P.E.R.C. NO. 80-48

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

JACKSON TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-79-271-75

JACKSON TOWNSHIP ADMINISTRATORS' ASSOCIATION and FRANK J. MORRA,

Charging Parties.

SYNOPSIS

A violation of N.J.S.A. 34:13A-5.4(a)(5) by the Board is concluded to have occurred when the workload of Frank Morra was unilaterally increased. Money damages for failure to negotiate are not appropriate as there is no automatic assumption that negotiations would have resulted in additional compensation. H.E. No. 80-7 is affirmed.

P.E.R.C. NO. 80-48

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

JACKSON TOWNSHIP BOARD
OF EDUCATION,

Respondent,

-and- Docket No. CO-79-271-75

JACKSON TOWNSHIP ADMINISTRATORS'
ASSOCIATION and FRANK J. MORRA,

Charging Parties.

Appearances:

For the Respondent, Russo & Courtney, Esqs.
(Mr. James P. Courtney, Jr., of Counsel)

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

DECISION AND ORDER

An Unfair Practice Charge having been filed with the Public Employment Relations Commission by the Jackson Township Administrators' Association (the "Association") and Frank J. Morra, a hearing was held before Commission Hearing Examiner Alan R. Howe on June 5, 1979. Briefs were filed by the parties by August 8, 1979. His Recommended Report and Decision issued on September 10, 1979, designated as H.E. No. 80-7. A copy is appended hereto and made a part hereof. He concluded that the Board had violated N.J.S.A. 34:13A-5.4(a)(5) and derivatively (a)(1) by unilaterally increasing the workload of Mr. Morra without negotiations with the Association.[1/] Both sides have

1/ He also recommended dismissal of charges alleging violations of N.J.S.A. 34:13A-5.4(a)(3) and (6), no evidence having been presented to support those allegations. In the absence of exceptions thereto, we affirm that recommendation.

filed exceptions to the report, and the Charging Parties have requested oral argument, which we hereby deny pursuant to our discretionary power - N.J.A.C. 19:14-8.2 - as there are no issues on which further argument would be beneficial.

Morra was transferred from School Principal to Director of Community Services for the 1977-78 school year. Prior to the 1978-79 school year he was advised that he would assume certain duties previously assigned to the Director of Special Services and Programs. The controversy in this matter lies in whether these duties were part of the job description for the Community Services post as the Board asserts, or rather had only been discussed as possibilities for the future at a July 28, 1977 meeting. The Board's exceptions essentially object to the weight that the Hearing Examiner accorded a memorandum written by Mr. Morra on August 1977 summarizing that meeting as opposed to testimony by Board witnesses on that score. We will not overrule a Hearing Examiner on such a determination without some exceptional reason being presented, and none has been herein. We believe the record supports the Hearing Examiner's conclusion, and we affirm.

Similarly, the Charging Parties' exceptions are without merit. What is sought by the Charging Parties is money damages for the additional work performed. There is no necessary reason to suppose that even if the Board had negotiated, as per its statutory duty, the result would have been an agreement to raise Mr. Morra's compensation. The duty to negotiate is not

synonomous with the duty to agree, and even if agreement was reached, it does not have to mean that money would be the sine qua non for the Association's acquiescence. Additionally, any award of money damages would be totally speculative. As in Maywood Board of Ed v. Maywood Education Assn, 168 N.J. Super. 45 (1979), pet for certif denied ___ N.J. ___ (1979), the proper remedy is a return to the status quo ante and an order to negotiate.

ORDER

For the foregoing reasons and upon the entire record, IT IS HEREBY ORDERED:

A. That the Respondent Board cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act and refusing to negotiate in good faith with the Jackson Township Administrators' Association concerning the terms and conditions of employment of employees represented by the Association, particularly by unilaterally increasing the workload of employees, such as Frank J. Morra, without prior negotiations with the Jackson Township Administrators' Association.

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

1. Within sixty (60) days hereof, restore the status quo ante as to the duties of Frank J. Morra in his position as Director of Community Services, the unilateral increase in

which occurred on June 30, 1978, and thereafter negotiate any proposed changes in Morra's workload with the Association prior to implementation.

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

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

C. That the charges of violations by the Respondent of N.J.S.A. 34:13A-5.4(a)(3) and (6) be dismissed in their entirety.

BY ORDER OF THE COMMISSION

Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Hartnett and Parcells voted for this decision. Commissioners Hipp and Newbaker abstained. Commissioner Graves was not present.

DATED: Trenton, New Jersey
October 31, 1979
ISSUED: November 1, 1979

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, and we will not refuse to negotiate in good faith with the Jackson Township Administrators' Association concerning the terms and conditions of employment of employees represented by the Association, particularly by unilaterally increasing the workload of employees, such as Frank J. Morra without prior negotiations with the Jackson Township Administrators' Association.

WE WILL within sixty (60) days hereof, restore the status quo ante as to the duties of Frank J. Morra in his position as Director of Community Services, the unilateral increase in which occurred on June 30, 1978, and thereafter negotiate any proposed changes in Morra's workload with the Association prior to implementation.

JACKSON 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 Jeffrey B. Tener, Chairman, Public Employment Relations Commission, 429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.

H.E. No. 80-7

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

In the Matter of

JACKSON TOWNSHIP BOARD OF EDUCATION,

Respondent,

- and -

Docket No. CO-79-271-75

JACKSON TOWNSHIP ADMINISTRATORS ASSOCIATION
and FRANK J. MORRA,

Charging Parties.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Board violated Subsections 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act when it unilaterally, and without notice to or negotiations with the Association, increased the workload of Frank J. Morra, the Director of Community Services, by memo from the Board's Superintendent dated June 28, 1978. Morra assumed the additional duties on June 30, 1978.

The Hearing Examiner, citing longstanding precedent of the Courts and the Commission, concluded that the Board was obligated to negotiate with the Association its decision to increase Morra's workload, and not just the impact thereof,in view of the fact that negotiations with respect to the increased workload would not interfere with or infringe upon the Board's right to make basic policy decisions to further educational services. The Hearing Examiner noted that the unilateral decision to increase Morra's workload came at the end of the 1977-78 school year, and that there was adequate time before the next school year to negotiate with the Association on any proposed increase in Morra's workload.

By way of remedy, the Hearing Examiner recommended that the Board be ordered to restore the status quo ante within sixty (60) days, i.e., eliminate all additional duties assumed by Morra since June 30, 1978, and negotiate in good faith with the Association regarding any additional duties to be assumed by Morra as Director of Community Services.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

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

In the Matter of

JACKSON TOWNSHIP BOARD OF EDUCATION, 1/

Respondent,

- and - Docket No. CO-79-271-75

JACKSON TOWNSHIP ADMINISTRATORS ASSOCIATION 1a/
and FRANK J. MORRA,

Charging Parties.

Appearances:

For the Jackson Township Board of Education
Russo & Courtney, Esqs.
(James P. Courtney, Jr., Esq.)

For the Jackson Township Administrators Association and Frank J. Morra
Chamlin, Schottland, Rosen & Cavanagh, Esqs.
(Michael D. Schottland, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on August 24, 1978 by Frank J. Morra, later joined in by the Jackson Township Administrators Association, 2/ (hereinafter the "Charging Parties", the "Association" or "Morra") alleging that the Jackson Township Board of Education (hereinafter the "Respondent" or the "Board") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (hereinafter the "Act"), in that the Board had on July 13, 1977 unilaterally transferred Morra

1/ At the hearing, counsel for the Charging Parties amended the named Respondents in the charge of unfair practices by deleting Dr. Gerald V. Savage and James P. Courtney, Jr., Esq. as individual Respondents.

1a/ As corrected at the hearing.

2/ Under date of March 13, 1979 the President of the Jackson Township Administrators Association moved to join the proceeding as a Charging Party and this motion was granted by the Director of Unfair Practices when the Complaint and Notice of Hearing was issued on April 5, 1979.

from Principal of the High School to a new position known as Director of Community Services, and that the Board had filed tenure charges against Morra on August 3, 1977, which are still pending before the Commissioner of Education, and that the Board on June 28, 1978 increased the work duties and responsibilities of Morra, by transferring to him a portion of the work duties and responsibilities of another employee, without prior negotiations with the Association or Morra, all of which is alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1),(3),(5) & (6) of the Act. 3/

It appearing that the allegations of the Unfair Practice Charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on April 5, 1979. Pursuant to the Complaint and Notice of Hearing, a hearing was held on June 5, 1979 in Trenton, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. The parties filed post-hearing briefs by August 8, 1979.

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

Upon the entire record, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. The Jackson Township Board of Education is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. The Jackson Township Administrators Association is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

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

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

"(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.

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

3. Frank J. Morra is a public employee within the meaning of the Act, as amended, and is subject to its provisions.

4. Morra was hired by the Board July 1, 1966 as Vice-Principal of the Jackson Memorial High School; and as of April 8, 1967 Morra became its Principal.

5. Morra has at all times material hereto been a member of the Association and has, along with other administrators, authorized the Association to represent him in negotiations (e.g.,see R-1).

6. The Board and the Association have been parties to a series of collective negotiations agreements, the current agreement consisting of the basic provisions of the July 1, 1975 through June 30, 1977 agreement (CP-1) and the addendum to that agreement covering salaries only and effective during the term July 1, 1978 through June 30, 1979 (CP-3). The 1977-78 addendum, also covering salaries only, was received in evidence as CP-2. Morra's name and negotiated salary appears in CP-1, CP-2 and CP-3.

7. On July 13, 1977 Morra was informed by the Board of his immediate transfer from Principal of the High School to a newly created position of Director of Community Services. 4/

8. Immediately after being informed of his transfer on July 13, 1977, Morra assumed the duties of the Director of Community Services in accordance with the job description (CP-7). Although the place of his employment changed from the High School to the Superintendent's office, there was no change in his hours of work, i.e., scheduled work day.

9. Morra attended a meeting on July 28, 1977 with the Board's Superintendent, Dr. Gerald V. Savage, and the Assistant Superintendent, Nicholas V. Sciarappa, where Morra's job responsibilities under the new position were discussed. Under date of August 19, 1977 Morra addressed a "draft" summary of the meeting to Dr. Savage, Item VII of which stated as follows:

> "Additional items discussed were possibility of administratively supervising the operational phases of the Adult Evening Programs and looking at the Vocational aspects of the Drug Educational Programs K-12, as they relate to vocational success. These items were strictly discussed as only suggestions

4/ Morra, in separate proceedings initiated by him before the Commissioner of Education, protested the Board's action in transferring him from the position of Principal to the position of Director of Community Services, and, after having initially prevailed before the Commissioner of Education, the matter is pending on appeal by the Board to the State Board of Education. Tenure charges were filed by the Board against Morra on August 3, 1977 and were certified to Commissioner of Education; these charges are still pending.

and not specifically delineated as specific responsibilities." (CP-13, p. 4)(Emphasis in the original). 5/

10. Morra functioned as Director of Community Services, in accordance with the aforesaid job description, during the 1977-78 school year, filing the required monthly reports (see CP-8 and CP-9) and, as of June 1, 1978, Morra received a "satisfactory" evaluation from Dr. Savage (CP-14). 6/

11. Negotiations for the 1978-79 agreement between the Board and the Association commenced May 18, 1978 and concluded with the signing of the agreement by the Association on December 12 and by the Board on December 18, 1978 (CP-3).

12. Without notice to the Association, nor negotiations with it, Dr. Savage, under date of June 28, 1978, advised Morra that he was to assume additionally certain duties previously performed by Edward Elms, the Director of Special Services and Programs. This was set forth in a June 28 memo from Dr. Savage to Morra, attached to which was the job description for Director of Special Services and Programs (CP-10). 7/

13. Morra immediately told Dr. Savage that his memo of June 28 constituted an expansion of Morra's job description. Nevertheless, Morra assumed the additional job responsibilities on or about June 30, 1978, all of which was subsequently protested by his attorney (CP-4),who then filed the instant charge of unfair practices (C-1).

14. The Hearing Examiner finds that the additional job duties and responsibilities assumed by Morra on and after June 30, 1978 constitute an unnegotiated and unilaterally imposed increase in Morra's workload, the scope and

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5/ Dr. Savage never responded in any manner to Morra's "draft" summary. It is noted that Paragraph 14 of Sciarappa's notes of the July 28, 1977 meeting (R-2) are not inconsistent with Item VII of Morra's "draft", supra.

6/ In view of this evaluation of Morra by Dr. Savage, the Hearing Examiner declines to draw any negative conclusion, regarding Morra's job performance, from the testimony of Dr. Savage that Morra objected to the additional responsibilities in his new position as Director of Community Services in the Summer of 1977, and that by the Spring of 1978 Dr. Savage had to direct Morra to perform the duties and responsibilities of this new position.

7/ As reflected in the said memo, Morra was to meet with Elms to develop a plan of action for transition of the "and Programs" phase of Elms' former responsibilities to Morra. Morra was to assume "full responsibility for all community education programs" formerly under the jurisdiction of Elms.

content of which is confirmed by the testimony of Elms, [8] notwithstanding that Morra has been able to perform the additional duties and responsibilities without an increase in the length of his work day.

15. Not having been given notice of the increase in job duties and responsibilities in regard to Morra's position in June 1978, the Association never made a demand upon the Board to negotiate with respect to this matter. Further, Morra never requested that the Association negotiate on his behalf with respect to this change in workload.

THE ISSUE

Did the Board violate the Act when its Superintendent on June 28, 1978 unilaterally advised Frank J. Morra by memo that he was to assume additional duties, previously performed by another employee, which Morra assumed on June 30, 1978, without notice to the Association nor negotiations with it? If so, what should the remedy be?

DISCUSSION AND ANALYSIS

Introductory Statement

It should be noted preliminarily that the Board in its brief concedes that if a violation of the Act by the Board has occurred the appropriate remedy would be an order upon the Board to negotiate with the Association and not an award of monetary damages for any increase in Morra's workload (Board's brief, pp. 18, 19 citing Maywood [9]). With this, the Hearing Examiner is in complete

8/ At the hearing in this proceeding on an Order to Show Cause before Stephen B. Hunter, Special Assistant to the Chairman of the Commission, September 12, 1978, Elms testified at length regarding what his duties had been with respect to "Programs" aspect of his job as Director of Special Services and Programs (see pp. 9-37 of the Transcript of said hearing, which the Charging Parties have offered in evidence as part of their proofs herein). It is noted that Elms testified therein that he found it necessary to work evenings durings parts of the academic year in order to fulfill the "Programs" portion of the job assignment (Tr. pp. 12, 13, 22). Elms also testified specifically regarding the percentages of time spent and the number of hours worked per week on "Programs" (Tr. pp. 20, 22, 23). It is noted that Mr. Hunter on January 24, 1979 denied Morra's request for Interim Relief on the Order to Show Cause: - See P.E.R.C. No. 79-48, 5 NJPER 62 (1979).

9/ Maywood Board of Education, P.E.R.C. No. 78-23, 3 NJPER 377 (1977); P.E.R.C. No. 79-49, 5 NJPER 64 (1979); and Maywood Board of Education v. Maywood Education Association, 168 N.J. Super 45 (1979), P.E.R.C. rev'd. and aff'd., in part, pet. for certif. den. June 26, 1979, Docket No. 15,917, ___ N.J. ___.

agreement, the Charging Parties' brief having cited no persuasive authority to the contrary. 10/

The matter of the appropriate remedy for any violations of the Act by the Board will be considered hereinafter.

The Respondent Board Violated Subsection (a)(5), And Derivatively Subsection (a)(1) of The Act When, Without Notice to or Negotiations With the Association, it Unilaterally Increased The Workload of Frank J. Morra by Memo Dated June 28, 1978

The Hearing Examiner has found that Morra assumed the duties of the Director of Community Services on July 13, 1977, in accordance with the job description, after having been transferred from his former position as High School Principal. Although his place of employment changed from the High School to the Superintendent's office, there was no change in his hours of work. Further, Morra's performance as Director of Community Services during the 1977-78 school year was rated as "satisfactory" by Dr. Savage. See Findings of Fact Nos. 8, 10, supra.

Notwithstanding that Morra was at all times material hereto represented by the Association, Morra's name and negotiated salary appearing in the collective negotiations agreements received in evidence, Dr. Savage, as a representative of the Board, advised Morra on June 28, 1978 that Morra was to assume certain additional duties previously performed by Edward Elms, all of which was done without notice to nor negotiations with the Association. See Findings of Fact Nos. 5, 6, 12, supra. The Hearing Examiner takes especial note of the fact that negotiations between the Board and the Association had commenced on May 18, 1978 for the 1978-79 collective agreement, this being approximately five and one-half weeks before Dr. Savage's memo of June 28. See Finding of Fact No. 11, supra.

Finally, the Hearing Examiner has found as a fact that the additional

10/ The Charging Parties cite Galloway Township Board of Education v. Galloway Township Association of Educational Secretaries, 78 N.J. 1 (1978) (brief pp. 8, 9), which the Hearing Examiner finds distinguishable in that the Court there affirmed the Commission's authority to "...order that a party found to have violated the Act make the affected employees whole for their actual losses sustained..." (78 N.J. at 16) (Emphasis supplied). The Charging Parties herein have offered no evidence or standard upon which the Hearing Examiner could predicate the imposition of a sum certain monetary award of damages for any increase in Morra's workload. See also, Maywood, supra, footnote 9, especially 168 N.J. Super at 63, 64.

job duties and responsibilities assumed by Morra on and after June 30, 1978 constituted an unnegotiated and unilaterally imposed increase in Morra's workload, notwithstanding that Morra has been able to perform the additional duties without any increase in the length of his workday (Finding of Fact No. 14, supra).

The Hearing Examiner finds and concludes that the Board, through the actions of Dr. Savage on June 28, 1978, violated Subsection (a)(5) of the Act, in that the unilateral increase in Morra's workload, which he assumed on June 30, was done without notice to or negotiations with the Association. Further, by violating the foregoing Subsection of the Act, the Board derivatively violated Subsection (a)(1) of the Act. 11/

In Byram Township Board of Education and Byram Township Education Association, 152 N.J. Super. 12 (App. Div. 1977) the Court said at page 26:

> "Work hours and workloads clearly relate to terms and conditions of employment and thus are mandatorily negotiable. Englewood Bd. of Ed. v. Englewood Teachers, supra; Burlington Cty. College Fac. Ass'n. v. Bd. of Trustees, supra..." 12/

In finding that the Board violated Subsection (a)(5) of the Act, the Hearing Examiner concludes that the Board was obligated to negotiate the decision to increase Morra's workload with the Association prior to implementation of the decision. In so finding and concluding, the Hearing Examiner relies upon current Commission precedent that the decision to increase the workload of a teacher is in itself mandatorily negotiable where the negotiations with respect to the additional duties would not interfere with or infringe upon the right of a public employer to make basic policy decisions in furtherance of educational services. 13/

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

12/ Englewood and Burlington County were decided with Dunellen in 1973: see especially 64 N.J. 1, 7 and 64 N.J. 10, 12; these being the pertinent references to Englewood and Burlington County seriatim. See also, State v. State Supervisory Employees Ass'n., 78 N.J. 54 (1978) where the Supreme Court said at page 67: "Thus, negotiable terms and conditions of employment are those matters which intimately and directly affect the work and welfare of public employees and on which negotiated agreement would not significantly interfere with the exercise of inherent management prerogatives..." (Emphasis supplied).

13/ See Rahway Board of Education, P.E.R.C. No. 79-30, 5 NJPER 23, 25 (1978); Newark Board of Education, P.E.R.C. No. 79-38, 5 NJPER 41, 42 (1979); Fair Lawn Board of Education, P.E.R.C. No. 79-44, 5 NJPER 48, 49 (1979). Buena

(continued next page)

The Board has offered no evidence or reason which persuades the Hearing Examiner that the negotiation of the workload decision regarding Morra would have in any way interfered with or infringed upon the Board's right to make basic policy decisions to further educational services. It is noted that the memo from Dr. Savage is dated June 28, 1978, at the end of the 1977-78 school year, and it is concluded herein that there was ample time to negotiate with the Association on this matter before the start of the 1978-79 school year in September. Thus, clearly there could be no interference or infringement on the Board's providing of educational services to the School District.

With respect to the appropriate remedy for the Board's violation of Subsection (a)(5), the Hearing Examiner turns to Maywood (footnote 9, supra) where the Commission was reversed in part and affirmed in part by the Appellate Division. With respect to the increase in the workload of certain physical education teachers in Maywood, which the Appellate Division remanded to the Commission on April 3, 1979 for additional findings (168 N.J. Super. at 60), the Commission said:

> "...The Board must restore the status quo ante and must negotiate in good faith any increased workload of (the) physical education teachers...
>
> "In order to effectuate the policies of the Act, we determine the restoration of the status quo ante must be ordered to negate any advantage gained by the unlawful conduct of the Board. However, the Board will be given 60 days from this decision to restore the status quo ante. This period is provided so as to avoid any unnecessary disruption of the school day and/or year." (3 NJPER at 379).

The Hearing Examiner is of the view that he can apply to the instant case the Commission's remedy in Maywood, inasmuch as the Appellate Division did not reverse but merely remanded the matter, and, further, the Hearing Examiner is of the opinion that the Maywood remedy of the Commission is the appropriate remedy for neutralizing the Respondent Board's unfair practices. Accordingly, the Hearing Examiner will so recommend in his Order to the Commission, infra.

The Charging Party having adduced no evidence that would support a vio-

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13/ (continued)

Regional Board of Education, P.E.R.C. No. 79-63, 5 NJPER 123, 124 (1979); and Hope Township Board of Education, P.E.R.C. No. 79-96, 5 NJPER 236 (1979). See also, New Jersey Institute of Technology, P.E.R.C. No. 80-27, 5 NJPER __ (1979).

lation of Subsections(a)(3) and (6) of the Act, the Hearing Examiner will recommend dismissal of these allegations in the Unfair Practice Charge.

* * * *

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

CONCLUSIONS OF LAW

The Respondent Board violated N.J.S.A. 34:13A-5.4(a)(5), and derivatively 5.4(a)(1), when it unilaterally and without negotiations with the Association increased the workload of Frank J. Morra by memo from the Superintendent dated June 28, 1978.

The Respondent Board did not violate N.J.S.A. 34:13A-5.4(a)(3) and (6) by its conduct herein.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER:

A. That the Respondent Board cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly, by unilaterally increasing the workload of employees, such as Frank J. Morra, without prior negotiations with the Jackson Township Administrators Association.

2. Refusing to negotiate in good faith with the said Association concerning the terms and conditions of employment of employees represented by the Association, in particular, the unilateral increase in the workload of employees such as Frank J. Morra.

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

1. Within sixty (60) days hereof, restore the status quo ante as to theduties of Frank J. Morra in his position as Director of Community Services, the unilateral increase in which occurred on June 30, 1978, and thereafter negotiate any proposed changes in Morra's workload with the Association prior to implementation.

2. Post at all places where notices to employees are customarily posted, copies of the attached notice marked Appendix "A". Copies of such notice, on forms to be provided by the Commission, shall be posted immediately upon the

receipt thereof, after being signed by the Respondent's authorized representative, and shall be maintained by it for a period of sixty (60) consecutive days. Reasonable steps shall be taken by the Respondent to insure that such notices are not altered, defaced or covered by other material.

3. Notify the Director of Unfair Practices within twenty (20) days of receipt what steps the Respondent has taken to comply herewith.

C. That the charges of violations by the Respondent of N.J.S.A. 34:13A-5.4(a)(3) and (6) be dismissed in their entirety.

Dated: September 10, 1979
Trenton, New Jersey

Alan R. Howe
Hearing Examiner

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 administrative employees in the exercise of the rights guaranteed to them by the Act, particularly, by unilaterally increasing employees' workloads without prior negotiations with the Jackson Township Administrators Association.

WE WILL negotiate in good faith with the Jackson Township Administrators Association concerning the terms and conditions of employment of employees represented by the Association, in particular, the increase in the workload of employees such as Frank J. Morra.

WE WILL, within sixty (60) days hereof, restore the status quo ante as to the duties of Frank J. Morra in his position as Director of Community Services, namely, as of June 30, 1978, and thereafter negotiate any proposed changes in Morra's workload with the Association prior to implementation.

JACKSON 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 Jeffrey B. Tener, Chairman, Public Employment Relations Commission, 429 East State Street, Trenton, New Jersey 08608 (Telephone) (609) 292-6780