P.E.R.C. NO. 80-115

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MILLBURN BOARD OF EDUCATION,

Respondent,

Docket No. CO-79-232-2

-and-

MILLBURN EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Commission dismisses an Unfair Practice Charge filed against the Board by the Millburn Education Association. The charge alleged that the Board violated the Act by unilaterally and without prior negotiations increased the work hours and workloads of certain teachers when it changed the scheduling of parent-teacher conferences. Although the in-school work day was not extended as a result of the Board's changes, the Commission, in agreement with the Hearing Examiner, found and concluded that the change in the parent-teacher conference schedules did affect teachers' workload and imposed additional preparation time upon the teachers. The Commission found that, under Bd. of Ed. of Woodstown-Pilesgrove Reg. Sch. Dist. v. Woodstown-Pilesgrove Ed. Assn., 81 N.J. 582 (1980), the dominant issue in the dispute was the change in the teacher workload rather than the Board's prerogative to determine the school calendar and, thus, that there was a negotiations obligation associated with this change. However, contrary to the Hearing Examiner's conclusion, the Commission finds that the Board did meet its negotiations obligation with the Association. The evidence shows that there was a meeting between the parties prior to the implementation of the change and that the Board made proposals which, although not acceptable to the Association, were responsive to the concerns raised by the Association and relevant to the workload increases which were in dispute. Therefore, the Commission ordered the complaint dismissed in its entirety.

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MILLBURN EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent
McCarter & English, Esqs.
(Steven B. Hoskins, Esq. and Lois M. Van Duesen, Esq., of Counsel)

For the Charging Party
Goldberg & Simon, P.A.
(Theodore M. Simon, Esq., of Counsel)

DECISION AND ORDER

An unfair practice charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on March 2, 1979 by the Millburn Education Association (the "Association"). The charge alleged that the Millburn Board of Education (the "Board") had engaged in unfair practices in violation of N.J.S.A. 34:13A-5.4(a)(1) and (5) [1/] by unilaterally and without

1/ These subsections of the New Jersey Employer-Employee Relations Act prohibit employers from: "(1) Interfering with, restraining or coercing 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".

prior negotiation increasing the work hours and workloads of teachers employed by the Board and represented by the Association.

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 July 19, 1979. Following the filing of an Answer and amended Answer by the Board, an evidentiary hearing was held on October 15, 1979 in accordance with N.J.A.C. 19:14-6.1 et seq. Post hearing briefs were filed with the Hearing Examiner by the Board and the Association on December 6 and 5, respectively. On December 28, 1979 Hearing Examiner Robert T. Snyder issued his Recommended Report and Decision.[2/] Exceptions to the report and a supporting brief were filed with us by the Board on January 11, 1980. The Association filed a brief in response to the Board's exceptions on January 23, 1980. The Board has also requested oral argument, which we hereby deny.

The alleged unfair practices stem from the Board's decision to restructure during the 1978-79 year 10 school days in which elementary students previously had been dismissed early so that their teachers [3/] could conduct parent-teacher conferences during the remainder of the workday. The Board made these days (5 in November and 5 in April) into regular school days. Teachers were still required to schedule conferences with the students' parents following dismissal of the students.

The Board's decision was made in April 1978 when it adopted a calendar for the 1978-79 school year which reflected

2/ H.E. No. 80-26, 6 NJPER 40 (¶10021 1980). The original of the report was filed with the Commission and copies were served upon the parties, thereby transferring the case to the Commission. N.J.A.C. 19:14-7.1.

3/ All references to teachers hereafter shall mean elementary teachers.

the elimination of the parent-teacher conference weeks. In the period following this action, prior to the beginning of the parent-teacher conference period in November 1978, the Board and Association exchanged views relating to the change through correspondence and a face-to-face meeting between the negotiating teams of the Board and the Association on September 13, 1978.

The Hearing Examiner found that the change in the parent-teacher conference system changed the terms and conditions of employment of the teachers. He concluded that the discussions between the parties were not legally sufficient to satisfy the obligations imposed by the Act on the Board to negotiate changes in terms and conditions of employment. He thus concluded that the Board's actions constituted a unilateral change in terms and conditions of employment without negotiations with the majority representative and were violative of N.J.S.A. 34:13A-5.4(a)(5) and derivatively N.J.S.A. 34:13A-5.4(a)(1).

The Board has filed detailed exceptions to the Hearing Examiner's Report which challenge both his conclusion that the Board had a duty to negotiate concerning the matter in dispute and that the Board did not in fact meet its negotiations obligation with respect to the matters determined to be mandatorily negotiable.

Rather than address the Board's exceptions in sequential order we shall discuss the findings and conclusions of the Hearing Examiner and the parties' exceptions and/or comments with respect thereto in the following context: First, did the Board have a duty to negotiate the matters raised by the Association (i.e.,

did the Board's actions change teachers' terms and conditions of employment)?; and second, did the Board, through its conduct in the instant case and the conduct of the Association, either meet its obligation and or was it discharged from such obligation?

Regarding the existence of a negotiations obligation, the record shows that for several years prior to the 1978-1979 school year, 5 days in April and 5 days in November had been set aside for parent-teacher conferences. On these days students were dismissed at 12:30 p.m. rather than the normal 2:45 p.m. dismissal time. The teachers took an hour for lunch from 12:30 p.m. to 1:30 p.m. and then scheduled parent conferences until 3:55 p.m., when the teachers' normal in-school workday ended, in accordance with the following article which has appeared in the parties' collective bargaining agreement at all times relevant herein:

> The normal in-school day for teachers shall consist of not more than seven (7) hours and forty (40) minutes. However, it is clearly understood that as professionals, teachers are expected to devote to their assignments the time necessary to meet their responsibilities.

Pursuant to the 1978-1979 calendar, teachers were to conduct parent conferences during the 2:45-3:55 p.m. block of time which followed the dismissal of students. During weeks when parent-teacher conferences were not scheduled, the 2:45-3:55 p.m. block, at all times relevant herein, was utilized by teachers as preparation time to conduct a variety of work-related activities which included marking papers, planning for future lessons, extra help for certain students, educational meetings with other teachers or learning

specialists. As a result of the change the period for teacher conferencing lasted almost four weeks during November 1978 and April 1979. Consequently the 2:45 to 3:55 p.m. block of time was used by teachers primarily for parent conferencing rather than for preparation and the other work-related activities mentioned previously. In prior years, teachers had lost the use of this time only during the one week during each of these months set aside for parent conferences after students were dismissed at 12:30 p.m. Conferences during these two weeks ran from 1:30 to 3:55 p.m., thus usurping the 2:45 to 3:55 p.m. "preparation" block.

While the changes in the parent-teacher conference system did not involve an extension of the in-school workday, several teachers testified concerning additional workload attributable to preparation for and review of the additional classroom work during the weeks when students had formerly been dismissed early, and to the loss of preparation time during the additional weeks when the 2:45 to 3:55 p.m. block was utilized for parent conferences.

The Hearing Examiner, based upon the above, concluded that the Board's change in the parent-teacher conference system altered the teachers' terms and conditions of employment, giving rise to an obligation to negotiate pursuant to the Act.

In disputing the Hearing Examiner's finding that the changes made by the Board were negotiable, the Board contends that the 2:45 to 3:55 p.m. is not a "preparation period" and that any change in the teachers' terms and conditions of employment is the direct consequence of an educational policy decision and is hence non-negotiable.

With respect to the first argument the Board contends that the wide range of activities conducted in the 2:45-3:55 p.m. block establishes that the post-dismissal period is not preparation time and the Hearing Examiner was incorrect in concluding that the teachers lost preparation time. We are satisfied from our review of the record that this time period was properly characterized by the Hearing Examiner as preparation time. Recently the Appellate Division affirmed our decision in In re Newark Board of Ed., P.E.R.C. No. 79-24, 5 NJPER 41 (¶10026 1979) where we held that although teachers were expected to pursue educationally related activities during preparation periods, the elimination of a preparation period to be replaced by a period of student contact was a change in teacher workload.[4/] In the course of its opinion the Court noted that according to the parties' contract preparation time was to be utilized, inter alia, for meetings with "parents, students, principal or other staff members", (slip opinion at 2). The time period in question herein, according to record testimony, was devoted to the same or substantially similar pursuits.

In arguing that any changes in terms and conditions of employment in the instant case are non-negotiable because they stem from an educational policy decision, the Board cites our prior decision in In re Parsippany-Troy Hills Bd. of Ed., P.E.R.C. No. 77-27, 3 NJPER 17 (1976), which also involved parent-teacher conferences. There, in ruling upon a scope of negotiations dispute, we found that the Board's decision to replace teaching time with parent conferences was a major educational policy decision not subject to negotiations. That holding was based upon an assumption, made

4/ ___ N.J. Super. ___, Docket No. A-2060-78, decided 2/26/80.

clear in our decision, that corresponding increases in conference time and decreases in teaching time (or vice-versa) did not change working conditions. See P.E.R.C. No. 77-27 at 4-5. The actual facts of the case and asserted defenses were not litigated before us since the parties had chosen to utilize arbitration to resolve their dispute.

Here, however, this issue is presented to us on the basis of a complete record upon which the Hearing Examiner has made detailed findings concerning the qualitative and quantitative changes made during the parent conference periods. In contrast to Parsippany-Troy Hills, the record herein does not show countervailing changes in student contact time and parent-teacher conferences. Here the time the teachers were expected to devote to parent-teacher conferences remained the same, albeit that the conferences were conducted over a longer period of time (four weeks as opposed to one.) However, the record is clear that teaching time increased as a result of the abandoning of the two weeks when students had previously been dismissed early. The Hearing Examiner concluded that these changes affected the teachers' workload because the stretching out of the parent conference periods an extra three weeks each, in the fall and spring, usurped the teachers' preparation time, and the extra teaching time produced additional "precedent and subsequent" work.

The fact that the Board asserts a calendar decision is a catalyst for these changes does not automatically render the matter non-negotiable as our Supreme Court has made clear in the most recent of its decisions concerning the scope of negotiable matters in public employment in New Jersey, Bd. of Ed. of

Woodstown-Pilesgrove Reg. Sch. Dist. v. Woodstown-Pilesgrove Ed. Assn, 81 N.J. 582 (1980).

In that case the Board had changed the school calendar by making the day prior to Thanksgiving a full school day, rather than one in which students were dismissed early as had been the case in several immediately prior years. The teachers' workday was also extended. Recognizing that the dispute involved both the Board's managerial decisions concerning the school calendar and the amount of instruction its students received, as well as the teachers' workday and workload, the Court observed:

> Logically pursued, these general principles -- managerial prerogatives and terms and conditions of employement -- lead to inevitable conflict. Almost every decision of the public employer concerning its employees impacts upon or affects terms and conditions of employment to some extent. While most decisions made by a public employer involve some managerial function, ending the inquiry at that point would all but eliminate the legislated authority of the union representative to negotiate with respect to "terms and conditions of employment:. N.J.S.A. 34:13A-5.3. Conversely to permit negotiations and bargaining whenever a term and condition is implicated would emasculate managerial prerogatives.
> 81 N.J. at 589.

After stating that it is inappropriate to resolve negotiability disputes by attempting to separate the subject into its non- negotiable and negotiable components, the Court held that what is required is that a weighing or balancing take place in order to determine whether the "dominant issue" is an educational goal or a term and condition of employment. Id. at 591. After applying these articulated principles to the dispute before it, the Court held that the dispute concerned terms and conditions of employment as the facts did not demonstrate that any "significant educational purpose" was at stake. Id. at 593-594.

The Appellate Division's decision in In re Newark, supra, also demonstrates that the dominant issue involved herein was a change in a term and condition of employment. As discussed earlier, we agree with the Hearing Examiner that the instant record shows an increase in teaching time and a loss of preparation time which increased teacher workload. Time devoted to parent conferences did not change substantially although it was clearly no longer confined to a single week each in the fall and spring. Citing Woodstown-Pilesgrove, supra, the Court in Newark held:

> Applying this definition, New Jersey courts have consistently held that a teacher's workload is a term and condition of employment which is mandatorily negotiable, even though the change in workload was caused by a change in educational policy.
> ___ N.J. Super. ___, slip opinion at p. 5.

We thus conclude that the dominant issue in this dispute was the change in the teachers' workload, rather than the Board's prerogative to determine the school calendar. Accordingly we conclude that the Board's exceptions on this aspect of the case are without merit and now turn our attention to the Board's assertion that it engaged in timely, good-faith negotiations concerning the changes and/or that the Association waived whatever rights it had to negotiate the changes.

The chronology of the communications and meetings between the Board and the Association is contained in Findings of Fact Nos. 6 though 10.[5/] The initial response by the Association to the Board's intended elimination of the weeks of early dismissal for parent conferences was an April 17, 1978 letter to the Board

5/ See H.E. No. 80-26 at 3-6.

suggesting a reconsideration of the calendar decision, pointing out what the teachers believed to be the detrimental effects of the changes on students, teachers and the educational program as a whole. By letter dated July 12, 1978, the Association formally demanded negotiations on the change in the parent-teacher conference system. Within a week the Board responded by letter which expressed the view that since the impact of the change would not be fully felt until November (when conferences were scheduled to begin), a meeting in the early fall would seem appropriate. However the letter suggested the week of August 7 as a time for such a meeting in the event the Association wanted to meet earlier. Responding that since the Association's negotiating team leader was away during August, the President of the Association proposed a meeting during the week of September 11 and the parties did in fact meet on the evening of September 13, 1978.

The events transpiring at the meeting are reflected in Finding of Fact #7. The meeting ended with the position of the Board being that it would not change back to the prior system during the present year. After Association members expressed concern that they not be penalized for work which could not be completed because of the added demands of the new schedule and for some scheduling flexibility, the Board responded that it would instruct principals to help teachers out with the added demands and there would be no penalties for fewer professional activities during the conference periods. The Board also stated that the conference period could be extended if necessary to commence late in October and end in December. Approximately a

month later the Association in a letter stated it would declare an impasse and seek the Commission's mediation services unless the Board altered its position on the parent-teacher conference system. The subject again arose during negotiations for a contract to cover a subsequent school year but the Association did not succeed in getting the Board to agree to a contract provision which would have returned to the parent conference system in effect prior to 1978-1979.

The Hearing Examiner concluded that the Board did not enter into discussions with the Association with an open mind or a willingness to reach agreement. He also concluded that the September 13 meeting came too late for the Board to properly meet its negotiations obligations because it had already made and implemented (when the school year commenced) its decision. Finally he concluded that the Association's conduct following the September 13, 1978 meeting did not amount to a waiver of its right to negotiate.

The Board in its exceptions does not attack the accuracy of the facts as set forth by the Hearing Examiner in his numbered findings but does assert that all three of the above conclusions are not supported by the instant record.[6/]

With regard to the timing of the negotiations the Board points out that it responded to the Association's demand

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6/ We have reviewed all of the Hearing Examiner's factual findings and have concluded that they are supported by the record adduced at the hearing. Thus these findings are hereby adopted.

for negotiations within a week and suggested a firm date for negotiations (or discussions) during August, which was prior to the start of the school year. The Association, because of the unavailability of one of its negotiators, declined to meet until September. In responding to the Board's exception on this point, the Association asserts, without elaboration or support in the record, that the August date "could not possibly be met by the Association."

We believe that the Board's exception is correct and the Hearing Examiner failed to recognize the Board's availability to meet well prior to the start of the school year, the date the Hearing Examiner viewed as the implementation date of the changes. Moreover, the actual meeting date, September 13, 1978, was far enough in advance of the period for parent conferences to allow lead time to implement any modification which might have been agreed upon. We also believe the Hearing Examiner's conclusion that the Board did not approach the September 13, 1978 meeting with an open mind is not borne out by the facts. In making this finding reliance is placed upon the use of the word "discuss" rather than "negotiate" by Board member Frederick Coombs, III in his July 12, 1978 letter to the Association (in which the Board agreed to meet with the Association). The Hearing Examiner concluded that since Coombs was the Negotiating Committee Chairman, he should have been aware of the different connotations of these two words in a labor relations setting. However, in later refuting an argument by the Board that Betsy Ramsey's (the Association President) use of the phrase "recently negotiated", in describing the events of September 13, was an admission that the Board had negotiated in good faith, the Hearing Examiner characterizes the comment as one of a "lay

person who at that time did not have the advice of counsel". There is nothing in the record to indicate that either Mr. Coombs or Mrs. Ramsey was qualified as an expert on labor relations or to establish the full extent of their familiarity with the "terms of art" involved in labor relations. In fact both the Board and the Association did utilize professional negotiators during the September 13, 1978 session, James L. Rigassio for the Board and NJEA Uniserv Representative Gerald Restaino for the Association. We thus believe that the Hearing Examiner's conclusion that the Board approached the meeting with the Association with a closed mind is not supported by the record and is erroneous.

We also believe the Hearing Examiner erred in his conclusion regarding the meeting of September 13, 1978, again by placing too much weight upon characterizations of events made by various principals rather than the events themselves. With respect to the events of that evening, the Board's statement that it did not believe its action affected the terms and conditions of employment was made after three hours of give and take between the parties. Even after this statement was made, the Board did not leave the meeting but made affirmative responses to the Association's concern regarding reprisals for low productivity during conference periods and for schedule flexibility.

The Association, in responding to the Board's exceptions, contends that the flexibility shown by the Board at the end of the September 13, 1978 meeting was with respect to "tangential issues" and not the issue the Association desired to negotiate. We disagree. The Board's proposal, although not acceptable to the

Association, was certainly responsive to the concerns raised and relevant to the issue in dispute: the workload increases which the changes were (at that point) likely to produce. The Hearing Examiner's view of the September 13, 1978 meeting was also colored by his erroneous conclusion that the Board approached it with a closed mind.

We need not address the waiver issue because we believe that, assuming the Association did not waive or abandon its efforts to have the prior parent conference system restored, it has not sustained its burden of proof to show that the Board violated the Act. Given our conclusion that the Board was willing to meet in a reasonably prompt fashion with the Association and did engage in meaningful negotiations with the Association, we conclude that the totality of its conduct did not amount to unlawful unilateral change in the terms and conditions of employment of its teachers without negotiations. We, therefore, do not adopt the Hearing Examiner's recommendation that the Board violated N.J.S.A. 34:13A-5.4(a)(1) or (5).

ORDER

The Complaint in this matter, CO-79-58-26, is hereby dismissed in its entirety.

BY ORDER OF THE COMMISSION

Jeffrey B. Tener

JEFFREY B. TENER
Chairman

Chairman Tener, Commissioners Hartnett and Parcells voted for this decision. Commissioner Graves voted against the decision. Commissioners Hipp and Newbaker abstained.

DATED: Trenton, New Jersey
April 3, 1980
ISSUED: April 7, 1980

H.E. No. 80-26

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

In the Matter of

MILLBURN BOARD OF EDUCATION,

Respondent,

-and- DOCKET NO. CO-79-232-2

MILLBURN EDUCATION ASSOCIATION,

Charging Party.

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 prior negotiations with the Association, changed the work hours and workloads of its elementary school teachers in the 1978-79 school year. The changes were made at the time the Board implemented a change in the student calendar and a revision in the time for scheduling of parent-teacher conferences. The Hearing Examiner concluded, in reliance on Commission precedent and Court decisions holding pupil contact time and preparation periods to be terms and conditions of employment, that the exercise by the Board of its managerial prerogative to change student calendar and the time period for holding parent conferences did not authorize the Board to unilaterally eliminate the teachers' preparation period or add a class instruction period. In reaching the conclusion, the Examiner rejected arguments advanced by the Board that it had negotiated the subjects of teacher work hours and workload at a meeting with the Association held in September 1978 and that the Association had waived its claim of a violation of the Board's negotiation obligation by a statement that it would pursue the matter through the Commission's impasse procedures and by its raising and then withdrawing negotiating demands related to work hours and workload for inclusion in a successor agreement.

By way of remedy, the Hearing Examiner recommends that the Board be ordered to restore the status quo ante as to the working hours and workload of the affected teachers prior to the changes made in these terms and conditions of employment and negotiate, on demand, retroactive to school year 1978-79, with respect to the changes as long as they remain in effect.

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

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For the Charging Party
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(Theodore M. Simon, Esq., Of Counsel)

HEARING EXAMINER'S RECOMMENDED REPORT AND DECISION

On March 2, 1979, the Millburn Education Association ("Association" or "Charging Party") filed an unfair practice charge with the Public Employment Relations Commission ("Commission") alleging that the Millburn Board of Education ("Board" or "Respondent") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act ("Act"), as amended, N.J.S.A. 34:13A-1 et seq. Specifically, the Association alleges that the Board unilaterally, and without prior negotiation, increased the work hours and work load of teachers employed by it in the negotiations unit represented by the Association commencing with school year 1978-1979 and continuing to date, in violation of N.J.S.A. 34:13A-5.4(a)(1) and (5). 1/

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

It appearing that the allegations of the Charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued thereon on July 19, 1979. By Answer and Amended Answer served and filed on September 5 and 25, 1979, respectively, the Respondent denied the material and conclusionary allegations of the Complaint and interposed four separate affirmative defenses which will be dealt with infra.

A hearing was held on October 15, 1979 in Newark, New Jersey. Both parties were given full opportunity to examine witnesses, present evidence and to argue orally. Both parties filed post-hearing briefs, the Respondent on December 6, 1979 and the Charging Party on December 5, 1979.

Upon the entire record in the case and from my observation of the witnesses and their demeanor I make the following:

FINDINGS OF FACT

1. The Board operates a school district located in Millburn, New Jersey containing six elementary schools each with grades K to 6, a junior high school and a senior high school. At all times material, the Association has been the exclusive collective negotiations representative of the certificated classroom teachers, librarians, nurses and special teachers employed by the Board. 2/

2. A collective negotiations agreement between the parties covered the period July 1, 1977 to June 30, 1979. Article XXI "Working Day" provided in A. Length of Day, that the normal in-school day for teachers shall consist of not more than seven (7) hours and forty (40) minutes. The clause further noted that, however, it is clearly understood that, as professionals, teachers are expected to devote to their assignments the time necessary to meet their responsibilities. Sub-paragraph D. Lunch Period, guaranteed each teacher a duty-free lunch period. This Article remains in effect under a contract renewal with certain modifications relating to wages and the like agreed to in a memorandum of understanding executed sometime in the Spring, probably in June, 1979 between the parties, covering the period July 1, 1979 to June 30, 1981.

3. Under a longstanding practice in the school district, for many years,

2/ I find and conclude that the Board is a public employer and the Association is an employee organization and majority representative of employees in an appropriate unit, respectively, within the meaning of the Act.

elementary students have been normally dismissed at 2:45 P.M. and the elementary teachers' [3] normal school day has ended at 3:55 P.M. In the hour and ten minutes after students departed, teachers corrected student work, prepared for the next day's classes, aided students who remained, met with learning specialists or other teachers.

4. For some years, including school year 1977-78, parent-teacher conferences were usually held over two separate weeks in November and April, during each of which 5 day period classes were dismissed at 12:30 P.M., teachers had their normal lunch period and parent-teacher conferences were held from 1:30 until 3:55 P.M. daily. The conference schedule was included in the school calendar, which, e.g. for the 1977-78 school year, noted for the weekly periods in November and April that for elementary schools only, the schools would close after extended single session for parent-teacher conferences.

5. Commencing with school year 1978-79 the Board determined to change the time during the school day during which parent-teacher conferences would be held. Thus, in April, 1978, the Board adopted a school calendar for the 1978-79 school year which eliminated any reference to extended single sessions for this purpose. In a letter dated April 17, 1978, the then Association President, William C. McCormack, wrote the Board President, Lucretia Rich, forwarding copies to all other Board members, requesting the Board to seriously reconsider the calendar and reinstate the extended single sessions, citing the detriment to the entire school program which McCormack claimed would result from requiring the conferences to be held after the students' school day concluded. In the letter McCormack argued, inter alia, that conferences held after school hours would leave teachers inadequate time to follow-up on students' daily work, to provide extra help needed by some students who remain after school, to adequately plan for the following day's lessons and activities, to attend educational meetings and conferences, and to confer with principals, psychologists and learning disability specialists concerning pupil progress. No reply was forthcoming to the letter and the Board did not reconsider its decision.

6. By letter dated July 12, 1978, [4] newly elected Association President

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[3] All references hereinafter to teachers shall be limited to elementary teachers only.

[4] All dates hereinafter will have reference to 1978 unless specifically noted otherwise.

Betsy Ramsay, wrote Board Member and Negotiations Committee Chairman Frederick Coombs, III requesting an early meeting to negotiate the impact of the Board's action in removing time for parent-teacher conferences from the 1978-79 calendar. By letter dated July 18, Coombs replied acknowledging receipt of Ramsay's letter regarding a meeting "to discuss" the impact of the 1978-79 parent-teacher conferences in the elementary schools. Coombs noted that since the impact, if any, of these conferences would not be apparent until November, perhaps this subject could be discussed early this fall. Coombs, however, indicated a willingness to meet earlier.

7. A meeting was mutually arranged for and held on September 13, after the opening of the 1978-79 school year. In attendance for the Association were N.J.E.A. Consultant Jerry Restaino, Ramsay, Negotiations Chairman Jack Smith and other members. Appearing for the Board were Coombs, Board members Jane Purcell and Roger Chesley and Labor Relations Consultant James Rigassio. The meeting lasted more than three hours and dealt exclusively with the subject of the impact of the Board's change in time of parent-teachers conferencing during the school day on the elementary school teachers. Restaino opened by citing a Parsippany-Troy Hills case not otherwise identified as a basis for the teacher's contentions. He also sought to discuss the Board's educational rationale for its decision. Rigassio, as spokesman for the Board, declined to discuss its rationale but indicated a willingness to receive information so as to negotiate the impact of any change on teachers' terms and conditions of employment. Ramsay then reviewed the teachers' duties and the impacts upon them as a result of the conferencing change. Among other things, she noted the clerical duties now performed during the teachers' work day which, under the change, teachers would have to perform in the evenings and on Saturdays. She also referred to various professional duties, including curriculum meetings and committees, principal and teaching specialist conferences and the like which would be curtailed or eliminated because of lack of time under the new schedule. A discussion then ensued as to the actual time involved in conferencing parents and the various facets of the teachers' work day. While the Association acknowledged some parent conferences were perfunctory, not exceeding 10 minutes in length, others required additional time and all required preparation time. As a result of this discussion, and following a Board caucus, Rigassio announced the Board's position that there was no impact on terms and conditions of employment flowing from the Board's elimination of the extended single sessions during the two weeks per school year previously set aside for parent-

teacher conferences. The Board members present, particularly Mr. Coombs, expressed the view that this change was something the Board had to do and that the teachers would give the rescheduling a fair try for at least a year. Association concern was then expressed that there be no reprisals if teachers could not complete work normally performed in the past during the conference weeks now rescheduled for class instruction and that there be some flexibility in the period for scheduling conferences. Coombs for the Board responded that the building Principals would be instructed to work with the teachers and not penalize them for failures to perform other professional duties during conference periods and, further, that the conference time would extend over a longer period of time for the full month of November and, if necessary, even from the end of October to early December for the fall period. According to Coombs, no impact on teachers' terms of employment would result from the change, but rather the change would call for a reordering of existing teacher work time.

8. By letter dated October 19, Association President Ramsay wrote Board Committee Chairman Coombs regarding the "recently negotiated matter" of elimination of parent-teacher conference time from the 1978-79 school calendar. In the letter Ramsay advised that if the Board's position remains unchanged, "the Association hereby declares an impasse in negotiations...and...hereby notifies the Board that it will file a notice of impasse with the...Commission." During the period encompassed by the Board's decision to change conferencing through the date of this letter the Association had not consulted counsel as to this matter. Following the letter, the Association did not file a notice of impasse nor take any other action to declare an impasse as to the subject dealt with in its letter.

9. Negotiations for a successor contract to the 1977-1979 agreement commenced sometime the same month, October, 1978. On or about October 1, the Association prepared and later submitted to the Board proposals for modification of the existing agreement, one of which sought to modify Article XXI, Working Day, by adding subparagraph J. providing that "In the elementary schools one full pupil week in November and one full pupil week in April will be set aside for parent-teacher conferences. During these weeks pupils will be dismissed at 12:30 P.M." This proposal sought a reversion to the calendar practice prior to school year 1978-79.

10. The Board's response to the proposal made on or about November 8, consistent with its September 13 statement of position, was that the calendar change did not impact upon teacher's terms and conditions and it did not agree

to this proposal. At the November 8 or a later November or December meeting when an impasse was reached, the Board sought to obtain Association agreement to reduce the issues in dispute. The Association declared and filed a notice of impasse in which it did not include the matter of parent-teacher conferences as an issue in dispute, thereby withdrawing the matter from the bargaining table. A memorandum of agreement executed in Spring, 1979, resolved the terms of a new agreement for the period July 1, 1980 to June 30, 1981. The agreement incorporated the terms of the prior agreement with certain modifications regarding economic items. Carried forward without charge were Articles XXI, Working Day, and Article VI, Board Rights from the prior agreement.

11. Parent-teacher conferences were held for elementary school students during the 1978-79 school year under the new schedule. At all six elementary schools in November, 1978 and April, 1979, after the student and teacher lunch period, classes resumed and continued until 2:45 P.M. Parent-teacher conferences were then scheduled for the remaining hour and ten minutes until conclusion of the teacher day at 3:55 P.M. Three teachers testified as to the changes in their workload and work hours related to the revised schedule. Association President Ramsay, teacher of grades 2 and 1 since 1965, testified that she and other teachers who she surveyed spent between seven and twenty additional hours per week for an average of four weeks each semester in work directly attributable to the change in conferencing parents, aside from the additional student contact time of an hour and fifteen minutes per day (from 1:30 to 2:45 P.M.). Part of the additional time is directly attributable to the added student contact time after lunch and is spent in connection with the additional teaching assignment. The time may be broken down into two components, preparation time in preparing for the class and time subsequent to the class in grading work and reviewing class materials. Ramsay estimated the additional time as one hour for each hour and 25 minute class period. Another part of the additional work time is attributable to the loss of the free or preparation or consultation period from 2:45 to 3:55 P.M. during November and April. Teachers either stayed beyond the close of the school day or took work home they had not normally performed at home in the past or did both in order to perform certain professional functions, including lesson planning, correcting student work, and other clerical duties. This additional work was now performed in the evening and on weekends. Certain work normally performed between 2:45 and 3:55 P.M. during past Novembers and Aprils, other than during the two parent-conference weeks, was now not performed at all during the two months.

This included assisting students, conferring with principal, fellow teachers, learning disability specialists and the like.

12. A second teacher witness, Rhoda Rosenfeld, a fifth grade teacher, estimated the additional preparation, planning and reviewing time attributable to the additional class as comprising an hour and one half daily during the conference months. She testified she had to prepare dittos and do research at home and not at school because of the Board's change in conference schedules. She also testified that under the new schedule, she planned only 2 to 3 parent conferences per day in the 2:45 to 3:55 P.M. period but found that even these conferences spilled over into her own time at school and continued on occasion until 4:45 P.M. in spite of the contract provision limiting the teachers in-school day to a 3:55 P.M. closing and 7 hours and 40 minutes. In Rosenfeld's experience, total additional time attributable to the added class and loss of free period averaged two hours per day at home plus 6 to 8 hours for each of 4 or 5 Sundays. A third teacher witness, Bernice A. Luxemburg, also a fifth grade teacher, scheduled parent-conferences from October 30 to December 1, 1978 for a class of 23 children. She only scheduled two conferences a day, had no time to prepare her classroom for the parents' visits, could no longer see parents before school as she had in the past because of her need for time to prepare for class teaching, and, like Ramsay and Rosenfeld, performed additional work at home and after hours at school during conference weeks.

13. Following the one year's experience of 1978-79, Ramsay forwarded a letter dated May 21, 1979 to Mrs. Lucretia Reich, Board President. In it, Ramsay communicated the results of two polls of elementary teachers, showing inability to perform certain duties including conferences, extra help for students and the like, infringement on time for preparation for teaching and communicating with parents, grading and evaluating students' work and professional reading. Ramsay also reported that because the conferences spanned a six week period, there were delays in remediation and follow-up in the home, but that in spite of these facts, the conferences were highly successful. The letter concluded in asking for Board consideration of the problems created by the plan and some release time for conferences next year within the parameters of current enrollment and a convenient calendar. No Board reply was made to this letter.

ISSUES

1. Did the Board's elimination of extended single sessions for parent-teacher conferences impose a greater workload and/or increased work hours upon elementary grade teachers?

2. Was the Board's elimination of the preparation period, and the imposition of an additional class period implemented unilaterally without negotiations with the Association, and, if so, were such negotiations mandated by the Act?

3. Is the Association either estopped to complain, or did it waive any of the rights it asserts herein, by any conduct in which it engaged subsequent to the Board's actions.

4. What affirmative remedy, if any, is appropriate on the record in this proceeding?

ANALYSIS

The record amply justifies a finding that the Board's elimination of extended single sessions one week each school semester during which teachers had previously conferenced parents from 1:30 to 3:55 p.m. daily imposed an increased workload on them. Finding of Fact No. 11 itemizes the changes in terms and conditions made by the Board. One increase resulted from the additional hour and a quarter (1:30 to 2:45 p.m.) teaching period each day for the two weeks as well as the additional "precedent and subsequent work" [5/] generated thereby. Another resulted from the elimination of the preparation period during the balance of the months of November and April not previously devoted to parent conferencing and its replacement by a parent conference period. [6/] During this newly extended six week segment (three weeks each in November and April not previously assigned to such conferences), the teachers were compelled to prepare and correct lessons and perform related work as they could fit in such functions in time during their in-school day or at home on evenings and weekends. See Findings of Fact Nos. 11 and 12.

5/ Buena Regional Education Association and Buena Regional Board of Education, P.E.R.C. No. 79-63 at page 4.

6/ Parsippany-Troy Hills Board of Education, P.E.R.C. No. 77-27, 3 NJPER 17 (1976).

The record evidence also warrants the conclusion that the work hours of teachers were also lengthened during November, 1978 and June, 1979 after the new parent-teacher conference schedules were implemented.

This conclusion is reached in spite of the fact that even before the calendar change, the in-school work day varied among the affected teachers and a number of them spent time out of school, on evenings and weekends, in preparation and related work. Thus, under the old schedule one teacher, Luxemburg, used time in school early in the morning before classes started to conference parents. After the calendar change, she used this time to prepare for classes. Other teachers, among them, Rosenfeld and Ramsay, who normally performed work at home, after the change spent additional time in school and on evenings and weekends on work directly attributable to the additional class assigned and loss of preparation period during the extended conferencing period. Indeed, Respondent in its brief at page 7 recognizes that some teachers who were unable to complete all of their lesson preparation and grading by 3:55 p.m. completed such work at home, that some parent conferences now on occasion, ran beyond the contractual day, and that even those teachers who normally did some preparation and planning at home engaged in additional work on evenings and weekends as a result of the rescheduling of parent conferences.

The contract defines in Article XXI only the teachers' "normal in-school day." The same Article recognizes their professional obligations to devote the time necessary to meet their responsibilities. Where, however, that normal in-school day is extended and the total time teachers normally devote outside school hours to preparation and related work is increased to compensate for additional pupil contact and loss of a free period during the school day, the Board cannot justify the increased work hours under this Article. Neither can the Board contend that its negotiations Chairman's commitment on September 13 to excuse teacher failures to complete other professional duties during the extended conferencing periods, relieved the affected teachers of their responsibilities for close preparation and post-teaching evaluations and review. Even with the accomodations some teachers appeared to have made in the past to meet parents outside the confines of the eleven odd hours assigned each semester, an extension in teacher work hours directly attributable to the calendar change has taken place.

I also conclude that the Board's conduct on September 13 after its decision on the new calendar made the prior April, did not evidence an open mind or willingness to reach agreement. [7/] The Association had sought the meeting to negotiate the impact of

7/ See State v. Council of N.J. State College Locals, 1 NJPER 39 (1975), aff'd 141 N.J. Super. 470 (App. Div. 1976).

the Board's action. The Board had agreed to a meeting "to discuss" that impact. I cannot believe that the Board's Negotiating Committee Chairman was unmindful of the generally recognized limited connotation associated with that phrase as distinguished from the broader obligation associated with the phrase "negotiate" which appears in the Act, negotiator Rigassio's denial to the contrary notwithstanding (Tr. 92). At the meeting the Association provided the Board with the basis for its claim of increased workload which would result from the intended change. After a caucus, the Board position that there was no impact on terms and conditions of employment was announced. The Board also indicated it had to proceed with the change as announced. As a consequence of these responses, no negotiations could, or did ensue on the Association's demand. Contrary to the Board's brief at page 11, there is no significant difference from the major element in Caldwell-West Caldwell Board of Education, H.E. No. 79-40, 5 NJPER 206, (par. 10118 1979) rev'd. on other grounds, P.E.R.C. No. 80-64, 5 NJPER ___ which led to a finding of the Board's rejection of its bargaining obligation, not disturbed by the Commission. That element was the Board's denial that any changes resulted from its educational decision to extend class periods. The Board also urges that its flexibility in adopting the Association proposals later in the meeting manifests an open mind. Such is not the case. The Board's extention of the conferencing and instructions to Principals did not mitigate its unwillingness to negotiate impact. It was instead a response to an Association concern expressed after the Board had foreclosed an open exchange of positions on impact. Indeed, in one respect it probably intensified the effect by extending by 3 weeks each semester the period during which the change would be felt. Further, the Board's response ignored totally the additional workload flowing from the additional class and the related work it engendered. Finally, those responses were made after the commencement of the school year for which the school calendar had previously issued which eliminated the extended single sessions. In this respect the decision had already been made and implemented.[7a/] The Board's position, even if deemed minimumly adequate in the context of the meeting - a position I categorically reject - came too late to fulfill its obligations under the Act.[8/]

The Board next claims that the changes flowing from the Board's exercise of its managerial responsibility are not subject to the bargaining duty, citing in support Edison Township Bd. of Ed. and Edison Township Ed. Assn., P.E.R.C.

7a/ See Jamesburg Board of Education and Jamesburg Education Association, P.E.R.C. No. 80-56 at 3.

8/ New Jersey Institute of Technology, P.E.R.C. No. 80-54 at 14.

No. 79-1, 4 NJPER 302 (par. 4152 1978), reversed App. Div. Docket No. A-5164-77 (9/20/79), pet. for certif. denied (12/20/79). Rather than view this as impact negotiations, I find the Commission's analysis in New Jersey Institute of Technology and Newark College of Engineering, et al., P.E.R.C. No. 80-54, 5 NJPER 491 (par. 10251 1979), dispositive. The Commission there recognized that an Appellate Division panel in Edison Township Bd. of Ed., supra, had extended the rejection of "impact" negotiations beyond the effects of a RIF [9/] to the effects of a calendar change. However, in reliance on an Appellate Division decision upholding the Commission's analysis as consistent with the principles set forth in the Dunellen Trilogy, [10/] and another Appellate Division decision upholding an arbitration award finding that teachers were entitled to compensation for additional hours worked due to a calendar change embodying a non-negotiable educational policy decision, [11/] the Commission determined that a decision to change student calendar did not give a public employer license to unilaterally change terms and conditions of employment. The Commission took particular note of the fact that the Woodstown-Pilesgrove decision emphasized the same portion of the Supreme Court's decision in Burlington County College Faculty Association v. Board of Trustees, 64 N.J. 10 (1978) at 12, in reaching the same result.

Accordingly, Respondent's argument is rejected. It is concluded that the Board did not have the unilateral right to eliminate the teachers' preparation time and increase their workload. These changes were not inseparable from the Board's decision and could have been dealt with at the negotiation table. While the calendar change extended the student's class day, and is thus not mandatorily negotiable, the extension of the teachers' pupil contact time and elimination of their preparation time are separate and distinct matters which directly and substantially effect their terms and conditions of employment. [12/] Negotiation on these matters will not significantly interfere with the exercise by the Board of its management prerogatives. [13/]

9/ Maywood Bd. of Ed. v. Maywood Ed. Assn., 168 N.J. Super. 54, Docket No. A-1648-77 (App. Div. 1979), certif. denied, 81 N.J. 292 (6/26/79).

10/ In re Byram Township Bd. of Ed., 152 N.J. Super. 12 (App. Div. 1977).

11/ Bd. of Ed. of Woodstown-Pilesgrove v. Woodstown-Pilesgrove Ed. Assn., 164 N.J. Super. 106 (App. Div. 1978, cert. granted 81 N.J. 44 (1979).

12/ See New Jersey Institute of Technology, supra at page 12.

13/ Ridgefield Park Ed. Assn. v. Ridgefield Bd. of Ed., 78 N.J. 144, 162 (1978).

Preparations period have been held by the Appellate Courts to be terms and conditions of employment, [14/] and as such, cannot be unilaterally abolished merely by citing a decision to change student calendar. The Fair Lawn matter, supra, decided after the Edison Appellate Division decision is analogous to the situation herein in that the Board unilaterally abolished certain teachers' preparation periods relying on their educational policy decision to increase the supervision when speciality teachers were in charge of the class. Notwithstanding this rationale, the court held that the Board could not unilaterally change these terms and conditions of employment.

The Respondent next urges that the Association waived its right to negotiate by its October 19 letter to the Board and its subsequent conduct of negotiations for the 1978-81 school years.

As Charging Party correctly notes at page 26 of its brief, the Association President's characterization in her October 19 letter of the subject matter discussed between the parties on September 13 as having been "recently negotiated" raises an issue, if at all, of an admission rather than waiver. I conclude that there was no admission made binding on Charging Party. One of the issues to be determined in the case sub judice is whether by its conduct on September 13 Respondent failed to negotiate. Determination of that issue based on an examination of all the evidence cannot be foreclosed by later comments made well after the event by one of the participants, a lay person, who at the time did not have advise of counsel. This issue must be decided based upon demonstrable conduct at the meeting itself. Since that evidence strongly supports a finding of violation, I conclude that this later interpretation even by an agent of one of the parties is ambiguous and alone insufficient to outweigh the testimony regarding the interchanges which took place at the meeting.

The Association's then stated intention to pursue the matter through impasse procedures and even its later withdrawal of the subject from negotiations [15/] may not bar a determination of the present charge on its merits. The failure to file notice of impasse coupled with the filing of the instant charge on March 2, 1979, demonstrates that the Charging Party timely sought relief from the Board's unlawful conduct. Further, as Respondent suggests, a waiver to be effective must be clear and unmistakable. The Association's demand, later withdrawn, does not

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14/ Red Bank Bd. of Ed. v. Warrington, et al., 138 N.J. Super. 564 (App. Div. 1976); Bd. of Ed. of Fair Lawn v. Fair Lawn Education Assn., App. Div. Docket No. A-3993-78, 12/10/79, affmg. P.E.R.C. No. 79-88, 5 NJPER 225 (par. 10124 1979).

15/ Respondent misstates the facts at page 23 of its brief. Impasse was not ultimately declared on this issue. Rather, the notice later filed did not include the parent-conference scheduling as an open issue (Tr. 117; 126).

constitute such a waiver. As Charging Party makes note in its brief, that demand was withdrawn in the face of the Board's consistent position that the calendar change did not impact on terms and conditions of employment. (See Finding of Fact No. 10 and Tr. 126). Under these circumstances, Respondent cannot be heard to complain if the Association sought to pursue its claims in this forum rather than at the bargaining table. 16/ Where, as here, the employer has clearly refused to negotiate the changes in teachers' terms and conditions of employment, the employee organization is not compelled to pursue the matter at the table provided it has pursued appropriate relief by filing an unfair practice charge.

As stated by the Commission in In re Hudson County Board of Chosen Freeholders, P.E.R.C. No. 78-48, 4 NJPER 87 (par. 4041 1978), aff'd App. Div. Docket No. A-2444-77 (4/9/79) at page 16:

> Requiring the employee organization to negotiate under such conditions would place it in an untenable position by allowing the employer to benefit from his unfair practice through the improved negotiating leverage he has obtained as a result of his unilateral withdrawal of a then existing benefit. Such a result would undermine the unfair practice provisions of the Act and the requirement of good faith negotiations as a method for unsuring labor peace.

The principle enunciated and the language quoted applies with equal force to Respondent's unilateral implementation of the change in the teachers' work schedules.

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

CONCLUSION OF LAW

The Respondent's elimination of the daily preparation period for teachers and the increase in the teachers' pupil workload during the parent conference period in the elementary grades, without negotiation, constitutes conduct in violation of N.J.S.A. 34:13A-5.4(a)(1) and (5).

16/ Respondent also erroneously places reliance for its waiver argument upon the Hearing Examiner's Report in New Jersey Institute of Technology, H. E. No. 79-41, 5 NJPER 257 (par. 10147 1979). The very point relied upon was reversed by the Commission in New Jersey Institute of Technology, P.E.R.C. No. 80-54, 5 NJPER 491 (par. 10251 1979) at 13-15.

THE REMEDY

Having found that the Respondent has engaged in, and is engaging in, unfair practices within the meaning of N.J.S.A. 34:13A-5.4(a)(1) and (5), I will recommend that Respondent cease and desist therefrom and take certain affirmative action. Charging Party in its brief argues that an award of compensation is a necessary remedy in this case. Galloway III [17/] and Maywood [18/] where the courts denied monetary awards to compensate for claimed performance of additional work are distinguished. Both involved minor extensions of split session teachers' in-school work hours which did not exceed those of other teachers and did not result in any loss of income while Charging Party asserts the extra duties in the instant proceedings extended beyond the in-school day, exceeded the contract limitations and the hours of other teachers.

I remain unconvinced that a monetary remedy may be awarded here. The contract work day makes exceptions for other than normal duties, such as the parent-teacher conference period. The record also fails to disclose whether even the elementary teachers' extra efforts during the conferencing weeks exceeds the work time on average on similar occasions of the Junior or Senior High School teachers in the same negotiating unit. Even if the extra work hours of these teachers twice a year exceeds those of other teachers, the present record provides an inadequate basis for determining a compensatory remedy. Teacher work hours varied depending upon personal work habits. Further, it would be an exceedingly difficult, if not impossible, task for the Commission to determine with any degree of certainty when the affected teachers' evening or weekend work turned from usual out of school assignments to preparation or other work generated by the calendar change. The lack of precision in the testimony of the teachers -- the best indicating a variation between seven and twenty extra hours per week during conference time -- does not aid in determining a measure of the loss which may be applied here. Had Respondent not violated its negotiating duty, it also remains problematic whether the Association would have been able to reach agreement on additional compensation for elementary teachers. [19/]

17/ Galloway Tp. Bd. of Ed. and Galloway Tp. Ed. Assn., P.E.R.C. No. 77-3, dec. on reconsid., P.E.R.C. No. 77-18, aff'd as modified, 157 N.J. Super. 74 (App. Div. 1978).

18/ Maywood Ed. Assn. v. Maywood Bd. of Ed., P.E.R.C. No. 78-23, aff'd in part, rev'd in part, 168 N.J. Super. 45 (App. Div. 1979), Pet. for certif. den. 81 N.J. 292 (6/26/79).

19/ See Jackson Township Bd. of Ed. and Jackson Township Administrator's Assn. and Frank J. Morra, P.E.R.C. No. 80-48 at 2-3.

Accordingly, while I conclude that compensation is not appropriate to remedy the unfair practices found, I will recommend as affirmative relief that Respondent restore the status quo ante by reinstating pre-existing preparation periods and work schedules for teachers during the parent conferencing periods and negotiate retroactive to the commencement of the 1978-79 school year. 20/

RECOMMENDED ORDER

Accordingly, for the reasons set forth above, it is HEREBY ORDERED that the Millburn Board of Education shall:

1. Cease and desist from interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act by refusing to negotiate in good faith with the Millburn Education Association concerning terms and conditions of employment of elementary school teachers employed in the unit and more specifically, by making unilateral changes in the length of work days and the workloads of such unit employees.

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

(a) Within sixty (60) days of the date hereof, restore the status quo ante as to working hours and workloads of the elementary school teachers prior to the changes therein made during the 1978-79 school year and negotiate in good faith with respect to these changes for the period commencing with the 1978-79 school year, and during which these teachers worked longer hours and had greater workloads.

(b) Upon demand, negotiate in good faith any proposed changes in the work hours or workload of employees prior to the implementation of such changes.

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

20/ The Board acted at its peril in determining that it was free to unilaterally change the teachers' terms and conditions of employment and should be required to negotiate from the first occasion when that change was made in the fall of 1978. Respondent's contrary argument at page 23 of its brief is rejected.

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

Robert T. Snyder
Hearing Examiner

DATED: December 28, 1979
Trenton, New Jersey

APPENDEX "A"

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL NOT interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed to them by the Act by refusing to negotiate in good faith with the Millburn Education Association concerning terms and conditions of unit employees and more specifically, by making unilateral changes in the length of their work day and workloads.

WE WILL, within sixty (60) days of the date hereof, restore the status quo ante as to the working hours and workloads of our elementary school teachers prior to the change in their working hours and workloads made during the 1978-79 school year and negotiate in good faith with respect to these changes for the period commencing with the 1978-79 school year and, during which these teachers worked longer hours and had greater workloads.

MILLBURN 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.