 10th. Foti stated that Forkan would be working the "school year" at "Board hours," meaning 8:30 a.m. to 4:30 p.m. [1 Tr 113, 115, 116, 119].

18. Barbara Coleman is a Supervisor in Special Projects and has been so for the past three years. She too received copies of CP-3 and CP-4. On October 21, 1991, she accepted the position of Central Office Supervisor with a change in hours to 4:30 p.m. [1 Tr 122, 124, 126, 127].

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<sup>7/</sup> Anthony White, Patricia Alfano and James Forkan.

19. Jill A. Watkins has been a Vice-Principal since November 13, 1991, and was, prior thereto, an Administrative Supervisor and then a Supervisor (2 Tr 10-13). The Administrative Supervisor position had been a 12-month position while that of Supervisor was ten-month ten-day (2 Tr 14, 15). Watkins also received copies of CP-3 and CP-4. However, Watkins, unlike other Supervisors, refused the offer of employment as Central Office Supervisor. [2 Tr 16, 19, 21; CP-13]. Watkins' reason for refusing to accept this assignment was that she did not want to work an additional one hour and 45 minutes per day with no additional pay (2 Tr 27). Salters advised Watkins on October 25th, that she was being reclassified and assigned as Vice-Principal at Weequahic High School (CP-16; 2 Tr 35, 36, 39).

20. On October 21st, Daniel Gutmore, the Assistant Executive Superintendent for Educational Services, informed a group of 20 Supervisors, including Watkins, that beginning that day they were to work until 4:30 p.m. At the end of the meeting, Gutmore told Watkins that Foti had said that she was to continue her regular hours until an assignment was made. [2 Tr 32, 33]. Watkins acknowledged that Gutmore had made no effort to "negotiate" with the group on October 21st (2 Tr 45).

21. Anthony Manochio, who was a Supervisor until November 1, 1991, received his CP-3 letter, dated September 9, 1991. After November 1st he became a Central Office Supervisor. [2 Tr 49, 50]. Manochio also met with Gutmore on October 21st.

After this meeting he received a copy of a memo from Connie L. Richard, the Director of Special Projects, on the same date. [CP-18; 2 Tr 65, 66]. Manochio, like Watkins, agreed that there had been no "negotiations" between Gutmore and the Supervisors at the October 21st meeting (2 Tr 74).

22. Foti denied that he had ever attempted to negotiate with the Board's Supervisors regarding their terms and conditions. However, he did acknowledge that he had called two meetings, one of which was covered by Gutmore, supra, for the purpose of informing the Supervisors about contemplated changes in their position. [2 Tr 92-95].

23. After speaking with Foti on October 10, 1991, Samuels sent him a confirming letter that day, one point of which dealt with the complaint that on October 9th Foti had spoken directly with Supervisors in Child Guidance (CP-5; 1 Tr 28, 29, 62). Foti allegedly advised those present that they could serve as Supervisors with a Central Office workday but without additional compensation (CP-5, p. 2).<sup>8/</sup> This conduct was deemed by Samuels the offer of "options" without prior negotiations with CASA (1 Tr 60). When Foti failed to respond to Samuels' written entreaty that he, Foti, should respond to anything incorrectly stated in CP-5, Samuels "assumed" that his statements on this issue were correct (1 Tr 30, 68, 69).

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<sup>8/</sup> Samuels was totally vague when asked whether Foti had been involved in more than one incident or had there been a series of meetings (1 Tr 61-63).

24. Foti testified persuasively that even though Samuels had asked that anything in his letter of October 10th which was "incorrectly stated" be identified, he, Foti, took no action cause he doesn't work for Samuels (2 Tr 96). Foti insisted that by not taking any action he had admitted nothing. In a subsequent telephone conversation with Samuels, Foti merely reiterated his purpose in meeting with the individuals and, also, what he said to them at the meeting (2 Tr 96, 97).

25. Gutmore, in preparing R-1, relied upon input from the Directors that he supervised, and then made the recommendation to abolish the position of "Supervisor" in order to obtain greater efficiency (2 Tr 119-121). Gutmore stated that there was absolutely no connection between his preparation of R-1 and the fact that contract negotiations for a successor to CP-1 were to commence shortly thereafter (2 Tr 121). He acknowledged that he met with individual Supervisors on October 21st and that his purpose in addressing them was to keep them informed about what was happening, stressing that he never attempted to "negotiate" with them regarding their job status (2 Tr 122-124).

26. Gerard J. Morano, the Director of the Office of Employment and Technology, was the author of R-2, the memo of October, 31 1991, to Gutmore. In it he extolled the benefits of the position change to Central Office Supervisor (3 Tr 12-16). He never distributed a job description, outlining the new duties of the Central Office Supervisors (3 Tr 22).

27. Connie L. Richard, is the Director of the Office of Special Projects, who, prior to October 1991, had 21 Supervisors assigned to his Office (3 Tr 30, 31). After November 1991, when the Central Office Supervisor position was established, he had individuals in this latter position assigned to his Office and he described the differences in duties between the two positions (3 Tr 32-35). When a second draft of a job description for Central Office Supervisor was sent to Richard on November 12, 1991 by counsel for the Board (R-4), it was never circulated or discussed with the Central Office Supervisors (3 Tr 51, 52).

28. Grace Walls, the Director of Child Guidance and Placement, had Supervisors assigned to her Office for the last two weeks of August 1991. Prior thereto she had had no direct contact with any Supervisors (3 Tr 58, 59). When the Central Office Supervisor position was created in October 1991, she met first with Foti, who directed her to meet with the Central Office Supervisors and explain their duties. She then met them as a group at a regular Friday meeting. However, they indicated a desire to meet with her individually. She then discussed their changes in assignments. [3 Tr 60-62]. She met with the Central Office Supervisors a month later in "follow up" (3 Tr 62, 63). Walls never received a copy of a job description for the Central Office Supervisors (3 Tr 79, 80).

ANALYSISThe Positions Of The PartiesCASA

Notwithstanding my conclusion that CASA has failed to prove that the Board violated Sections 5.4(a)(2), (3) and (7) of the Act, there remains the basic issue, namely, CASA's allegations and proofs that the Board violated Sections 5.4(a)(1) and (5). These sections are alleged to have been violated when the Board unilaterally abolished the position of Supervisor on August 27, 1991, effective October 18, 1991 (CP-3), and thereafter unilaterally created the position of Central Office Supervisor on October 22, 1991, effective November 1, 1991 (CP-7). Those employees of the Board who had been Supervisors were henceforth given the title of Central Office Supervisor and, for the most part, they were transferred from their job site to the Board's central office with no changes in personnel or reductions in force (Finding of Fact No. 9).

However, the following change in terms and conditions occurred, namely, the hours of the Supervisors, which had been 8:30 a.m. to either 2:30 p.m. or 2:45 p.m., depending upon school assignment, were unilaterally set at 8:30 a.m. to 4:30 p.m. for the new position of Central Office Supervisors (Findings of Fact Nos. 7, 10, 11). The length of the school year remained the same at "10-months 10-day" as had been the case for the Supervisors (Id.) Also, the Board had determined not to increase the level of compensation of Central Office Supervisors, notwithstanding that it had unilaterally extended the workday as of November 1, 1991.

These changes with respect to the positions of Supervisors and Central Office Supervisors occurred during the course of negotiations for a successor agreement to CP-1, which had expired on June 30, 1991. Although Samuels, CASA's negotiator, stated that the abolition of the position of Supervisor had a "deleterious" impact on negotiations, the parties were, nevertheless, able to conclude the successor agreement with the only open issue being CASA's demand for additional compensation for the Central Office Supervisors from November 1, 1991 (Finding of Fact No. 13; 1 Tr 53-55). The matter of this single issue of additional compensation for Central Office Supervisors was the subject of a "sidebar agreement" between the Board and CASA in language that "...was very specific and all inclusive to ensure that Supervisors, Central Office Supervisors would receive the same compensation as all other CASA Bargaining Unit members..." (1 Tr 41-44). Samuels acknowledged that the Board's obligation was to negotiate compensation because it had (unilaterally) expanded the work year of the employees assigned to the Central Office Supervisor position (1 Tr 72, 73).

The remaining issue advanced by CASA pertained to its proofs that representatives of the Board negotiated directly with employees represented by CASA regarding their terms and conditions of employment, namely, Supervisors. If proven, this, too, would be a violation of Sections 5.4(a)(1) and (5) of the Act, supra.

#### THE BOARD

The Board's position is quite simple, namely, it is invested with the power to abolish positions and create new

positions as a managerial prerogative pursuant to the various provisions in Title 18A of the Education Law.<sup>9/</sup>

The Board also denies that CASA has met its burden of proof regarding its allegation that Board representatives negotiated directly with members of CASA regarding their terms and conditions at the time that they were Supervisors.

The Board Did Not Violate Any Provision Of The Act When It Unilaterally Abolished The Position Of Supervisor On August 27, 1991, And Unilaterally Created The New Position Of Central Office Supervisor On October 22, 1991.

In his oral argument, counsel for CASA expressed his agreement with an observation that I had made on the second day of hearing, April 1st, that "...this is a case about compensation and the extension of a workday, not about job duties and job functions..." (3 Tr 110, 111). This is of note since there was considerable testimony given by witnesses for the Charging Party regarding the differences in the job duties and functions of Supervisors as opposed to Central Office Supervisors.

If the Board had, in fact, refused to negotiate the matter of additional compensation for Central Office Supervisors, following the creation of the position and the accompanying extension of the

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<sup>9/</sup> For reasons that I do not entirely understand, the Board in its written submission at the interim relief stage (p. 4) stressed its authority to implement a reduction in force. The record in this case is quite clear that there was no reduction in force since the former Supervisors merely moved en masse to the new position of Central Office Supervisor with the extended workday and no additional compensation.



workday to 4:30 p.m., then I would necessarily have found that the Board violated Sections 5.4(a)(1) and (5) of the Act. This is so because compensation is negotiable where a unilateral abolition or creation of a position has occurred: Englewood Bd. of Ed. v. Englewood Teachers Assn., 64 N.J. 1 (1973); Ramapo-Indian Hills Reg. H.S. Dist. Bd. of Ed. v. Ramapo-Indian Hills Ed. Assn., Inc., 176 N.J. Super. 35 (App. Div. 1980); Fairview Bd. of Ed., P.E.R.C. No. 84-43, 9 NJPER 659, 660 (¶14285 1983) and Bergen Pines Cty. Hosp., P.E.R.C. No. 87-25, 12 NJPER 753, 754 (¶17283 1986). If CASA had sought to challenge the right of the Board to have unilaterally abolished the position of Supervisor and then created the position of Central Office Supervisor, which it has not (1 Tr 41-44, 72, 73), then I would have been constrained to cite Commission decisions precedent, sustaining the Board's managerial prerogative to abolish a position and create a new position. See for example: Trenton Bd. of Ed., P.E.R.C. No. 88-16, 13 NJPER 714, 715 (¶18266 1987); Bergen Pines, supra; Fairview, supra; West Deptford Bd. of Ed., P.E.R.C. No. 80-95, 6 NJPER 56 (¶16030 1980); and Ramapo-Indian Hills, supra.<sup>10/</sup>

Because of the testimony of Samuels, CASA's negotiator, that the parties have concluded a successor agreement to CP-1 except for the one outstanding issue of additional compensation for the

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<sup>10/</sup> The various Commission decisions cited and discussed by the Charging Party at pp. 13-17 of its Brief at the interim relief stage (3 Tr 103) are readily distinguishable from the case at bar.

Central Office Supervisor position, and no evidence having been adduced that the Board has refused to negotiate on this issue, I have no alternative but to find that the Board has not violated the Act as alleged. The Board properly exercised its managerial prerogative to abolish the position of Supervisor in August 1991 and thereafter to create a new position, Central Office Supervisor in October. It, thus, remains to negotiate the matter of additional compensation for the Central Office Supervisor with an apparent willingness on both sides to do so as of the date of the instant hearing.<sup>11/</sup>

Finally, in view of the fact that the parties have undertaken to negotiate the matter of compensation for Central Office Supervisors, the Board's suggestion that this case involves a claim by CASA that the parties' collective negotiations agreement has been violated is inapposite: see N.J. Dept. of Human Services, P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).<sup>12/</sup>

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<sup>11/</sup> I find and conclude that any failure of the Board to have timely failed to provide a new job description for the Central Office Supervisor has either been remedied or is a de minimis issue, which does not appear in CASA's Unfair Practice Charge.

<sup>12/</sup> Further, I see no need to consider the Board's argument that this matter is within the exclusive jurisdiction of the Commissioner of Education.

The Board Did Not Violate Sections  
5.4(a)(1) Or (5) Of The Act With Respect  
To The Alleged Conduct Of Its  
Representatives In Having Negotiated  
Directly With Certain Of Its  
Supervisors Regarding Their Terms And  
Conditions Of Employment.

With respect to this aspect of the Charge, the Charging Party has failed to prove by a preponderance of the evidence that the Board directly negotiated with members of the CASA negotiations unit.<sup>13/</sup> Only in Findings of Fact Nos. 20-22, 25 and 28 are there any references to direct negotiations by Board representatives with Supervisors and overwhelmingly these are denials, which I have credited. Overall, the record is clear that representatives of the Board did not engage in direct negotiations with Supervisors in contravention of the Act.

Commission precedent is quite clear that a public employer has a right to express opinions regarding labor relations so long as the statements are non-coercive: Black Horse Pike Reg. Bd. of Ed., P.E.R.C. No. 83-19, 7 NJPER 502, 503 (¶12223 1981); and Willingboro Tp. Bd. of Ed., P.E.R.C. No. 89-49, 14 NJPER 691, 692 (¶19294 1988).

Thus, CASA has failed to demonstrate that the Board negotiated directly with its Supervisors.

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Based on all of the foregoing, I must recommend the dismissal of the Complaint, the parties having entered into negotiations on compensation for the newly created position of Central Office Supervisor and the Charging Party having failed to

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<sup>13/</sup> See Findings of Fact Nos.: 16, 17, 20-25, 28.

prove that the Board's representatives engaged in direct negotiations with certain of its Supervisors as alleged.

**CONCLUSIONS OF LAW**

1. The Respondent Board did not violate N.J.S.A. 34:13A-5.4(a)(1), (2), (3), (5) or (7) by its conduct herein in having unilaterally abolished the position of Supervisor and then created the position of Central Office Supervisor without collective negotiations with the Charging Party, it having been found that the parties thereafter, during negotiations for a successor agreement to that which expired on June 30, 1991, engaged in negotiations on the issue of compensation for the Central Office Supervisor due to the extension of the workday for this newly created position.

2. Further, the Respondent Board did not violate N.J.S.A. 34:13A-5.4(a)(1) or (5) since it did not engage in direct negotiations with Supervisors represented by the Charging Party with respect to their terms and conditions of employment as alleged.

**RECOMMENDED ORDER**

I recommend that the Commission **ORDER** that the Complaint be dismissed.



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Alan R. Howe  
Hearing Examiner

Dated: July 22, 1992  
Trenton, New Jersey