P.E.R.C. NO. 94-31

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDDLESEX BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-92-311

MIDDLESEX ADMINISTRATORS ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the Middlesex Board of Education violated the New Jersey Employer-Employee Relations Act when it repudiated an express provision contained in the 1990-1993 collective negotiations agreement with the Middlesex Administrators Association and unilaterally reduced the work year and salary and changed other related terms and conditions of employment of elementary school principals and K-12 mathematics and language arts supervisors. The Board wanted to reduce the contractual work year mid-contract. Given the facts of this case, the Association was not required to reopen negotiations for the duration of the contract.

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STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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MIDDLESEX BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-H-92-311

MIDDLESEX ADMINISTRATORS ASSOCIATION,

Charging Party.

Appearances:

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

For the Charging Party, Wayne J. Oppito, attorney

DECISION AND ORDER

On March 26, 1992, the Middlesex Administrators Association filed an unfair practice charge against the Middlesex Board of Education. The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (5), and (7),[1/] by unilaterally changing the work year and compensation of unit members during the life of the parties' collective negotiations agreement

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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. (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."

despite the fact that those terms and conditions of employment were set by that agreement.

On May 21, 1992, a Complaint and Notice of Hearing issued. On May 29, the Board filed an Answer asserting that the Association had waived its right to negotiate regarding the changes in light of its repeated refusal to enter into mid-contract negotiations with the Board.

In lieu of a hearing, the parties filed a joint stipulation of facts and exhibits. Briefs and responses were filed by April 5, 1993.

On May 25, 1993, Hearing Examiner Stuart Reichman issued his report and recommendations. H.E. No. 93-26, 19 NJPER 279 (¶24143 1993). He found that the Board had repudiated the parties' contract and that the Association had no obligation to reopen negotiations on issues expressly set by the terms of the contract.

On June 7, 1993, the Board filed exceptions. It claims that the Hearing Examiner offered no decisional support for his holding that the Board could not seek negotiations over work year for the duration of the contract and that the Association could refuse to negotiate. The Board concedes that a change from twelve to ten months is a mandatorily negotiable reduction in work year. It argues that because valid managerial exigencies motivate a school district to reduce a twelve month work year to ten months, we should permit such changes during a contract term. The Board argues that Sayreville Bd. of Ed., P.E.R.C. No. 83-105, 9 NJPER 138 (¶14066

1983) and <u>Upper Pittsgrove Tp. Bd. of Ed.</u>, P.E.R.C. No. 90-34, 15 <u>NJPER</u> 621 (¶20259 1989) implicitly support its right, if negotiations are properly concluded, to make a work year change mid-contract. The Board also relies on its brief to the Hearing Examiner.

On June 14, 1993, the Association filed a reply urging adoption of the Hearing Examiner's recommendations.

We have reviewed the record and incorporate the stipulated facts. We also adopt the Hearing Examiner's conclusion that the Association had no obligation to reopen negotiations mid-contract and that the Board therefore violated the Act by unilaterally reducing the work year and salary of elementary school principals and K-12 mathematics and language arts supervisors.

The length of an employee's work year is mandatorily negotiable. <u>In re Piscataway Tp. Bd. of Ed</u>., 164 <u>N.J. Super</u>. 98 (App. Div. 1978). An employer therefore has a duty to negotiate over, but no obligation to agree to, work year contract proposals. Here, the Board agreed to a twelve month work year for the affected titles and included it in a collective negotiations agreement. It also agreed that the contract would run from July 1, 1990 to June 30, 1993.

It is undisputed that the Board then abrogated the work year provision and had no managerial prerogative to do so. It is also undisputed that there is no contractual provision requiring the reopening of the contract during its term. The Board's position

instead is that, as a matter of labor relations practice, it should have the right to reopen a collective negotiations agreement during the term of that agreement.

The Board's position, under these facts, conflicts with the basic purposes of the Act. When collective negotiations agreements are reached, they must be reduced to writing. N.J.S.A. 34:13A-5.3. These written agreements set terms and conditions of employment for the life of the contract, unless the parties mutually agree to change them. Passaic Cty. Reg. H.S. Dist. No. 1, P.E.R.C. No. 91-11, 16 NJPER 446 (¶21192 1990); State of New Jersey, Dept. of Veterans Affairs and Defense (Menlo Park Soldiers Home), P.E.R.C. No. 89-76, 15 NJPER 90 (¶20040 1989); Elmwood Park Bd. of Ed., P.E.R.C. No. 85-115, 11 NJPER 366 (¶16129 1985); Wayne Bd. of Ed., P.E.R.C. No. 81-106, 7 NJPER 151, 155 n. 4 (¶12067 1981). Unilaterally changing a contract term may be a violation of the contract or the Act. Ibid; see also Sparta Bd. of Ed., P.E.R.C. No. 90-2, 15 NJPER 488 (¶20199 1989).[2/]

Here the parties negotiated the work year of principals and K-12 mathematics and language arts supervisors. The Board wanted to reduce their contractual work year mid-contract. Given these facts, the Association was not required to reopen negotiations for the duration of the contract. When the Board then acted unilaterally, it repudiated the clear contractual term and violated its obligation

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2/ Neither Sayreville nor Upper Pittsgrove involved a repudiation of a clear contract provision.

to negotiate in good faith. We order enforcement of the contractual provision and back pay. In the absence of exceptions, we dismiss the subsection 5.4(a)(7) allegation.

ORDER

The Middlesex Board of Education is ordered to:

A. Cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act by repudiating an express provision contained in the 1990-1993 collective negotiations agreement and unilaterally reducing the work year and salary and changing other related terms and conditions of employment of elementary school principals and K-12 mathematics and language arts supervisors.

B. Take this action:

1. Restore the elementary school principals and K-12 mathematics and language arts supervisors to the 12 month work year as established by the terms of the 1990-1993 collective agreement unless and until a successor agreement has been reached.

2. Compensate the affected employees pursuant to the terms of the negotiated agreement unless and until a successor agreement has been reached.

3. Pay the affected employees the difference between what they received during school year 1992-1993 and what they would have received had no reduction in work year or salary taken place, plus interest pursuant to R. 4:42-11.

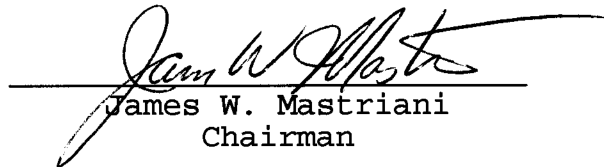
4. Make affected employees whole for all benefits and other terms and conditions of employment which such employees would have received had no change in work year or other terms and conditions of employment occurred for school year 1992-1993.

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 for 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.

The subsection 5.4(a)(7) allegation is dismissed.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Grandrimo, Smith and Wenzler voted in favor of this decision. None opposed. Commissioner Regan abstained from consideration.

DATED: September 24, 1993
Trenton, New Jersey
ISSUED: September 24, 1993

NOTICE TO EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

AND IN ORDER TO EFFECTUATE THE POLICIES OF THE

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED,

We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act by repudiating an express provision contained in the 1990-1993 collective negotiations agreement and unilaterally reducing the work year and salary and changing other related terms and conditions of employment of elementary school principals and K-12 mathematics and language arts supervisors.

WE WILL restore the elementary school principals and K-12 mathematics and language arts supervisors to the 12 month work year as established by the terms of the 1990-1993 collective agreement unless and until a successor agreement has been reached.

WE WILL compensate the affected employees pursuant to the terms of the negotiated agreement unless and until a successor agreement has been reached.

WE WILL pay the affected employees the difference between what they received during school year 1992-1993 and what they would have received had no reduction in work year or salary taken place, plus interest pursuant to R. 4:42-11.

WE WILL make affected employees whole for all benefits and other terms and conditions of employment which such employees would have received had no change in work year or other terms and conditions of employment occurred for school year 1992-1993.

Docket No. CO-H-92-311

MIDDLESEX BOARD OF EDUCATION
(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. 93-26

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

In the Matter of

MIDDLESEX BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-92-311

MIDDLESEX ADMINISTRATORS ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission finds that the Middlesex Board of Education repudiated the extant collective negotiations agreement when it unilaterally reduced the work year and salary and changed other related terms and conditions of employment of elementary school principals and K-12 mathematics and language arts supervisors. The Hearing Examiner found that the Association had no obligation to re-open negotiations on mandatorily negotiable issues which were expressly set by the terms of the 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.

H.E. NO. 93-26

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

In the Matter of

MIDDLESEX BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-92-311

MIDDLESEX ADMINISTRATORS ASSOCIATION,

Charging Party.

Appearances:

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

For the Charging Party, Wayne J. Oppito, attorney

HEARING EXAMINER'S REPORT AND RECOMMENDED DECISION

On March 26, 1992, the Middlesex Administrators Association (Association) filed an unfair practice charge with the Public Employment Relations Commission (Commission) against the Middlesex Board of Education (Board). The Association alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), specifically Sections 5.4(a)(1), (5) and (7),[1/] by unilaterally implementing a reduction in unit members'

1/ These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the

Footnote Continued on Next Page

work year and effecting a concomitant reduction in their compensation and benefits.

On May 21, 1992, the Director of Unfair Practices issued a Complaint and Notice of Hearing. On May 29, 1992, the Board filed an answer denying that it had violated the Act and asserting that the Association waived its right to negotiate regarding the changes in light of its repeated refusal to enter into negotiations with the Board.

In lieu of a hearing, on December 23, 1992, the parties filed a joint stipulation of facts and proffered evidentiary exhibits. A briefing schedule was established. Briefs and responsive briefs were filed by April 5, 1993.

Set forth below is the parties'

STIPULATED FACTS

1. The Association and the Board are parties to a collective negotiations agreement ("agreement") which covers the years 1990 through 1993. (Exhibit A)[2/].

1/ Footnote Continued From Previous Page

rights guaranteed to them by this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative. (7) Violating any of the rules and regulations established by the commission."

2/ Exhibits were attached to the joint stipulation of facts submitted by the parties

2. The agreement governs the terms and conditions of employment for Principals, Assistant Principals and K-12 Mathematics and Language Arts Supervisors.

3. Prior to the 1992-93 school year, elementary principals and the K-12 mathematics and language arts supervisors were employed on a twelve month basis pursuant to Article VII of the agreement and past practice in the district.

4. During the 1991-92 school year, it was determined by the Board that, in its opinion, it was in the best interest of the school district to abolish the twelve month elementary school principalships and twelve month supervisor positions and create, instead, ten month supervisor positions and ten and a half month elementary principal positions.

5. As this decision by the Board implicated the work year and other terms and conditions of employment of these principals and supervisors, by letter dated February 7, 1992, Board President Dennis Switaj, invited the Association to commence negotiations regarding this proposed change in work year. (Exhibit B).

6. By letter dated February 13, 1992, the Association, through its President, Joseph Diegnan, declined the invitation to negotiate this issue. (Exhibit C).

7. By letter dated February 18, 1992, Board of Education President Switaj renewed his offer to negotiate the change in work year for elementary principals and supervisors. (Exhibit D). Mr. Switaj requested a response to his renewed invitation to negotiate by the close of business on February 18, 1992.

8. Mr. Switaj received no response to his February 18, 1992, letter. Accordingly, by letter dated February 19, 1992, Mr. Switaj offered, once again, to negotiate the change in work year and the resultant changes in terms and conditions of employment. In this letter, he invited the Association to respond favorably to the invitation to negotiate by Friday, February 28, 1992. He indicated in that letter, however, that if the Board did not hear from the Association by that date, it would proceed unilaterally to make the needed changes in the best interest (economically, etc.) of the school district. (Exhibit E).

9. The Association's only response to Mr. Switaj's February 19, 1992 letter was a March 2, 1992, letter from the Association's attorney, Wayne Oppito, to Board attorney, David B. Rand. (Exhibit F).

10. Mr. Rand responded to Mr. Oppito's letter on or about March 10, 1992. (Exhibit G).

11. The Board, at its March 10, 1992, meeting acted to abolish the twelve month position of K-12 Language Arts Supervisor, K-12 Mathematics Supervisor and Elementary Principal. At that same meeting, the Board created a ten month Language Arts Supervisor position, ten month Mathematics Supervisor position and ten and a half month Elementary Principal position. The Board in its resolution stated that the salaries for these positions would be prorated accordingly and resolved that the positions would follow a calendar to be established by the Board, and would receive no vacation allowance. (Exhibit H).

12. Additionally, pursuant to Article XV, paragraph D of the parties' contract, administrators receive mileage reimbursement "according to the Board of Education's Administrative Mileage Policy." By past practice, the actual dollar amount afforded each administrative title in the unit is unilaterally determined yearly by the Board by formal resolution, and differs for each title in the unit.

13. For the 1992-93 school year, the mileage reimbursement afforded the elementary school principals and subject supervisors who are the subject of this unfair practice charge was prorated downward, by the Board, in view of the reduction in the work year for these positions.

14. The 1991-1992 salaries of the affected positions were as follows:

Name	Salary 1991-92
Phillip Sidotti, Elem. Principal	$73,367
Robert Conway, Elem. Principal	$69,613
John Donovan, Math. Supervisor	$61,102
Janet Murphy, Language Art Super.	$61,102

15. The salaries established for 1992-93 were as follows:

Name	Salary Estab. By Board 1991-92
Phillip Sidotti, Elem. Principal	$69,974
Robert Conway, Elem. Principal	$66,394
John Donovan, Math. Supervisor	$55,501
Janet Murphy, Language Art Super.	$55,501

16. In accordance with Article XII of the Collective Negotiations Agreement, each affected administrator would have received a 9% salary increase in 1992-93 and had there been no decrease in work year, their salaries would have been as follows:

Name	Contractual Salary Salary 1992-1993
Phillip Sidotti, Elem. Principal	$79,970
Robert Conway, Elem. Principal	$75,878
John Donovan, Math. Supervisor	$66,601
Janet Murphy, Language Art Super.	$66,601

17. The affected administrators received twenty (20) days vacation pay in July, 1992, which was calculated at their salary rate.

18. The changes made by the Board of Education, with the exception of the resolution to abolish vacation pay, became effective July 1, 1992.

19. The Board did not file a "Notice of Impasse" with PERC or request the services of a mediator or fact finder prior to acting unilaterally to make the change the work year at issue here. The Board enters into this specific stipulation without conceding that it was legally required to use the aforementioned Commission services after the Association refused to enter into negotiations.

20. In stipulating to the above facts the parties recognize that the facts as stipulated constitute the complete record to be submitted to the Commission. The Association has been placed on notice that to the extent that the stipulated facts are insufficient to sustain the Association's burden of proof by a preponderance of the evidence, the Complaint may be dismissed by the Commission. Similarly, the Board recognizes that it too must rely upon the sufficiency of the stipulated record to sustain any affirmative defenses it has asserted or to rebut or disprove the existence of a _prima facie_ case established by the Association.

ANALYSIS

The facts in this case establish that the Board unilaterally implemented a reduction in the work year of elementary school principals and the K-12 mathematics and language arts supervisors from a 12 month work year to a 10 1/2 month and 10 month work year, respectively. In cases where the primary issue involves the implementation of educational policy, or where negotiations are preempted or would significantly interfere with the determination of governmental policy, it is well settled that negotiations regarding such issue is inappropriate and the employer may act unilaterally. But if the issue intimately and directly affects the work and welfare of public employees, and negotiations is neither preempted nor interferes with a governmental policy determination, negotiations are required before implementing changes in terms and conditions of employment. Woodstown-Pilesgrove Bd. of Ed. v. Woodstown-Pilesgrove Ed. Assn., 81 N.J. 582 (1980); Local 195, IFPTE v. State, 88 N.J. 393, 403-404 (1982).

Nothing in the facts suggests that the Board's action to reduce the work year represents an exercise of inherent managerial prerogative and, therefore, may be unilaterally implemented. [3/] The Board's action appears to be economically rather than educationally based. The parties do not contest that the work year

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3/ Indeed, this point is conceded in the Board's brief dated March 12, 1993, at pages 2 and 3, and in its reply brief dated March 26, 1993, at page 2.

change along with the change in compensation and other terms and conditions of employment applied to the affected principals and supervisors represent changes in otherwise mandatorily negotiable subjects and, therefore, must be negotiated prior to implementation. East Brunswick Bd. of Education, P.E.R.C. No. 82-111, 8 NJPER 320 (¶13145 1982). See also Piscataway Tp. Bd. of Ed. v. Piscataway Tp. Principals Assn., 164 N.J. Super. 98 (App. Div. 1978); Hackettstown Bd. of Ed., P.E.R.C. No. 80-139, 6 NJPER 263 (¶11124 1980); Sayreville Bd. of Ed., P.E.R.C. No. 83-105, 9 NJPER 138 (¶14066 1983); Cherry Hill Bd. of Ed., P.E.R.C. No. 85-68, 11 NJPER 44 (¶16024 1984).

The Board argues that on numerous occasions, as demonstrated by the frequent letters sent by Board representatives to Association representatives, it invited the Association to enter into negotiations regarding the reduction in the employees' work year and to also negotiate changes in salary, benefits and other related terms and conditions of employment. However, the Association repeatedly refused to enter into such negotiations with the Board. The Board concludes that the Association's absolute refusal to negotiate established a true impasse which permitted the Board to implement its "last best offer" and unilaterally reduce the affected employees' work year and salary and modify other terms and conditions of employment.

The Association argues that it has not waived its right to negotiate regarding the Board's proposed changes. The Association

points out that the Board sought to enter into negotiations over the work year change some 16 months prior to the expiration of the parties' collective agreement. The agreement contained no provision to re-open negotiations regarding the work year matter or any other issue.

There is no dispute between the parties that Article VII of the extant collective agreement expressly provides for the principals and supervisors to be employed on a twelve month basis. The agreement does not expire until June 30, 1993. Once the parties reached agreement on a mandatory subject of negotiations and reduced that agreement to writing in the collective agreement, the terms and conditions of employment controlled by that agreement are set for the duration of the agreement; neither party is required to re-open negotiations with respect to that issue. Parties wishing to change terms and conditions of employment controlled by the express language contained in the collective agreement may do so only during successor negotiations, unless the parties jointly agree otherwise. In the instant case, the Association was under no obligation to re-open the collective agreement and enter into negotiations with the Board with respect to a modification of the work year. The parties conducted negotiations with respect to the principals' and supervisors' work year, reached agreement with respect thereto and memorialized their understanding in Article VII of the collective agreement, fixing that term and condition of employment until at least the expiration of the collective agreement.

Consequently, the Board's unilateral change in work year, salary and any other related terms and conditions of employment repudiates the express terms of the extant collective agreement and violates Section 5.4(a)(5) and, derivatively, (a)(1) of the Act. The Association's refusal to enter into negotiations with the Board concerning work year and related terms and conditions of employment does not constitute a waiver by the Association of its right to negotiate or, in this case, its right to refuse to re-open negotiations on a matter set by the extant collective agreement.

The cases cited by the Board to stand for the proposition that an employer may make a mid-contract change in terms and conditions of employment provided the employer attempted to initiate negotiations prior to such change are distinguishable from the instant matter. In City of Newark, P.E.R.C. No. 88-38, 13 NJPER 817 (¶18313 1987), the employer instituted a mid-contract change in the then extant tour of duty of its police officers. The City refused the employee representative's demand to enter into negotiations. The Commission held that the City's obligation to enter into negotiations arises with respect to those severable consequences which flow from the City's exercise of its non-negotiable managerial right to change the tours of duty. In Hawthorne Bd. of Ed., P.E.R.C. No. 82-62, 8 NJPER 41 (¶13019 1981), the Board exercised its inherent managerial right to establish an extra class before school hours and to designate an instructor for the class. In so doing, the Board unilaterally determined through private

consultation with the affected teacher the form of accommodation to be made for the additional work of teaching a class before school hours. The Commission held that such form of accommodation to be made for the additional work of teaching a class before school hours is a severable consequence of the Board's decision to establish the extra class and, thus, is negotiable and arbitrable. In City of Newark and Hawthorne, the negotiations obligation arose as the result the employers' mid-contract exercise of its inherent managerial right. In this case, the Board did not exercise a managerial right but, rather, sought to achieve a mid-contract modification in mandatorily negotiable terms and conditions of employment, expressly set by the collective agreement.

The Board also cites several cases[4/] in support of its contention that it is free to unilaterally implement a mid-contract change in terms and conditions of employment expressly governed by terms contained in the collective agreement. I find these cases to be inapposite to the issue of whether the Association has waived its right to negotiate by refusing to re-open negotiations on a matter controlled by an express term of the collective agreement. While the cases cited by the Board pertain to mid-contract reductions in work year and concomitant salary changes, none of those cases

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4/ Piscataway Tp. Bd. of Ed.; Upper Pittsgrove Bd. of Ed., H.E. No. 89-44, 15 NJPER 429 (¶20179 1989) adopted P.E.R.C. No. 90-34, 15 NJPER 621 (¶20259 1989); Sayreville Bd. of Ed., H.E. No. 82-64, 8 NJPER 419 (¶13192 1982) adopted P.E.R.C. No. 83-105, 9 NJPER 138 (¶14066 1983); and Hackettstown Bd. of Ed.

specifically address the issue raised by the Association in its charge.

I find no facts in support of the Association's contentions that the Board violated any of the rules and regulations established by the Commission.

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

CONCLUSIONS OF LAW

1. The Board violated Section 5.4(a)(5) and, derivatively, (1) when it repudiated an express provision contained in the extant collective negotiations agreement and unilaterally implemented a reduction in the work year of elementary school principals and K-12 mathematics and language arts supervisors.

2. The Board did not violate Section 5.4(a)(7) of the Act.

RECOMMENDED ORDER

I recommend that the Commission **ORDER:**

A. That the Board cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act by repudiating an express provision contained in the extant collective negotiations agreement and unilaterally reducing the work year and salary and changing other related terms and conditions of employment of elementary school principals and K-12 mathematics and language arts supervisors.

B. That the Board take the following affirmative action:

1. Restore the elementary school principals and K-12 mathematics and language arts supervisors to the 12 month work year as established by the terms of the extant collective agreement.

2. Prospectively pay affected employees at the rate they should receive had a reduction in work year and salary not occurred.

3. Pay the affected employees the monetary difference between what they received during school year 1992-1993 and what they would have received in school year 1992-1993 had no reduction in work year or salary taken place, plus interest on the monetary difference to date of payment in accordance with R. 4:42-11.

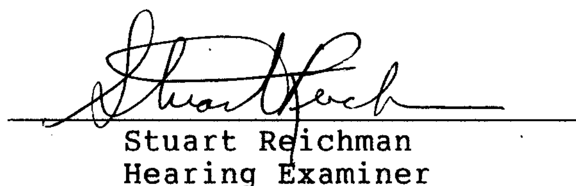
4. Make affected employees whole for all benefits and other terms and conditions of employment, including vacation and mileage reimbursement which such employees would have received had no change in work year or other terms and conditions of employment occurred for school year 1992-1993. Prospectively maintain such benefits and other terms and conditions of employment at the proper level for school year 1992-1993 and beyond, subject to future properly negotiated changes.

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 for sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, deface 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 Complaint be dismissed regarding the Section 5.4(a)(7) allegation.



Stuart Reichman
Hearing Examiner

Date: May 25, 1993
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 NOT interfere with, restrain or coerce our employees in the exercise of the rights guaranteed to them by the Act by repudiating an express provision contained in the extant collective negotiations agreement and unilaterally reducing the work year and salary and changing other related terms and conditions of employment of elementary school principals and K-12 mathematics and language arts supervisors.

WE WILL restore the elementary school principals and K-12 mathematics and language arts supervisors to the 12 month work year as established by the terms of the extant collective agreement.

WE WILL prospectively pay affected employees at the rate they should receive had a reduction in work year and salary not occurred.

WE WILL pay the affected employees the monetary difference between what they received during school year 1992-1993 and what they would have received in school year 1992-1993 had no reduction in work year or salary taken place, plus interest on the monetary difference to date of payment in accordance with R. 4:42-11.

WE WILL make affected employees whole for all benefits and other terms and conditions of employment, including vacation and mileage reimbursement which such employees would have received had no change in work year or other terms and conditions of employment occurred for school year 1992-1993. We will prospectively maintain such benefits and other terms and conditions of employment at the proper level for school year 1992-1993 and beyond, subject to future properly negotiated changes.

Docket No. CO-H-92-311   Middlesex Board of Education
(Public Employer)

Dated ____________   By ____________
(Title)

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

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