P.E.R.C. NO. 98-21

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

IRVINGTON BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-H-96-124

IRVINGTON ADMINISTRATORS ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint against the Irvington Board of Education. The Complaint, based on an unfair practice charge filed by the Irvington Administrators Association, alleges that the Board violated the New Jersey Employer-Employee Relations Act by replacing the week-long winter recess with a presidents' weekend and thereby unilaterally increasing the work year of administrators by three days. The Commission finds that the number of days worked by administrators during the 1995-96 school year was within the range of days worked by administrators over the past nine years and that even if the work year of administrators had been increased, no evidence shows that the Association requested, and the Board refused, to negotiate over compensation for an increased work year.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

P.E.R.C. NO. 98-21

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

IRVINGTON BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-H-96-124

IRVINGTON ADMINISTRATORS ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Schwartz, Simon, Edelstein, Celso & Kessler, attorneys (Nicholas Celso, III, of counsel; Joseph R. Morano and Marc H. Zitomer, on the brief)

For the Charging Party, New Jersey Principals & Supervisors Association (Wayne J. Oppito, attorney)

DECISION AND ORDER

On October 30, 1995, the Irvington Administrators Association filed an unfair practice charge against the Irvington Board of Education. The charge alleges that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4(a)(1), (5) and (7),[1/] by replacing the week-long winter recess with a presidents' weekend and thereby

---

1/ These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative. (7) Violating any of the rules and regulations established by the commission."

unilaterally increasing the work year of administrators by three days.

On March 8, 1996, a Complaint and Notice of Hearing issued. On April 18, the employer filed an Answer admitting that the 1995-96 school calendar did not have a week-long winter recess and instead had a four-day presidents' weekend, but denying that this change violated the Act.

On October 17, 1996, Hearing Examiner Jonathon Roth conducted a hearing. The parties examined witnesses, introduced exhibits, and filed post-hearing briefs.

On April 3, 1997, the Hearing Examiner recommended dismissing the Complaint. H.E. No. 97-27, 23 NJPER 263 (¶28127 1997). He found that under the parties' contract and practice there was no change in the work year for administrators for the 1995-96 school year.

On April 15, 1997, the Association filed exceptions. It asserts that the Hearing Examiner erred in distinguishing Somerville Bd. of Ed., P.E.R.C. No. 87-128, 13 NJPER 323 (¶18134 1987). In that case, the Chairman of this Commission, in the absence of exceptions, agreed with a Hearing Examiner that the board violated the Act by increasing the employees' work year without negotiating compensation for the increase.

On April 24, 1997, the Board filed an answering brief supporting the Hearing Examiner's conclusions that Somerville is distinguishable and that the revisions to the school calendar did not trigger a negotiations obligation.

We have reviewed the record. We incorporate the Hearing Examiner's undisputed findings of fact (H.E. at 3-7).

The Hearing Examiner found, and we agree, that the number of days worked by administrators between September and June during the 1995-96 school year was within the range of days worked by administrators over the past nine years.2/ Nothing in the parties' contract specifies the administrators' work year. The 1995-96 work year was consistent with the pattern of administrators having to work all days during the school year except holidays and recess days.

Somerville is distinguishable because the number of scheduled workdays in the disputed year was outside the range of the parties' past practice. Although the Hearing Examiner found that the board in that case had a right to set the school calendar at 196 days, two days more than the previous maximum of 194 days, she concluded that the board had violated the Act by refusing the Association's request to negotiate over compensation for the increased workload.

Here, the scheduled number of workdays for 1995-96 falls within the range of the parties' practice. Even if the work year had been increased under the 1995-96 school calendar, no evidence shows that the Association requested, and the Board refused, to

---

2/ In examining the parties' practice, we reject the Association's invitation to use the average number of workdays rather than the actual number of workdays over the past decade.

negotiate over compensation for an increased work year. Under these circumstances, the Board's action did not violate its obligation to negotiate in good faith.

Absent any supporting evidence, we also dismiss the 5.4(a)(7) allegation.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Boose was not present.

DATED: August 28, 1997
Trenton, New Jersey
ISSUED: August 29, 1997

H.E. NO. 97-27

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

In the Matter of

IRVINGTON BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-H-96-124

IRVINGTON ADMINISTRATORS ASSOCIATION,

Charging Party.

SYNOPSIS

A hearing examiner recommends that the Commission dismiss a Complaint issued on a charge alleging that a Board of Education unilaterally increased the work year of school administrators without negotiations.

The hearing examiner recommends that the agreement and practice of the parties did not prove the alleged "change", notwithstanding a reduction in the number of recess days off in February 1996.

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. If no exceptions are filed, the recommended decision shall become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

H.E. NO. 97-27

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

In the Matter of

IRVINGTON BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-H-96-124

IRVINGTON ADMINISTRATORS ASSOCIATION,

Charging Party.

Appearances:

For the Respondent
Schwartz, Simon, Edelstein, Celso & Kessler, attorneys
(Nicholas Celso, III, of counsel)
(Joseph Morano, on the brief)

For the Charging Party
New Jersey Principals & Supervisors Association
(Wayne J. Oppito, attorney)

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On October 30, 1995, the Irvington Administrators Association filed an unfair practice charge against the Irvington Board of Education. The charge alleges that in August 1995, the Board adopted a school calendar that for the first time deleted a "winter recess in which schools were closed for a week in February." The 1995-96 calendar instead had a "presidents weekend" in which schools were closed on Friday, February 16 and Monday February 19, 1996. The Board's unilateral action occurred

during collective negotiations on a successor agreement,[1/] allegedly increasing the work year by three days, thereby violating subsections 5.4(a)(1), (5) and (7)[2/] of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

On March 8, 1996, the Director of Unfair Practices issued a Complaint and Notice of Hearing. On April 18, 1996, the Board filed an Answer, denying some allegations and admitting others, including an admission that it adopted a 1995-96 calendar with a "presidents weekend" in which schools were closed February 16 and 19, 1996. It denies any violation of the Act and asserts that it acted in good faith and pursuant to a managerial prerogative; and in a manner consistent with the collective agreement.

On October 17, 1996,[3/] I conducted a hearing at which the parties examined witnesses and presented exhibits. Post-hearing briefs were filed by February 18, 1997.

1/ The Association did not introduce evidence of the collective negotiations process at the hearing nor was the allegation cited in its post-hearing brief. Accordingly, I dismiss it.

2/ These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative. (7) Violating any of the rules and regulations established by the commission."

3/ Transcript references will be referred to as "T" for this day of hearing.

Upon the record, I make the following:

FINDINGS OF FACT

1. The Association represents all principals, assistant principals, vice-principals, supervisors and directors employed by the Board. The parties' applicable collective negotiations agreement runs from July 1, 1992 - June 30, 1995 (J-A-6).

Article II (Board's Rights Clause) reserves to the Board the right,

> ...(e) to determine class schedules, the hours of instruction and the duties, responsibilities and assignments of teachers and other employees with respect thereto and non-teaching activities, and the terms and conditions of employment.

The article also states that the exercise of the "foregoing" ...shall be limited "only by the specific and express terms of this agreement...."

Article XIII(C) (Vacation Time) gives all twelve-month administrators 22 vacation days, with limitations on the number of days available while school is in session. "The intent of the parties is that administrators will be permitted to take vacation days during the summer..." (J-A-6, p. 15).[4/]

2. The Board also negotiates with the Irvington Education Association, which represents "certified teaching personnel" and others and excludes the administrators. Their agreement extends from July 1, 1993 to June 30, 1996, and has a "school calendar"

4/ This case does not concern ten-month employees (T21, T24).

provision (Article IV) (R-3). It defines the work year as 183 days (182 days that pupils attend plus one day for a teacher conference). New teachers must report an additional four days.

3. Anthony Pilone is the Association president and has been employed by the Board for many years. He is principal of a middle school and has been included in the administrators unit since 1972 (T14, T31).

Pilone was asked numerous questions about the work year. On direct examination, he was asked:

> Q: Mr. Pilone how does your work year compare with the teachers' work year beginning with September 1st and the time that students leave school in June?
>
> A: We are off all the days that the teachers previously had been off, except that at the end of the school year when the teachers leave along with the students, we worked till the end of June (T19).

Pilone conceded that he is a twelve-month employee and that nothing in the collective agreement defines the administrators' work year, or the number of workdays, holidays, and recess days (T19, T28). Pilone also concedes that the number of recess days in any given year varied over the span of years (T38, T39-T40).

Guy Ferri is superintendent of schools at the South Plainfield Board of Education and was previously employed by the Irvington Board from 1967 to 1994 (T81). Ferri was a school principal and later, deputy superintendent at Irvington from 1989-1994. He was a member of the Board's negotiations team and

chairperson of the "school calendar" committee which proposes the next year's calendar to the superintendent every April (T82).

Ferri corroborated Pilone's testimony, stating, "whenever the school was in recess, the administrators from the IAA were not required to work" (T83). The school calendar is not predicated upon a set number of workdays for administrators (T83). The number of student contact days and teachers days was constant, but the number of recess days varied over the years (T84-T85). "Therefore", Ferri concluded, "the number of days that the administrators worked or did not have to work also varied" (T85).

Pilone and Ferri concurred that administrators did not work when teachers were "off" or when school was in recess, and that the number of recess days in any given year varied over the years. Ferri testified that the variations depended on what day of the week a holiday falls and how close to September 1 the school year begins for students (T84-T85). Neither stated the obverse fact -- which I find -- administrators worked whenever teachers and students reported to school. (They also worked to the end of June).

4. The parties jointly placed in evidence copies of school calendars dating back to 1986-87 except for the 1989-90 calendar (J-A, pp. 8-16). All of them state near the bottom a "total" of "182 student days" or "182 days" except 1992-93, which had 183 "student days." All calendars show a date in September when schools open and a date in June, when schools close. All calendars include a "mid-winter" or "winter" recess in February, except the 1995-96 calendar, which had a "presidents' weekend."

In all calendars from 1986-87 through 1993-94, schools were closed for a winter or mid-winter recess five consecutive days, Monday through Friday. Schools were not closed an additional day for any "presidents" holiday. The 1994-95 calendar had a winter recess of four consecutive days (Tuesday through Friday), preceded by a "presidents day" holiday on Monday. The 1995-96 calendar has no winter recess; schools were closed for a "presidents weekend" on Friday, February 16 and Monday, February 19.

The charging party prepared a useful chart showing the number of days administrators worked from September through June in each school year in the past ten years (except 1989-90). The numbers are corroborated by the teachers agreement (R-3), the school calendars in evidence (J-A, 8-16), a printed calendar (i.e., the two-hundred-fifty year calendar at the back endpaper of the 1997 New Jersey Lawyers Diary and Manual), and testimony (T19, T76-T77). It is:

School Year	Teacher Days	Extra Days in June IAA Members	IAA Days Sept. to June
1995-96	183	+6	189
1994-95	183	+4	187
1993-94	183	+3	186
1992-93	183[5/]	+3	186
1991-92	183	+3	186
1990-91	183	+4	187
1988-89	183	+4	187
1987-88	183	+3	186
1986-87	183	+6	189

5/ This number represents "student days" (J-A-13). The record does not show specifically that teachers reported an additional day.

This chart shows that except for 1986-87, and the year in dispute, administrators worked 186 or 187 days from September through June.[6/]

ANALYSIS

The Association concedes that the Board has the prerogative to set the school calendar, but argues that it has the duty to negotiate compensation before "requiring employees to work extra days" (post-hearing brief at 4). The Board contends that it properly exercised its managerial prerogative to set the school calendar and that the disputed change is "within the parameters of the parties' agreement" (post-hearing brief at 17).

The Board has the managerial prerogative to establish the school calendar in terms of when school begins and ends. Woodstown-Pilesgrove Reg. Schl. Dist. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582 (1980); Cf. Burlington Cty. College Faculty Ass'n v. Burlington Cty. College, 64 N.J. 10 (9173). Compensation for increased workload is severable from that prerogative. Woodstown-Pilesgrove; Greenbrook Tp. Bd. of Ed., P.E.R.C. No. 77-11, 2 NJPER 288 (1976); see also, Maywood Bd. of Ed, P.E.R.C. No. 85-36,

---

6/ In 1986-87, students and employees had 25 days off combining holidays and recess days. In 1995-96, students and employees had 23 days off.

10 NJPER 571 (¶15266 1984) (Board has duty to negotiate compensation before increasing pupil contact time for teachers).[7/]

The Association relies on Somerville Bd. of Ed., P.E.R.C. No. 87-128, 13 NJPER 323 (¶18134 1987). The Somerville Board adopted a calendar which reduced the Easter recess, the February break and eliminated December 23 as a holiday. The Chairman on behalf of the Commission and in the absence of exceptions to the hearing examiner's report and recommended decision, found that the Board violated the Act when it adopted a calendar which increased the employees' work year but did not negotiate compensation for the increased work. The finding was applied to the administrators unit (in addition to the teachers and supervisors units), comprised of twelve-month employees with twenty-two vacation days in the summer. The administrators agreement also had a paragraph defining the "in-school" work year (H.E. at 13 NJPER 173).

The Board asserts that a mere schedule change is not an unfair practice; the change must fall outside the terms and conditions in the collective agreement. It cites as examples, Carlstadt Bd. of Ed., P.E.R.C. No. 91-72, 17 NJPER 153 (¶22062 1991) and Glen Ridge Bd. of Ed., P.E.R.C. No. 90-33, 15 NJPER 619 (¶20258

7/ In Maywood, the Association demanded to negotiate compensation and the respondent Board refused. Majority representatives normally have the duty to demand negotiations on severable issues of compensation. Willingboro Bd. of Ed., P.E.R.C. No. 90-43, 15 NJPER 692 (¶20280 1989): Trenton Bd. of Ed., P.E.R.C. No. 88-16, 13 NJPER 714, (¶18266 1987).

1989). The Board argues that these twelve-month employees are contractually entitled only to twenty-two vacation days and that "the change from a winter recess to a four-day holiday remains within the parameters of the parties' agreement" (post-hearing brief at p. 17).

N.J.S.A. 34:13A-5.3 requires an employer to negotiate with the majority representative before implementing "proposed new rules or modifications of existing rules governing working conditions." Any change imposed without negotiations violates 5.4(a)(5) unless the employer can prove that the employee representative waived its right to negotiate. A waiver can come in a variety of forms but it must be clear and unequivocal. So. River Bd. of Ed., P.E.R.C. No. 86-132, 12 NJPER 447 (¶17167 1986), aff'd NJPER Supp.2d 170 (¶149 App. Div. 1987); Elmwood Park Bd. of Ed., P.E.R.C. No. 85-115, 11 NJPER 366 (¶16129 1985).

I do not believe that the Association established the requisite "change" in a term and condition of employment. The record does not prove that the Board unilaterally lengthened the work year. The administrators' work year is defined by the agreement and by practice. See Caldwell-W. Caldwell Bd. of Ed. and Caldwell-W. Caldwell Ed. Assn., P.E.R.C. No. 80-64, 5 NJPER 536 (¶10276 1979), aff'd in part, rev'd in part, 180 N.J. Super. 44 (App. Div. 1981). By practice, administrators worked whenever school was in session and through June 30. Excepting their contractual twenty-two vacation days, administrators also worked in

July and/or August. By practice, they also did not have to work on holidays and recess days.

The Association concedes that the number of holidays and recess days in any one year has varied over the last decade; that the number of workdays from September through June hovered at 186 or 187; and that ten years ago, administrators worked 189 days in that ten-month span -- the same number complained of in this matter.

The latter fact distinguishes this case from Somerville Bd. of Ed., where the hearing examiner found a "change", based in part upon a counting of workdays (196) between September 1 and July 1. In the proffered ten-year history in that case, administrators never before worked more than 194 days.

Defining the practice in this case as a minimum number of winter recess days or even an averaged number of workdays from September through June ignores the precedence of the school calendar. Under N.J.S.A. 18A:7D-35 and N.J.S.A. 18A:58-16, public school facilities must be provided for at least 180 days a year in order for a school district to receive State aide. See Middletown Tp. Bd. of Ed., P.E.R.C. No. 96-30, 21 NJPER 392 (¶26241 1995).

The constancy of 182 student days shows the Board's adherence to the statute. The teachers in turn have a work year defined as all student days plus one day. Administrators by comparison are twelve-month employees who work all the student days, all the teacher days, the "extra" days through June 30 and whatever days remain after vacation. The calendars in evidence and the

mutually consistent testimonies of Pilone and Ferri corroborate this practice.8/

In 1995-96, as in all other years, administrators received the same holidays off and recess days off as did teachers, consistent with the school calendar. They are not entitled to more than that.

RECOMMENDATION

I recommend that the Commission dismiss the Complaint.

Jonathon Roth
Hearing Examiner

DATED: April 3, 1997
Trenton, New Jersey

8/ The Board's reliance upon Glen Ridge Bd. of Ed. and Carlstadt Bd. of Ed. is misplaced. Those cases concerned alleged unilateral increases in pupil contact time while the respective collective agreements set workday limits and had restrictions for lunch periods and preparation time. The increases did not go beyond those negotiated restrictions.