

LH-100

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION  
LITIGATION ALTERNATIVE PROGRAM

In the Matter of -  
FREEHOLD BOROUGH BOARD OF EDUCATION -  
-and- -  
FREEHOLD BOROUGH EDUCATION ASSOCIATION -

Docket No. L-85-12

DECISION

The Freehold Borough Board of Education (the "Board") and the Freehold Borough Education Association (the "Association") have advised the Public Employment Relations Commission (the "Commission") that they wished to have the dispute herein processed through the Commission's Litigation Alternative Program. In this Program, the parties describe and document the nature of their dispute to the Commission designee. Failing a direct resolution of the disputed issues by the parties, the Commission designee issues an advisory recommendation designed to resolve the dispute without prejudice to the parties' legal positions.

On January 8, 1985, the undersigned conducted an informal session with the parties concerning this dispute. The Board was represented by Vincent DeMaio, Esq. and the Association was represented by Arnold Melk, Esq. The following persons were also in attendance and gave information to the Commission Designee:

Frank Kane, Superintendent of Schools; Diane Mansfield, Association Grievance Chairperson and J. Murphy, Association Representative.

### Background

On December 19, 1983, an unfair practice charge (docket no. CO-84-159) was filed with the Commission by the Association. In that charge, the Association alleged that the Board had violated subsection 5.4 of the Act by altering various terms and conditions of the collective bargaining agreement. The Association alleged that the Board had altered the teachers' work schedule and in so doing, had reduced preparation time. The Association alleged that the Board had unilaterally assigned each teacher lunch duty and that this conduct was violative of the parties' agreement, past practice and the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act").

In February 1984, the then Administrator of Unfair Practices, Joel Scharff, conducted an exploratory conference in this matter wherein a settlement proposal was advanced to the parties. While the parties did not then settle the matter, they agreed to continue discussions in an attempt to achieve an informal resolution of the matter. The Administrator sent status letters to the Charging Party in April and May 1984. The Charging Party thereafter responded (May 22, 1984) that it wished to continue pursuing the charge against the Board.

On June 1, 1984, the Administrator wrote to the Charging Party and noted, inter alia, that the the charge contained certain

defects and that if the Charging Party wished to pursue it further, an amendment would be required to remedy the noted deficiencies. The Charging Party was given seven days within which to amend the charge. Having received no response from the Charging Party by July 1, 1984, the Administrator issued a letter dismissing the charge for lack of prosecution.

On September 6 and 7, 1984, the Association filed two additional charges against the Board (docket nos. CO-85-55 and CO-85-56) alleging that the Board violated subsection 5.4(a)(1), (3) and (5) of the Act. Specifically, in charge CO-85-55, the Association alleged that on June 30, 1984, the Board unilaterally altered terms and conditions of employment of teaching staff by violating Article VI(e) of the collective bargaining agreement; in charge CO-85-56, the Association alleged that on June 5, 1984, the Board unilaterally altered terms and conditions of employment of teachers by increasing student contact time -- a violation of the collective bargaining agreement and the parties' past practice.

On September 19, 1984, the Board filed a response to docket numbers CO-85-55 and CO-85-56. The Board stated that on September 11, 1984, the parties had completed their contract negotiations and executed a Memorandum of Understanding (Submission A) for a two year agreement. One of the provisions of the Memo was that the Association was to withdraw all then-pending unfair practice charges except the charge which related to lunch room assignments during the 1983-1984 school year (docket no. CO-85-55). The Board's

position was that this matter (CO-85-55, the lunch duty assignment dispute) was untimely filed.

#### Issues in Dispute

Based upon the foregoing recitation, it appears that charge docket number CO-84-159 was dismissed in July, 1984 by the Administrator of Unfair Practices and charge docket number CO-85-56 was withdrawn under the terms of the parties' executed Memorandum of Understanding. However, charge docket number CO-85-55 (lunch duty assignments during the 1983-1984 school year) remains in dispute. More specifically, the Association contends that the Board has, unilaterally and without negotiations with the Association, altered certain terms and conditions of employment of unit members in violation of the New Jersey Employer-Employee Relations Act, the parties' collective negotiations agreement and past practice. <sup>1/</sup>

#### Positions of the Parties

The Association contends that the Board unilaterally assigned lunch duty to teachers, failed to compensate teachers for the performance of such duty, removed a preparation period from teachers, and refused to negotiate concerning any of the foregoing changes.

The Board alleges that its decision to assign lunch duty to teachers was implemented in September, 1983 for the 1983-1984 school

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<sup>1/</sup> At the time that this dispute arose, there was a collective bargaining agreement in effect between the parties covering the years 1982-1983 and 1983-1984. Submission B.

year. An unfair practice charge was filed with the Commission (CO-84-159) regarding that issue. That charge was dismissed by the Commission on July 5, 1984 for failure to prosecute. The Board asserts that charge docket number CO-85-55 relates to the same lunch duty assignment issue and further argues that consideration of that issue as an unfair practice is now barred as the charge was filed more than six months after the occurrence of the event.

#### Analysis

In September 1983, the Board changed its educational program format from a non-graded, team teaching format to a traditional, individual teacher-classroom format. As a result of this basic programmatic change, the structure and schedule of the entire school day was changed. Teachers' period schedules were changed. Not changed, however, were the starting and ending times of the teachers' work day and the length of the teachers' work day.

Prior to September 1983, under the team teaching format, a typical teacher's schedule was as follows:

8:05 - 8:55	Team Prep Period
9:00 - 10:20	Class Period
10:20 - 11:00	Individual Prep Period
11:05 - 1:00	Class Period
1:00 - 1:30	Duty Free Lunch Period
1:30 - 3:05	Class Period

Prior to September, 1983, lunch duty was performed by teachers on a voluntary basis. There is nothing in the 1982-1983/1983-1984 collective negotiations agreement about the assignment of a lunch duty period or a stipend to be paid for such assignment.

Rather, this entire issue was handled through a past practice which both parties agreeably followed for many years. Each year, approximately eight teachers would volunteer to perform the lunch duty in two school buildings. (In the third school building, cafeteria aides performed lunch duty). The teachers were compensated for performing lunch duty at the rate of \$4 per duty session.

Generally, when a teacher volunteered for lunch duty, the teacher's original duty free lunch period became their lunch duty period. The teacher lost his/her individual prep period -- that period became their duty free lunch period. Thus, teachers who performed lunch duty had but one prep period -- the group or team prep period at the start of each school day.

In September, 1983, only one teacher volunteered to perform lunch duty, thereby presenting the Board with a staffing problem. <sup>2/</sup> Faced with no volunteers to perform lunch duty, the Board decided to assign lunch duty to all teaching staff members in two of its three school buildings. The Board further decided not to compensate the teachers for this assignment.

There are approximately 74 teaching professionals included in the Association's negotiations unit; 65 of these teachers were

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<sup>2/</sup> The teachers who had volunteered to perform lunch duty in previous years did not volunteer in September, 1983 because they believed the stipend (\$4 per session) was insufficient and that it was not worth sacrificing their time

affected by this change. Teachers of grades K-4 were assigned lunch duty one day per week for the entire school year (September 1983-June 1984) (or approximately 40 lunch duty periods for the entire year). Intermediate grade teachers received lunch assignments by marking period -- five days per week for approximately ten weeks of the school year (approximately 50 lunch duty periods for the entire year). <sup>3/</sup> Thus, what duty had formerly been performed by a relatively small group of teachers who had volunteered for the duty and were paid a stipend for performing same, was now assigned fractionally, among essentially the entire teaching staff. Teachers assigned a lunch duty period lost a commensurate number of team prep periods.

The Board accomplished this change by converting the team prep period into an individual prep period; converting the individual prep period into a duty free lunch period; and converting the duty free lunch period into a lunch duty period. In essence, the Board eliminated the team prep period and replaced it with a lunch duty period. <sup>4/</sup>

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<sup>3/</sup> Thus, each teacher who received a lunch duty assignment received approximately 20-25% of a "full share" of lunch duty assignments (i.e., a "full share" would be performance of lunch duty every day for the entire school year).

<sup>4/</sup> Given the change in educational program format -- from the team teaching concept to the traditional format -- the team prep period, as originally conceived, was apparently no longer needed.

Prior to September, 1983, each teacher had a schedule comprised approximately as follows:

- a) class periods
- b) duty free lunch period, which was 30 minutes in length and floated (that is, the time of day for this period varied from teacher to teacher).
- c) individual prep period, which was 40 minutes in length and floated.
- d) team prep period, which was 50 minutes in length and fixed (that is, scheduled at the same time of day for all teachers, 8:05 a.m. - 8:55 a.m.).

After September, 1983, each teacher's schedule affected by the Board's changes was comprised approximately as follows:

- a) class periods.
- b) duty free lunch period (this time slot had formerly been the individual prep period); 40 minutes in length; floated.
- c) individual prep period (this time slot had formerly been the team prep period); 50 minutes in length; fixed from 8:05 a.m. to 8:55 a.m.
- d) lunch duty period. This time slot had formerly been the duty free lunch period. It was converted to a lunch duty period for approximately 20-25% of the total number of annual lunch periods. For the other 75-80% of the formerly duty free lunch periods in this time slot, apparently, the teacher still had these free.

The parties' collective negotiations agreement contains, inter alia, provisions addressing the school calendar (maximum length 186 days, in Article V, Association Rights), hours and workload (Article VI, Employee Hours and Employee Load), and a management rights clause (Article XXIV).

Article VI states as follows:

3. Preparation Time - ....The period from 8:05 a.m. to 8:55 a.m. will be duty free and utilized for team planning and coordinating the program.

B. Preparation Period - It is desirable for



each teacher to have an uninterrupted preparation period each day. The practice of using a regular employee as a substitute, thereby depriving him of his preparation period, is undesirable and shall be discouraged.

C. Lunch Period - 1. Teachers in grades 1-8 shall have a daily duty-free lunch period of thirty (3) minutes....

Article XXIV states as follows:

The Board,...retains and reserves unto itself....

4. To decide upon the means and methods of instruction, the selection of textbooks and other teaching materials, and the use of teaching aids of every kind and nature. Where the Board has adopted procedures in the above areas, the Board will follow said procedures.

5. To determine class schedules, the hours of instruction, and the duties, responsibilities and assignments of teachers and other employees with respect thereto.

Further, the parties have both acknowledged the past practice regarding the assignment of lunch duty and compensation therefor (see discussion supra, at pp. 5-6)

The Commission has stated in a number of cases that an employer has the managerial right to make work assignments.

Mainland Reg. Teachers Assn. v. Mainland Reg. Bd. of Ed., P.E.R.C. No. 80-8, 6 NJPER 301 (¶ 10162 1979), aff'd 176 N.J. Super 476 (App. Div. 1980).

Based upon the foregoing, the undersigned would conclude that the Board's assignment of a lunch duty period to teachers is within the scope of its managerial prerogatives. The Board has not discontinued the individual prep period (which the contract terms to

be "desirable"), but it has partially discontinued the team preparation period (which the contract requires to be duty free and utilized for team planning). However, it would appear that there is no longer a need for the team prep period in the sense which existed previously (as the Board abandoned the team teaching format).

The crux of the change which was made herein was the Board's unilateral assignment of a lunch duty period to teachers -- whereas previously such duty was assigned on a voluntary basis -- and the failure to compensate the teachers who performed the lunch duty for their performance of that task. The Board can unilaterally assign lunch duty; however, it may not do so without compensating the employees it assigned to do the work. Compensation is a term and condition of employment which is mandatorily negotiable. Further, the parties had a clear past practice of compensating those teachers who performed lunch duty at the rate of \$4 per session. Thus, the Board's failure to pay these teachers to whom it mandatorily assigned lunch duty was in violation of the parties' past practice and an unfair practice. Morris Cty. and Park Commission of Morris Cty. v. Morris Council #6, NJCSA, P.E.R.C. No. 83-31, 8 NJPER 561 (¶ 13259 1982), aff'd App. Div. Docket No. A-795-82T2 (1984); Ramapo-Indian Hills Education Assn. v. Ramapo-Indian Hills Regional High School District Bd. of Ed., 176 N.J. Super 35 (App. Div. 1980); and Burlington Cty. College Faculty Assn. v. Burlington Cty. Coll. Bd. of Trustees, 64 N.J. 10 (1973).

However, the Board has argued that the Association's charge herein is untimely. The Board asserts that the charge complains

about assignments which were implemented in September, 1983. Thus, the Board contends that the Association's charge herein, filed on September 6, 1984, is untimely. But see, In re Camden Bd. of Ed., P.E.R.C. No. 84-87, 10 NJPER 119 (¶ 15061 1984).


While the Board's decision to mandatorily assign lunch duty to teachers was implemented in September, 1983, its decision not to pay the teachers who performed that assignment was a continuing violation -- it was renewed each time a teacher worked and was not subsequently paid for that work.

In the instant matter, the charge was filed on September 6, 1984; thus, unfair practice conduct back to March 6, 1984 is cognizable thereunder. Accordingly, the Board should compensate teachers -- at the rate of \$4 per session per teacher -- for each lunch duty period worked on and after March 6, 1984 through the end of the 1983-1984 school year.

#### Conclusions and Recommendations

Based upon the entire record presented in this matter and the foregoing discussion, the undersigned concludes that the Board acted within its managerial prerogative in assigning teachers to perform lunch duty; that the Board was required to compensate teachers assigned lunch duty for performing that task, at the rate established by their past practice (\$4 per session); that within the charge filed on September 6, 1984, unfair practice conduct through March 6, 1984 was cognizable; and accordingly, that the Board should compensate

teachers for each lunch duty worked between March 6, 1984 and the end of the school year, at the rate of \$4 per session worked.



Charles A. Tadduni  
Commission Designee

DATED: Trenton, New Jersey  
June 20, 1985