P.E.R.C. No. 77-3

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

GALLOWAY TOWNSHIP BOARD OF EDUCATION,

Respondent,

- and - Docket No. CO-76-59-36

GALLOWAY TOWNSHIP EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

In agreement with the Hearing Examiner's findings of fact and conclusions of law, and after consideration of the exceptions to the Hearing Examiner's decision filed by both parties, the Commission finds that the Board of Education refused to negotiate, in violation of N.J.S.A. 34:13A-5.4(a)(5), when it unilaterally, without prior negotiations with the Associations, lengthened the work day of the teachers at one school in the district during the course of negotiations for a successor agreement; but that its conduct did not amount to a violation of N.J.S.A. 34:13A-5.4(a)(3). The Commission also holds that an unfair practice under subsections (a)(2) through (7) of N.J.S.A. 34:13A-5.4 is a derivative violation of N.J.S.A. 34:13A-5.4(a)(1). The Commission orders the Board to cease and desist such conduct, and affirmatively orders the Board to negotiate in good faith; and, in modification of the recommended order of the Hearing Examiner, orders the Board to pay the teachers affected the equivalent of 1/200 of their 1975-1976 annual salary, and post notices informing its employees of the corrective actions, and notify the Commission of the steps taken to comply with the Order.

P.E.R.C. No. 77-3

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

GALLOWAY TOWNSHIP BOARD OF EDUCATION,

Respondent,

- and - Docket No. CO-76-59-36

GALLOWAY TOWNSHIP EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Murray, Meagher and Granello, Esqs. (Mr. James P. Granello, of Counsel, Mr. Robert J. Hrebek, on the Brief)

For the Charging Party, Starkey, Turnbach, White and Kelly, Esqs. (Mr. Edward J. Turnbach, of Counsel and the Brief)

DECISION AND ORDER

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on September 2, 1975 by the Galloway Township Education Association (the "Association") alleging that the Galloway Township Board of Education (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. (the "Act"). In particular the Association alleged that the Board had unilaterally and without prior negotiations with the Association, lengthened the work day of all teachers employed at the Arthur Rann School by fifteen minutes per day, in violation of

N.J.S.A. 34:13A-5.4(a)(1)(3) and (5).[1/]

The Charge was processed pursuant to the Commission's Rules and it appearing to the Commission's Executive Director that the allegations of the Charge, if true, might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on November 10, 1975.[2/]

Pursuant to the Complaint and Notice of Hearing, a hearing was held before Hearing Examiner Stephen B. Hunter on December 9, 1975, at which all parties were represented and were given the opportunity to present evidence, to examine and to cross-examine witnesses, and to argue orally. Briefs were submitted to the Hearing Examiner by the Association and the the Board on January 14,

1/ 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.

"(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."

2/ Another Complaint and Notice of Hearing relating to a different Unfair Practice Charge between the same two parties was issued simultaneously with this Complaint, under Docket No. CO-76-72-37, along with an order consolidating the cases for hearing. However the parties were able to agree upon a Stipulation of Facts with regard to CO-76-72-37. Therefore on December 2, 1975 the Executive Director issued an order severing the two cases and CO-76-72-37 proceeded directly to the Commission for a decision. See In re Galloway Township Board of Education, P.E.R.C. No. 76-32, 2 NJPER ___ (April 27, 1976), appeal pending (App. Div. Docket No. A-3016-75).

1976 and on February 17, 1976. On May 11, 1976 the Hearing Examiner filed with the Commission and served on the parties his Recommended Report and Decision (H.E. No. 76-7, published at 2 NJPER 115). A copy of the Report is attached hereto and made a part hereof.

The Hearing Examiner found, after an exhaustive legal and factual analysis, that the Board violated N.J.S.A. 34:13A-5.4(a)(1) and (5) by lengthening by fifteen minutes the work day for both morning and afternoon session teachers at the Arthur Rann School without engaging in collective negotiations with the Association, thus unilaterally altering a term and condition of employment of unit members. He further concluded that the aforementioned actions by the Board did not violate N.J.S.A. 34:13A-5.4(a)(3) and recommended dismissal of the (a)(3) allegation.

By letter from the Board's attorney dated April 13, 1976, received after the close of hearing, the Hearing Examiner was informed and took administrative notice of the fact that the parties had signed a Memorandum of Understanding in settlement of all outstanding issues concerning the school year during which the Charge was filed (1975-1976). He later learned that the parties formally ratified an agreement for the 1975-1976 school year. Based upon an analysis of the foregoing information and an inspection of the Memorandum of Agreement executed by the parties, the Hearing Examiner concluded that any remedial order in this case should be prospective in application only. He thus concluded that under the circumstances it would not effectuate the purposes of the Act to

require the Board to restore the hours of employment of the teachers at the Arthur Rann School as they existed prior to the start of the 1975-1976 school year and further that no monetary award was warranted. Therefore, the Hearing Examiner recommended that the Board be ordered to cease and desist from unilaterally altering terms and conditions of employment and from interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act.

Both parties have filed exceptions to the Hearing Examiner's Report. The Board's exceptions may be summarized as follows. The Hearing Examiner incorrectly dichotomizes the Board's managerial decision to increase the length of the student day and the decision to increase the hours of the teachers, contending the decision to do the former necessitates the latter. The Board was under no duty to negotiate concerning the formulation of this educational policy decision and it stood ready to negotiate the impact of this decision upon the terms and conditions of employment of the teachers affected. However, the Association failed to request any negotiations concerning this matter and therefore is now foreclosed from requesting such negotiations. It is also argued that the Hearing Examiner erred in his conclusion, based upon the facts of this case, that the Association satisfied its duty to request negotiations with regard to the Board's decision to alter and extend the teachers' hours of employment and that the Board did not evince a willingness to negotiate in good faith.

The Board excepts to the Hearing Examiner's conclusion that the Commission's impasse procedures had not been exhausted prior

to the implementation of the decision to alter the teachers' working hours. The Board contends, contrary to the Hearing Examiner, that the Piscataway[3/] doctrine does not require the maintenance of the "precise" terms and conditions of employment in existence at the commencement of negotiations for a successor agreement.

The Board excepts to the Hearing Examiner's reference to the Board's reliance upon the "policy manual" in support of its position, contending that it did not rely upon or mention the manual. Moreover, the Board objects to the Hearing Examiner's consideration of post-Charge events in the absence of a formal amendment. Exception is taken to the Hearing Examiner's Report as imposing too lenient a standard for adjudging a violation of N.J.S.A. 34:13A-5.4(a)(1). Finally the Board argues that the case should be dismissed as moot, contending that the signing of the aforementioned successor agreement amounts to the Association having acceded to the Board's position concerning hours.

We find the Board's exceptions to be without merit. Previous judicial and Commission decisions have dealt with the question of a public employer's duty to negotiate with respect to hours of employment.[4/] The facts in this case bear a striking similarity to the facts in issue before the Supreme Court in Board of Education of the City of Englewood v. Englewood Teachers Association,

3/ See In re Piscataway Township Board of Education, P.E.R.C. No. 91, 1 NJPER 49 (1975), appeal dismissed as moot (June 24, 1976), petition for rehearing pending (App. Div. Docket No. A-8-75).

4/ The Act delimits the collective negotiations obligation as follows, N.J.S.A. 34:13A-5.3, in pertinent part:

> "Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established. In addition, the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment."

64 N.J. 1 (1973). While the latter case was decided prior to the 1974 amendments to the Act giving the Commission jurisdiction over unfair practices, its general precepts retain their validity and have been followed in later decisions.[5/]

In the Englewood case, supra, the board of education unilaterally increased the hours of employment of four special education teachers during the term of an existing written agreement between the board and the teachers association. The customary teaching hours of the special education teachers were from 8:45 A.M. to 1:30 P.M. whereas the hours of other teachers were from 8:45 A.M. to 3:15 P.M.

The existing agreement defined teachers' hours with reference to the students' school hours. It made no mention of special education teachers but it contained a general savings clause maintaining existing teacher benefits. The board ordered that hours of the special education teachers be lengthened to conform to the longer hours of other teachers, without adding to their compensation. The association sought to submit the matter to arbitration pursuant to the parties' agreement and the board brought an action to restrain arbitration, alleging that its decision was not arbitrable in that it stemmed from its management duty under N.J.S.A. 18A:11-1 to conduct the public school system.

The Supreme Court, while acknowledging the board's rights and duties pursuant to N.J.S.A. 18A:11-1, also noted the board's

5/ See, Board of Education of the Town of West Orange v. West Orange Education Association, 128 N.J. Super 281 (Ch. Div. 1974); In re Piscataway Township Board of Education, supra note 3; In re Hillside Board of Education, P.E.R.C. No. 76-11, 1 NJPER 55 (1975).

duty under N.J.S.A. 34:13A-5.3 to negotiate in good faith with respect to terms and conditions of employment.[6/]

> Surely working hours and compensation are terms and conditions of employment within the contemplation of the...Act. Those matters along with physical arrangements and facilities and customary fringe benefits would appear most evidently in the legislative mind.... No issues of any substance under the school laws are presented....[7/]

In the matter before us the Board unilaterally altered and extended the hours of employment of teachers at the Arthur Rann School contending that this action was a necessary part of its educational decision to lengthen the students' instructional day. The Hearing Examiner determined that the decision to increase student school hours was a managerial decision but concluded that no evidence was presented to indicate that implementation of this decision necessitated a concomitant increase in the teachers' hours. He concluded that the alteration of the teachers' hours while negotiations for a successor agreement were in progress constituted a per se refusal to negotiate in good faith. We agree.

It is well established that hours of employment are required subjects for collective negotiations within the meaning of the Act. The Supreme Court so held in the Englewood case, supra, under similar facts, and the Commission has repeatedly reaffirmed this holding.[8/] Furthermore, in Piscataway, supra, we noted in a

---

6/ Englewood, supra, 64 N.J. at 7.
7/ Englewood, supra, 64 N.J. at 6-7.
8/ See the Commission cases cited in note 5, supra, and In re Galloway Township Board of Education, P.E.R.C. No. 76-31, 2 NJPER ___ (April 27, 1976), appeal pending (App. Div. Docket No. A-3015-75).

footnote that an employer must maintain the terms and conditions of employment in existence at the commencement of negotiations at least until the exhaustion of the Commission's impasse procedures. In the instant matter it is uncontested that the parties were involved in fact-finding at the time the Board instituted the altered schedule. Furthermore, the board admits to the institution of the unilateral change in the teachers' hours without prior negotiations with the Association. Therefore, we find that the Board unilaterally instituted a change in hours of employment, a required subject for negotiations, without prior negotiations, and before the exhaustion of impasse procedures, in violation of N.J.S.A. 34:13A-5.4(a)(1) and (5).

Without ruling on the validity of the Board's assertion that the Piscataway doctrine allows an employer to make de minimis changes in the status quo during negotiations, we find that the additional work time required by the Board herein is not de minimis in nature. We also note in reenforcement of our finding that the parties' agreement contained in Articles XI and XIII, a savings clause and teaching hours clause similar in content to the agreement ruled upon by the Supreme Court in the Englewood case, supra.

With reference to the Board's exception concerning its alleged reliance on the "Policy Manual" in support of its position, we find that this issue does not bear upon the ultimate disposition of this case. However, an examination of the record indicates that the Board did, at least impliedly, rely on the manual during the hearing and in its brief.

As to the Board's exception to the Hearing Examiner's consideration of post-Charge events, allegedly without the requisite procedural formalities, we find the actions of the Hearing Examiner to be well within the ambit of N.J.A.C. 19:19-1.1, which provides for a liberal construction of the Rules. In the instant matter the post-Charge events were fully litigated at the hearing and their consideration worked no surprise upon any party, thus no prejudice or injustice can be said to have resulted.

The Hearing Examiner's finding of a violation of N.J.S.A. 34:13A-5.4(a)(1) as a derivative of the (a) (5) violation, is in accord with well established National Labor Relations Board precedent to the effect that any unfair labor practice committed by an employer gives rise to a co-existent (a)(1) violation.[9/] The Supreme Court has recognized that the New Jersey Act is patterned after the National Labor Relations Act and has sanctioned resort to the body of law and precedent surrounding that Act for guidance in deciding cases brought under the auspices of the New Jersey Act.[10/] We hold that an unfair practice under subsections (a)(2) through (7) necessarily interferes with employees in the exercise of their rights and thus derivatively violates subsection (a)(1) as well.

9/ "...A violation by an employer of any of the four subdivisions other than subdivision one, is also a violation of subdivision one." 3 NLRB Ann. Rep 52 (1939). See also In re Englewood Board of Education, E.D. No. 76-34 at p. 3, note 4, 2 NJPER ___ at ___ (May 11, 1976).

10/ Lullo v. Int'l Assn. of Fire Fighters, 55 N.J. 409, 424 (1970).

We come finally to the interface of the parties' exceptions: the questions of mootness and remedy. The Board asserts in its exceptions that the entire case should be declared moot and the complaint should be dismissed, suggesting that the silence of the 1975-1976 successor agreement on the issue of teaching hours at the Arthur Rann School manifests the agreement of the Association to the altered schedule. The Association, on the other hand, excepts to the recommendation of the Hearing Examiner that a monetary award is not warranted, and thus implicitly rejects the Board's argument on mootness. The Association argues that the lack of a monetary award fails to make the wronged employees whole and, in effect, encourages the perpetuation of the type of prohibited practices complained of in the instant matter, thereby frustrating the purposes of the Act.

The parties' 1975-1976 collective negotiations agreement is not in the record and thus we are unable to evaluate the Board's contention that the parties agreed to a lengthened work day for the teachers at the Arthur Rann School. Neither party introduced any evidence to indicate that the subject matter of this case has been rendered moot by any agreement of the parties. Should such an agreement exist, it must be concluded that one or both of the parties would have submitted it to the Commission for our consideration. On the contrary, the Association has specifically requested that a monetary award be granted to the teachers at the

Arthur Rann School.[11/]

In agreement with the Association's exception, and based upon the record as a whole, we find that the Board's unilateral extension of the teachers' hours at the Arthur Rann School warrants a monetary award to compensate the teachers for the additional hours they were required to work during the 1975-1976 school year as a result of the Board's unlawful actions. Based upon our reading of the entire record as well as our general experience in matters of school district collective negotations, we conclude that each teacher required to work an additional 15 minutes per day during the 1975-1976 school year is entitled to be compensated by the Board in an amount equivalent to one day's salary, to be computed as 1/200 of the 1975-1976 annual salary.

Based upon the foregoing, except as the Hearing Examiner's proposed Order is hereby modified, his rulings, findings and conclusions are hereby affirmed.

ORDER

Respondent, Galloway Township Board of Education shall:

1. Cease and desist from:

(a) Interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed to them by the

11/ The Association has not excepted to the Hearing Examiner's recommendation that it would not effectuate the purposes of the Act under the facts of this case to require the Board to restore the teachers' hours as they existed prior to the start of the 1975-76 school year. In fact, as the Hearing Examiner noted at page 15 of his Report, note 12, the Association has never pursued this remedy at any stage of the proceedings. While under different circumstances such a remedy is clearly warranted (see In re Galloway Township Board of Education, supra note 8), we conclude that the Hearing Examiner's recommendation is appropriate under the particular circumstances presented herein.

Act.

(b) Refusing to negotiate collectively in good faith with the Galloway Township Education Association as the majority representative of the teachers, concerning terms and conditions of employment of such employees.

(c) Unilaterally altering, or threatening to unilaterally alter, terms and conditions of employment of its teachers during the course of collective negotations with the Galloway Township Education Association.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Upon request, negotiate collectively in good faith with the Galloway Township Education Association concerning the terms and conditions of employment of its teachers.

(b) Pay its teachers whose hours of employment were unilaterally altered and increased as of September 2, 1975, the equivalent of 1/200 of their 1975-1976 annual salary.

(c) Post at its central office building in Galloway Township, New Jersey, copies of the attached notice. Copies of said notice on forms to be provided by the Chairman of the Public Employment Relations Commission, shall, after being duly signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof, and maintained by it for a period of at least sixty (60) consecutive days thereafter including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that such

notices are not altered, defaced or covered by any other material.

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

BY ORDER OF THE COMMISSION

Jeffrey B. Tener
Chairman

Chairman Tener and Commissioners Forst, Hartnett and Parcells voted for the Decision.
Commissioner Hipp did not participate in this matter.
Commissioner Hurwitz was not present.

DATED: Trenton, New Jersey
July 19, 1976

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, 1968

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.

WE WILL NOT refuse to negotiate collectively in good faith with the Galloway Township Education Association as the majority representative of our teachers, concerning terms and conditions of employment of such employees.

WE WILL NOT unilaterally alter, or threaten to unilaterally alter, terms and conditions of employment of our teachers during the course of collective negotiations with the Galloway Township Education Association.

WE WILL, upon request, negotiate collectively in good faith with the Galloway Township Education Association concerning the terms and conditions of employment of our teachers.

WE WILL pay our teachers whose hours of employment were unilaterally altered and increased as of September 2, 1975, the equivalent of 1/200 of their 1975-1976 annual salary.

GALLOWAY TOWNSHIP 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 Chairman of the Public Employment Relations Commission, Labor & Industry Bldg., P.O. Box 2209, Trenton, N.J. 08625 Telephone (609) 292-6780

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

GALLOWAY TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-76-59-36

GALLOWAY TOWNSHIP EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent
Murray, Meagher and Granello, Esqs.
(Mr. James P. Granello, of Counsel,
Mr.Robert J. Hrebek, on the Brief)

For the Charging Party
Starkey, Turnbach, White and Kelly, Esqs.
(Mr. Edward J. Turnbach, of Counsel and
on the Brief)

HEARING EXAMINER'S RECOMMENDED REPORT AND DECISION

An Unfair Practice Charge (the "Charge") was filed with the Public Employment Relations Commission (the "Commission") on September 2, 1975 by the Galloway Township Education Association (the "Association") alleging that the Galloway Township Board of Education (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. (the "Act") in that the Board had unilaterally, without prior negotiations with the Association, lengthened the work day of all teachers employed at the Arthur Rann School by fifteen minutes per day.[1/]

1/ More specifically, the Association asserted that the actions of the Board violated N.J.S.A. 34:13A-5.4(a)(1), (3) and (5).

These subsections prohibit employees, their representatives or agents from "(1) Interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by this Act...(3) Discriminating in regard to hire or tenure or 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...(and) (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.

It appearing that the allegations of the charge, if true, might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on November 10, 1975. Another Complaint and Notice of Hearing relating to a different Unfair Practice Charge between the same two parties was issued simultaneously with this Complaint, under Docket No. CO-76-72-37, along with an Order consolidating the two cases for hearing. However, the parties were able to agree upon a Stipulation of Facts with regard to that other unfair practice matter thus avoiding the necessity of holding an evidentiary hearing in that proceeding.[2/] Therefore by an Order contained in a letter dated December 2, 1975 the Executive Director severed the two cases.

Pursuant to the Complaint and Notice of Hearing, a hearing was held on December 9, 1976 in Trenton, New Jersey at which time all parties were given an opportunity to examine witnesses, to present evidence and to argue orally. Briefs were submitted by the parties to this instant proceeding by February 18, 1976. Upon the entire record in this matter, the Hearing Examiner finds:

1. The Galloway Township Board of Education is a Public Employer within the meaning of the Act, as amended, and is subject to its provisions.

2. The Galloway Township Education Association is an employee representative within the meaning of the Act, as amended, and is subject to its provisions.

3. An Unfair Practice Charge having been filed with the Commission alleging that the Galloway Township Board of Education has engaged or is engaging in unfair practices within the meaning of the Act, as amended, a question concerning alleged violations of the Act exists and this matter is appropriately before the Commission for determination.

BACKGROUND[3/]

The Association is the recognized exclusive majority representative for all certified teaching personnel employed by the Board excluding the Superintendent of Schools, School Business Administrator and full time Principals. As such, the Association had entered into a collective negotiations

2/ See In re Galloway Township Board of Education, P.E.R.C. No. 76-32, 2 NJPER (1976).

3/ All of the facts referred to in this section are essentially uncontroverted.

agreement with the Board, which was in effect from July 1, 1974 until June 30, 1975. At the time of the filing of the instant unfair practice charge the Board and the Association were in the process of negotiating a successor agreement. The parties had completed the mediation stage of the Commission's impasse resolution procedures and fact-finding had been invoked. The first meeting with regard to the fact-finding process had been scheduled for September 22, 1975.

There are presently six schools within the Galloway Township School District. Two of these schools, the Sixth Avenue School in Absecon (Kindergarten only) and the Arthur Rann School in Absecon (Grades 6 through 8) are presently on split sessions.

For the past five years (including the 1975-1976 present school year) the Arthur Rann School has been on split sessions for the upper elementary grades. In the four years preceding the start of the 1975-76 school year teachers employed at the Arthur Rann School reported at work for the morning session at approximately 7:30 A.M. Pupils reported to school during this period of time at 7:40 A.M. and homeroom lasted from 7:40 A.M. to 7:50 A.M. Six instructional periods lasting 40 or 41 minutes each followed. Each individual teacher was responsible for five instructional periods daily and had one preparation period four days a week. In addition the morning split session schedule provided for one mid-session break and a second homeroom period. Students were then dismissed at 12:22 P.M. The teachers would then have a lunch period from 12:30 P.M. to 1:00 P.M. and would then have additional preparation time from 1:00 P.M. to 1:30 P.M. when the day of a morning session teacher would end.[4/]

In the four years preceding the start of the 1975-76 school year afternoon session teachers at the Arthur Rann School reported to work at 11:45 A.M. Lunch period would last from 11:45 A.M. to 12:15 P.M. and would be followed apparently by a preparation period. Students would arrive at approximately 12:40 P.M. and the teaching day would begin at 12:45 P.M. when homeroom would begin. Thereafter the instructional schedule for the afternoon session would closely parellel that of the morning session. The actual teaching day would end at 5:15 P.M. and the students would leave at 5:30 P.M. An afternoon session teacher's day would then end at 5:45 P.M.

4/ The record reflects that in one year morning session teachers at the Arthur Rann School reported to work at 7:32 A.M. Their day ended that year at 1:32 P.M. All periods were accordingly advanced two minutes during this particular school year.

On August 20, 1975 each teacher at the Arthur Rann School received a letter from Joseph Pagnatto, Principal of the Arthur Rann School, that in part enclosed a copy of the 1975-1976 teaching schedule which became operative as of the start of the 1975-1976 school year. The new teaching schedule in effect required that both morning and afternoon session teachers report 15 minutes earlier each day to their assigned sessions than had been the practice at the Arthur Rann School the previous four years. A morning session teacher's day would begin at 7:15 A.M. not at 7:30 A.M. and would end at 1:30 P.M. An afternoon session teacher's day would begin at 11:30 A.M. not 11:45 A.M. and would end at 5:45 P.M. The additional 15 minutes added to the pupil and teacher day at the Arthur Rann School resulted in lengthening each instructional period by two minutes along with lengthening the mid-session break and homeroom periods.

The Board had earlier suggested to the Superintendent of Schools that the school day be lengthened at the Arthur Rann School. The Superintendent thereafter discussed a new schedule with the principal of the Arthur Rann School and the agreed upon schedule was then typed up and sent out on August 20, 1975.

The parties stipulated that with regard to negotiations for the 1975-1976 school year there were no substantive negotiations or discussions on the topic of teaching hours concerning either the Arthur Rann School or any of the other schools within the Galloway Township School District. At a negotiating session conducted on January 27, 1975 the Association did make a proposal concerning Article 13 of the collective negotiations agreement [entitled "Teaching Hours"] then in existence with specific reference to teachers at the Arthur Rann School who had been required in the past to return to the school for the purpose of signing out after leaving to go to lunch. However the spokesman for the Board questioned the wisdom of this proposal at that time and asked to move on to some other topic. There were no negotiations or discussions on this specific Association proposal thereafter.

The parties also stipulated that the length of the teacher work day as well as the pupil day at the other five schools within the District remained unchanged for the 1975-1976 school year although minor shifts were made in the schedules in effect at two of these schools because of changes in transportation schedules. More specifically the teachers' work day at the

Cologne School (Grades 1-5), Oceanville School (Grades 1-5), and the Pomona School (Grades 1-5) comprises the hours between 8:45 A.M. and 3:45 P.M. The pupils' day at these three schools extends from 9:15 A.M. to 3:30 P.M. At the South Egg Harbor School (Grades 1-4) teachers report at 8:30 A.M. and depart at 3:30 P.M. The pupils at this school arrive at 9:00 A.M. and leave at 3:30 P.M. At the Sixth Avenue School (Kindergarten only) teachers report at 8:45 A.M. and depart at 3:00 P.M. The morning and afternoon sessions at the Sixth Avenue School last from 9:30 A.M. to 12:00 noon and from 12:30 P.M. to 3:00 P.M. respectively.

During the course of the hearing in this instant matter the parties referred to one contractual provision [Article XIII-JT-1] and one section of the Board's Policy Manual [Section 4-2.6-JT-4] in partial support of their respective contentions. These articles are reproduced below in their entirety:

(1)

ARTICLE XIII

TEACHING HOURS

In all schools that are on a full session, the teachers will arrive thirty (30) minutes prior to the beginning of the students instructional day. Teachers may depart fifteen (15) minutes following the close of the students instructional day with the exception of those teachers on a rotation duty roster to monitor busing.

(2)

SECTION IV - POLICIES OF CERTIFIED PERSONNEL

4-2 The School Session

4-2.6 Length of Teacher's Day

1. Teachers are required to be on duty at least one half hour before the actual starting of regular classes for the pupils.

2. They are required to remain on duty at least one half hour after the dismissal of regular class sessions for the pupils.

3. If at the discretion of the administration, a teacher is requiested (sic) to be on duty earlier or later than the one half hour, compensatory time will be granted earlier or later as the case may be.

4. The "in-school" time for a teacher will be at least 7¼ hours.

5. At the discretion of the principal for meetings or emergencies or other suitable reasons this length of time may be waived.

6. Special teachers and Special Service Personnel are required to maintain the same length day as the regular classroom teachers.

7. In the event of double sessions the length of the "in-school" day may be shortened to less than, but not extended beyond, the 7¼ hours at the discretion of of the Building Principal and the Superintendent of Schools.

(Adopted 8/26/69)

MAIN ISSUES

1. Whether the Board in lengthening the teacher work day at the Arthur Rann School by fifteen minutes unilaterally altered the terms and conditions of employment of certified teaching personnel employed by the Board during the course of collective negotiations with the Association?

2. Whether there was an attendant obligation on the part of the Board to negotiate with the Association present under the facts of this case?

3. Whether the conduct of the Board in this instant matter is violative of N.J.S.A. 34:13-5.4(a)(1)(3) and (5)?

POSITION OF THE ASSOCIATION

The Association maintained that the working hours of a teacher undoubtedly falls within the definition of "terms and conditions" of employment as that phrase was used in the New Jersey Employer-Employee Relations Act. The Association therefore contended that the Board, through its agents and representatives, in effectuating unilateral changes in the status quo concerning teacher hours at the Arthur Rann School during the course of negotiations for a successor agreement refused to negotiate in good faith and committed unfair practices as defined by the Act.

The Association argued that no article contained within either the expired collective negotiations agreement or the Board's policy manual gave the Board the authority to increase the working hours of teachers employed at the Arthur Rann School without prior negotiations with the Association.

The Association did not contend that a decision of the Board to increase the instructional day for students at the Arthur Rann School

was a required subject for collective negotiations. The Association however emphasized that many judicial and PERC decisions had confirmed its contention that the decision to increase a teacher's work day to accommodate a lengthened instructional day for students was certainly a required subject for collective negotiations.

The Association maintained that the Commission should direct the Board to compensate the teachers in question for the additional wages due them for the additional 15 minutes a day worked during the 1975-1976 school year.

POSITION OF THE BOARD

The Board asserted that it had not committed any unfair practice in announcing its decision on August 20, 1975 to increase the student instructional day at the Arthur Rann School by fifteen minutes and by later implementing this decision as of the start of the school year September 3, 1975. The Board contended that its decision to increase the student instructional day, along with the attendant teacher work day increase of fifteen minutes, involved a major educational policy matter and thus was not mandatorily negotiable. The Board emphasized that its decision to increase the student instructional day was brought about by a desire to provide split session students with increased educational opportunities. The Board stated that the total day of instruction for pupils at the Arthur Rann School was still approximately forty-five minutes less than that accorded to students at the other District schools [excluding Kindergarten pupils] even after the pupil day was lengthened for the 1975-1976 school year. The Board maintained that the Board's management right to establish the pupil instructional day had never been challenged by the Association during the course of negotiations in the past. The Board stated that the article on teaching hours within the expired negotiations agreement substantiated its position inasmuch as the teachers' work day was tied into the student instructional day without having that student instructional day defined. The Board thus concluded that the teachers had conceded contractually that the Board had both the right to determine the pupil instructional day and the right to restructure the teachers' work day to accommodate the changes effectuated.

The Board stated that it was prepared to concede that the "impact" of its decision to increase the student instructional day by fifteen

minutes - the increased teacher work day - was a required subject for negotiations. The Board however emphasized that no demand had been made by the Association to negotiate the "impact" of the Board's decision after the changes in the teachers' schedules were announced in the aforementioned August 20, 1975 letter from the Principal of the Arthur Rann School. The Association had responded only by filing the instant unfair practice charge. The Board therefore concluded that since no demand to negotiate "impact" was made the Board could not be found to have refused to negotiate the matter; the more appropriate finding being that the Association acquiesced in this case.

The Board further suggested that since an extended impasse existed concerning negotiations with the Association on a successor contract the Board was required only to keep terms and conditions of employment substantially intact and was permitted to make minor changes in the precise status quo. The Board argued that this "degree of flexibility would work no evil on the impasse negotiations process and would preserve the Board's ability to meet and discharge its educational responsibilities."

During the course of the hearing in the instant matter the Board also introduced into the record a copy of an article from the Board's Policy Manual entitled "Length of Teacher's Day". The Board contended that this document established the right of the Principal at the Arthur Rann School and the Superintendent to restructure a teacher's work day at any time without prior negotiations with the Association in order to provide a thorough and efficient education to its pupils.

The Board in addition argued that the Association had failed to meet its burden of proof of establishing anti-union animus on the part of the Board and that therefore, as a matter of law, the Association's Section (1) and Section (3) charges must fall.

In the event that the Commission determined that an unfair practice had been committed the Board questioned whether the Commission in fashioning a remedy could consider any events occurring after September 2, 1975, the date of the filing of the instant charge, inasmuch as the Association had never amended its original charge to refer to events that took place after September 2, 1975.

Lastly, in a letter dated April 13, 1976, the attorney for the Board informed the undersigned that the Board and the Association had reached

an agreement for the 1975-1976 school year. It was suggested that the instant unfair practice charge was now moot inasmuch as the Board and the Association had agreed not to modify the contract provision on teaching hours (Article XIII) referred to hereinbefore thus manifesting the Association's decision to fully accept the lengthened school day.

DISCUSSION AND ANALYSIS

The undersigned, after careful consideration of the foregoing and the record as a whole, finds that the Board did violate N.J.S.A. 34:13A-5.4 (a), subsections (1) and (5) by lengthening the work day for both morning and afternoon session teachers at the Arthur Rann School by fifteen minutes without engaging in any collective negotiations with the Association on this issue, thus unilaterally altering the terms and conditions of employment of certified teaching personnel employed by the Board.

It is clear to the undersigned that as a result of apposite administrative and judicial decisions it is virtually axiomatic that the working hours of certificated teaching personnel employed by the Board relate to terms and conditions of employment and are required subjects for collective negotiations within the meaning of the Act.[5/] This is the only "scope of negotiations" issue that must be considered preliminarily by the undersigned since the Association did not contend that the Board's decision to increase the instructional day for students at the Arthur Rann School was a required subject for collective negotiations and did not attempt to adjudicate this particular issue in the proceedings before this Hearing Examiner. The Board itself recognized the distinction between increasing the pupil instructional day and lengthening a teacher's work day and conceded that the impact of its decision to expand the students' instructional day - specifically the decision to increase the teacher work day - was a mandatory subject for negotiations.

The undersigned is not persuaded by any of the affirmative defenses proffered by the Board in an attempt to justify its decision not to negotiate the issue of the lengthening of the teachers' work day at the Arthur Rann School with the Association despite the Board's position that this matter dealt with a mandatory subject for negotiations. The Board's specific contentions will be discussed seriatim.

5/ See Board of Education of the City of Englewood v. Englewood Teachers' Association 64 N.J. 1 (1973), Board of Education of the Town of West Orange v. West Orange Education Association, 128 N.J. Super 281 (Ch. Div. 1974), In re Hillside Board of Education, P.E.R.C. No. 76-11, 1 NJPER 55 (1975), In re Galloway Township Board of Education, P.E.R.C. No. 76-31, 2 NJPER (1976).

1. ASSERTION THAT THE BOARD HAD NO CHOICE BUT TO INCREASE THE TEACHER WORK DAY IF THE BOARD WAS TO EXPEDITIOUSLY EFFECTUATE ITS DECISION TO INCREASE THE PUPIL INSTRUCTIONAL DAY

The Board at various times in this proceeding contended that the lengthening of the pupil instructional day mandated an attendant increase in the teacher work day as well. The Board appeared to suggest that the separate decisions to first increase student instructional time and secondly to lengthen the teachers' work day to provide for adequate supervision were for all practical purposes one indivisible decision emanating from its inherent managerial prerogatives and authorities. The Board therefore concluded that it had no obligation to negotiate with the Association on the decision to extend the teacher work day until after these schedule changes had been unilaterally effectuated.

The undersigned finds that the Board has presented no evidence that its managerial decision to extend the student instructional day was or would have been rendered impossible of implementation in the absence of a concomitant alteration in the teachers' hours. On the contrary it is obvious that there were other alternatives available that would have permitted the instructional day to be increased without changing the hours worked by the teaching staff at the Arthur Rann School. For example, teacher aides or other qualified individuals could have been hired or retained by the Board or homeroom or mid-session non-instructional periods could have been shortened.

2. THE BOARD WAS NOT REQUIRED TO NEGOTIATE THE DECISION TO INCREASE THE TEACHER WORK DAY WHERE NO DEMAND TO NEGOTIATE THAT MATTER WAS MADE BY THE ASSOCIATION

The Board asserted that absent a formal demand from the Association to negotiate concerning the teacher work day issue after receipt of the aforementioned August 20, 1975 "Pagnatto letter", no duty to negotiate inured to the Board.

The undersigned concludes that this affirmative defense of the Board is without merit. The parties have agreed that (1) the issue of teacher hours was a required subject for collective negotiations; (2) the Association had during the course of negotiations introduced at least one proposal dealing with the question of teaching hours at the Arthur Rann School; (3) the parties were involved in the Commission's fact-finding process at the time of the filing of the instant charge and negotiations were therefore continuing; and (4) the August 20, 1975 letter issued to all teachers at the

Arthur Rann School provided the first indication that teaching hours would be altered as of September 3, 1975.

When these particular factors are considered along with the timing of the Board's "announcement" concerning the changed teaching hours [6] and the expeditious filing and docketing of the instant unfair practice charge on September 2, 1975 [7] it is obvious that the Association more than adequately fulfilled any requirement concerning a demand to negotiate on this issue. In addition the Board never took a formal position during the processing of this case that it would have negotiated with the Association on the issue of teaching hours at the Arthur Rann School absent a decision in this matter.

3. THE BOARD WAS NOT REQUIRED TO MAINTAIN THE PRECISE "TERMS AND CONDITIONS" OF EMPLOYMENT WHICH EXISTED UNDER THE PRIOR EXPIRED CONTRACT WHERE IMPASSE EXISTED OR WHERE THE IMPASSE PROCEDURES WERE EXHAUSTED

The dispute in this matter would appear to be governed by the Commission's decision in In re Piscataway Township Board of Education, P.E.R.C. No. 91, 1 NJPER 49 (1975), appeal pending (App. Div. Docket No. A-8-75). That case concerned the decision of a board of education to unilaterally discontinue payments concerning hospitalization and medical insurance coverage upon the expiration of the parties' current contract and while negotiations for a successor agreement had not yet been concluded. In Piscataway the Commission adopted the generally accepted principle of public and private sector labor relations that an employer is precluded from altering the status quo concerning terms and conditions of employment while engaged in collective negotiations and that such an alteration constitutes a per se illegal refusal to negotiate.[8]

It is the Board's position that the fifteen minute schedule change for teachers at the Arthur Rann School, who were still working fewer hours than other teachers employed within the District who were not

6/ The August 20, 1975 letter was not apparently mailed until that date and was received only a few days before the start of the Labor Day weekend and the start of the new school year.

7/ The Association in its charge filed with the Commission and served on representatives of the Board in part requested that an order be entered against the Board enjoining them from effectuating any charges in the terms and conditions of employment pending a final ruling in this matter.

8/ See also In re Township of Little Egg Harbor, P.E.R.C. No. 76-15, 2 NJPER 5 (1976) and In re Galloway Township Board of Education, P.E.R.C. No. 76-32, 2 NJPER (April 27, 1976), appeal pending (App. Div. Docket No. A-).

involved in split sessions, was a de minimis change which had to be viewed in light of the fact that the parties had been at impasse for over six months and were in the middle of fact-finding with no end in sight. The Board thus suggests that the Piscataway rationale does not require the maintenance of the precise "terms and conditions of employment" under circumstances that are reflective of this instant matter.

The undersigned does not concur. The clear language of Piscataway refers to the maintenance of the terms and conditions of employment in effect as of the commencement of the obligation to negotiate. There is no reference to partial maintenance of "terms and conditions" of employment or a requirement of keeping "terms and conditions" of employment only substantially intact. In addition, the Piscataway decision states that a public employer has the obligation to maintain the status quo at least until the Commission's impasse procedures set forth in N.J.A.C. 19:12-1.1 et seq., have been exhausted. It is uncontroverted in the instant matter that the first fact-finding hearing date with regard to the impasse between the Board and the Association was scheduled for September 22, 1975, three weeks after the instant charge was filed and three weeks after the teachers' hours at the Rann School were unilaterally lengthened. The fact-finder's report was not issued until October 28, 1975. It is thus clear that the Commission's impasse resolution procedures had not been exhausted as of the start of the 1975-1976 school year.

4. LANGUAGE IN THE EXPIRED CONTRACT AND IN THE BOARD'S POLICY MANUAL MAY HAVE PERMITTED THE BOARD TO UNILATERALLY CHANGE TEACHERS' HOURS TO ACCOMMODATE MANAGERIAL DECISIONS

The Board referred to Article XIII of the last agreement executed between the Association and the Board [that expired as of June 30, 1975] and to Section 4-2.6 of the Board's Policy Manual in partial support of its contentions. These provisions were reproduced in their entirety in the Background section of this recommended report and decision.

It is the undersigned's determination that reliance on these two cited articles is clearly misplaced. Article XIII, entitled Teaching Hours, specifically refers to teachers employed at all schools that were on full session. There was no reference in the expired contract to the teaching hours of certified personnel employed on a split session basis of the Arthur Rann School. In addition, there is nothing contained within Article XIII

that would constitute any kind of waiver of the right of the Association to negotiate changes in teaching hours at any of the District's schools. This provision of the contract merely establishes general parameters for teacher arrival and departure times.

With regard to Section 4-2.6 of the Board Policy Manual the record establishes that this article was adopted in August of 1969 by the Board and has since been modified as a result of negotiations between the Board and the Association.[9] The Superintendent of Schools testified under oath that there has never been a specific Board policy developed for split session teachers employed at the Arthur Rann School or elsewhere in the district. The Superintendent did testify that the length of the "in school" day had been shortened for teachers on split sessions as authorized by provision number 7 of Section 4-2.6.[10] In light of the above information it is the undersigned's finding that nothing within this section of the Board policy manual could be construed to permit the Board to unilaterally lengthen the work day that had been in effect for four years for a split session teacher without negotiating this matter with the Association.

5. THE COMMISSION MAY PROPERLY CONSIDER ONLY THOSE ACTS THAT OCCURRED ON OR BEFORE SEPTEMBER 2, 1975, THE DATE OF THE FILING OF THE CHARGE, FOR PURPOSES OF FASHIONING A REMEDY IF A VIOLATION OF THE ACT IS FOUND

The Board is correct when it notes that the Association could have amended its charge pursuant to the Commission's Rules. The undersigned will not stand however on procedural formalities inasmuch as the Board in its brief and also during the hearing in this instant matter referred to post-charge events thus having impliedly agreed that these events should be considered by the undersigned and the Commission in deciding this case.

6. THE MATTER IS MOOT AND NO DECISION SHOULD BE RENDERED INASMUCH AS AN AGREEMENT HAS BEEN CONCLUDED BY THE PARTIES FOR THE 1975-1976 SCHOOL YEAR

The undersigned takes administrative notice of the previously mentioned letter dated April 13, 1976 from the attorney for the Board advising that the parties had signed a Memorandum of Understanding covering the 1975-1976

9/ For example teachers may now depart fifteen minutes after the close of the students' instructional day and are no longer required to remain on duty at least one half hour after the dismissal of their pupils. The "in school" time for teachers is no longer "at least 7¼ hours." /Transcript, pages 30-34 and Exhibit JT-3/

10/ Transcript, pages 30-32.

school year in settlement of all outstanding issues concerning that school year. However the undersigned also takes notice that the Association as the Charging Party has not requested that the Complaint in this matter be withdrawn, and in the absence of such a request, the undersigned does not believe that the subsequent achievement of an agreement renders moot violations of the Act which occurred during the course of negotiations. The undersigned, after careful analysis of all of the foregoing including the Memorandum of Agreement executed by the parties,[11/] does conclude that any Order in this case should be prospective in application only.

In conclusion, based upon the entire record, the undersigned finds that the lengthening of the working hours of teachers employed at the Arthur Rann School related to required subjects for collective negotiations; and that the Board's actions in unilaterally altering the status quo concerning terms and conditions of employment while engaged in collective negotiations constituted unfair practices within the meaning of N.J.S.A. 34:13A-5.4(a)(5) in that they constituted a refusal to negotiate in good faith concerning these terms and conditions of employment. The undersigned further concludes that the Board's improper conduct, although not apparently motivated by any specific anti-union animus, necessarily had a restraining influence and attendant coercive effect upon the free exercise of the rights of the members of the negotiating unit guaranteed to them by the Act and was violative of N.J.S.A. 34:13A-5.4(a)(1).

After careful consideration of the foregoing and the record as a whole, the undersigned does not find that the Board's conduct violated N.J.S.A. 34:13A-5.4(a)(3).

ORDER

Accordingly, for the reasons set forth above, IT IS HEREBY ORDERED that the Respondent, Galloway Township Board of Education, shall refrain from unilaterally altering, or threatening to unilaterally alter, terms and conditions of employment of employees represented by the Charging Party,

11/ The undersigned has been informed that the parties have now formally ratified an agreement for the 1975-1976 school year.

Galloway Township Education Association, during the course of collective negotiations for a successor agreement with said Charging Party.

IT IS FURTHER ORDERED that the Respondent, Galloway Township Board of Education, shall cease and desist from interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act.[12/]

IT IS FURTHER ORDERED that that section of the instant Unfair Practice Charge dealing with alleged violations of N.J.S.A. 34:13A-5.4(a)(3) be dismissed.

Stephen B. Hunter

Stephen B. Hunter
Hearing Examiner

DATED: Trenton, New Jersey
May 11, 1976

12/ On the basis of the entire record and after carefully considering the effect of the new agreement executed by the Board and the Association the undersigned has determined not to order the restoration of the hours of employment of the teachers at the Arthur Rann School as they existed prior to the start of the 1975-1976 school year. The undersigned has concluded that an order of this kind issued under the circumstances in this instant matter would not properly effectuate the policies of the Act. The Association itself did not propose at the hearing or in its brief that the status quo with regard to hours be restored.

The undersigned also has concluded that under the circumstances no "monetary award" is warranted.