

P.E.R.C. NO. 84-17

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RANDOLPH TOWNSHIP BOARD OF  
EDUCATION,

Respondent,

-and-

Docket No. CO-82-201

RANDOLPH EDUCATION ASSOCIA-  
TION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission holds that the Randolph Township Board of Education committed an unfair practice when it unilaterally increased the number of "subject content periods" assigned to each teacher within the high school's physical education and business departments. The Commission orders the Board to restore the prior workload levels and to negotiate over compensation for the illegal increase in the affected teachers' workload.

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RANDOLPH TOWNSHIP BOARD OF  
EDUCATION,

Respondent,

-and-

Docket No. CO-82-201-145

RANDOLPH EDUCATION ASSOCIA-  
TION,

Charging Party.

Appearances:

For the Respondent, Rand & Algeier, Esqs.  
(Robert M. Tosti, of Counsel)

For the Charging Party, John W. Davis, Field Repre-  
sentative, NJEA UniServ Regional Office

DECISION AND ORDER

On February 11, 1982, the Randolph Education Associa-  
tion ("Association") filed an unfair practice charge against the  
Randolph Township Board of Education ("Board") with the Public  
Employment Relations Commission. The charge alleged that the  
Board violated the New Jersey Employer-Employee Relations Act,  
as amended, N.J.S.A. 34:13A-1 et. seq. ("Act"), specifically  
subsections 5.4(a)(1), (3), and (5),<sup>1/</sup> when it unilaterally in-  
creased the number of "subject content periods" assigned to each

1/ These subsections prohibit public employers, their representa-  
tives or agents from: "(1) Interfering with, restraining or  
coercing employees in the exercise of the rights guaranteed  
to them by this act; (3) Discriminating in regard to hire or  
tenure of employment or any term or condition of employment  
to encourage or discourage employees in the exercise of the  
rights guaranteed to them by this act; and (5) Refusing to  
negotiate in good faith with a majority representative of  
employees in an appropriate unit concerning terms and condi-  
tions of employment of employees in that unit, or refusing to  
process grievances presented by the majority representative."

teacher within the high school's physical education and business departments.

On June 25, 1982, the Director of Unfair Practices issued a Complaint and Notice of Hearing pursuant to N.J.A.C. 19:14-2.1. On July 8, 1982, the Board filed an Answer in which it admitted having increased the number of subject content periods, but averred that it had a managerial prerogative as well as a contractual right to make these additional assignments.<sup>2/</sup>

On July 27, 1982, Hearing Examiner Charles A. Tadduni conducted a hearing at which the parties examined witnesses and presented evidence. They waived oral argument, but filed post-hearing briefs by October 15, 1982.

On June 9, 1983, the Hearing Examiner issued his report and recommendations, H.E. No. 83-43, 9 NJPER 377 (¶14171 1983) (copy attached). He found that the Board violated subsections 5.4(a)(1) and (5) when it unilaterally increased the workload of every teacher in the business and physical education departments by assigning each teacher an additional subject content period for both semesters during the 1981-82 school year.<sup>3/</sup> As a remedy, he

<sup>2/</sup> The Answer also alleged that the charge should be dismissed because the Association had not pursued its rights under the parties' grievance procedure. In fact, the Association had initiated grievance proceedings which culminated in an advisory arbitration award. The arbitrator found that the increase in subject content periods violated the parties' contract, but rejected the Association's request for monetary relief. Instead, he directed the Board to comply prospectively (beginning with the spring 1982 school term) with its contractual obligations. When the Board refused to do so, the instant unfair practice proceedings commenced.

<sup>3/</sup> He found no evidence of a subsection 5.4(a)(3) violation and recommended dismissal of that part of the Complaint.

recommended an order requiring the Board to restore the prior workload level of the affected teachers, to negotiate upon the Association's demand concerning the increase in workload during the 1981-82 school year, and to post a notice of its violation and remedial action.

The Board has not filed any Exceptions. On June 23, 1983, the Association filed an Exception to the recommended remedy. It claims that a "make whole" remedy is appropriate in this case and that the contract provides a method by which the teachers can be compensated.<sup>4/</sup>

We have reviewed the record. The Hearing Examiner's findings of fact are supported by substantial evidence. We adopt and incorporate them here.

Under all the circumstances of this case, we hold that the Board violated subsections 5.4(a)(1) and (5) when it unilaterally increased the workload of all of the teachers in the business and physical education departments by assigning each of them a sixth "subject content period" for the 1981-82 school year. We adopt and incorporate the Hearing Examiner's thorough analysis here.

We find the Association's Exception to be without merit. The Association litigated the issue of monetary relief before an arbitrator who determined that the Association was not

<sup>4/</sup> Article VII-E states that when a regular teacher either volunteers or is assigned as a substitute, he will be compensated at the rate of \$8.00 per period.

contractually entitled to such relief. We see no reason to displace this finding and instead believe that the appropriate remedy is to require the Board to restore the prior workload and to negotiate over compensation for the illegal increase in the affected teachers' workload. See Galloway Twp. Bd. of Ed. v. Galloway Twp. Ed. Ass'n, 157 N.J. Super. 74 (App. Div. 1978); In re Wharton Bd. of Ed., P.E.R.C. No. 83-35, 8 NJPER 570 (¶13263 1982).

ORDER

IT IS HEREBY ORDERED that:

I. Respondent Randolph Township Board of Education:

A. Cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of rights guaranteed by the Act by unilaterally increasing teacher workload by assigning six subject content period teaching schedules to all teachers in the business and physical education departments for both semesters of the 1981-82 school year.

2. Refusing to negotiate in good faith with the Association by unilaterally altering terms and conditions of employment of employees represented by the Association by unilaterally assigning six subject content period teaching schedules to all teachers in the business and physical education departments for both semesters of the school year.

B. Take the following affirmative action:

1. Restore within 60 days the workload of the teachers in the business and physical education departments to


that which was extant prior to the teaching schedule changes made by the Board in the 1981-82 school year, unless the parties negotiate or have already negotiated teaching schedule changes in those departments.

2. Negotiate with the Association upon demand concerning compensation for the increase in the workload of teachers in the business and physical education departments in the 1981-82 school year over the workload levels extant for those teachers prior to the 1981-82 school year.

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

4. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent Board has taken to comply herewith.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Butch, Mastriani & Suskin voted in favor of this decision. None opposed. Commissioners Hipp and Newbaker abstained. Commissioner Graves was not present.

DATED: Trenton, New Jersey  
September 15, 1983  
ISSUED: September 16, 1983

# 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 employees in the exercise of rights guaranteed by the Act by unilaterally increasing teacher workload by assigning six subject content period teaching schedules to all teachers in the business and physical education departments for both semesters of the school year.

WE WILL NOT refuse to negotiate in good faith with the Association by unilaterally altering terms and conditions of employment of employees represented by the Association by unilaterally assigning six subject content period teaching schedules to all teachers in the business and physical education departments for both semesters of the school year.

WE WILL restore within 60 days the workload level of the teachers in the business and physical education departments to that which was extant prior to the teaching schedule changes made by the Board in the 1981-82 school year, unless the parties negotiate or have already negotiated teaching schedule changes in those departments.

WE WILL negotiate with the Association upon demand concerning compensation for the increase in the workload of teachers in the business and physical education departments in the 1981-82 school year over the workload levels extant for those teachers prior to the 1981-82 school year.

RANDOLPH TOWNSHIP BOARD OF EDUCATION

(Public Employer)

Dated \_\_\_\_\_

By \_\_\_\_\_  
(Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission,  
429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.

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

In the Matter of

RANDOLPH TOWNSHIP BOARD  
OF EDUCATION,

Respondent,

-and-

DOCKET NO. CO-82-201

RANDOLPH EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Randolph Township Board of Education violated §§ 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act when it unilaterally and without negotiations increased the workload of teachers in the business and physical education departments when it assigned every teacher in the above-referred departments a six subject content teaching load for both semesters during school year 1981-82. The Hearing Examiner concluded that the pertinent contractual language and the parties' practice thereunder enabled the Board to periodically assign six subject content period loads to some of the teachers in the business and physical education departments. The Board's actions in this matter constitute an extension of that practice which was not justified by either the language of the contract or the parties' practice established in the record. The Hearing Examiner further concluded that the complaint in this matter addresses a workload issue and that negotiations thereon would not interfere with any managerial prerogatives of the Board.

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, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.



STATE OF NEW JERSEY  
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DOCKET NO. CO-82-201

RANDOLPH EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent  
Rand & Algeier, attorneys  
(Robert M. Tosti of counsel)

For the Charging Party  
John W. Davis, UniServ Representative, NJEA

HEARING EXAMINER'S RECOMMENDED  
REPORT AND DECISION

An Unfair Practice Charge ("Charge") was filed with the Public Employment Relations Commission ("Commission") on February 11, 1982, by the Randolph Education Association ("Association") alleging that the Randolph Township Board of Education ("Board") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). It is alleged in the Charge that the Board violated the contract in effect between the parties by unilaterally increasing the number of "subject content periods" assigned to certain teachers

represented by the Association. The Association contends that said conduct is violative of N.J.S.A. 34:13A-5.4(a)(1), (3) and (5). <sup>1/</sup>

It appearing to the Director of Unfair Practices that the allegations of the Charge, if true, would constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued in the above captioned matter. Pursuant to the Complaint and Notice of Hearing, a hearing was held on July 27, 1982, in Newark, New Jersey, at which time all parties were given the opportunity to examine witnesses, present evidence and argue orally. Subsequent to the close of hearing, briefs were submitted by both parties to the instant proceeding by October 15, 1982.

#### POSITIONS OF THE PARTIES

In its Unfair Practice Charge, the Association alleges that the Board and the Association are parties to a contract covering the period from July 1981 to June 1983; that the contract includes daily and weekly teaching load provisions which state that generally, no more than five subject content periods shall be assigned to teachers except where scheduling exigencies require the assignment of a sixth subject content period.

<sup>1/</sup> 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; (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act; 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."

In September 1981, the Board assigned the teachers in two departments a sixth subject content period. The Association contends that before the Board can implement a sixth subject content period, they must establish that a scheduling exigency exists. The Association alleges that no such emergent circumstance existed herein. Further, the Association alleges that the Board was aware of its scheduling situation several months prior to actually implementing the sixth subject content period in September 1981, and that several other methods were available to the Board to deal with the same. Finally, the Association argues that under the contractual maintenance of benefits clause, the Board is precluded from removing any benefits such as, a normal teaching schedule of five subject content periods per day, which has been provided to teachers in past years.

In its answer, the Board acknowledges the existence of the contractual provision concerning daily and weekly teaching load. Further, the Board admits that it did increase the number of subject content periods (to six per day) which it assigned to certain teachers in September 1981. However, the Board denies that it has violated the contract. The Board advances these defenses: The Board asserts that the actions which gave rise to the instant Charge arise from changes made in assigned work which are within the scope of applicable contract provisions. The Board argues that no past practice argument is applicable herein because the actions complained of are regulated by several specific contract provisions. The Board contends that scheduling exigencies,

as they have come to be defined by these parties over the course of years, did indeed exist. Finally, the Board notes that the issue involved herein -- deployment of manpower -- is a major educational policy concerning which there is no mandatory obligation to negotiate.

#### ISSUES FOR CONSIDERATION

The crux of the instant Charge is the allegation that the Board has unilaterally changed a term and condition of employment of unit employees without negotiations; said action is alleged to be violative of the parties' contract and of N.J.S.A. 34:13A-5.4(a)(1), (3) and (5).

It being admitted by the Board that it did increase the number of subject content periods assigned to certain teachers, the case shall turn upon a determination of several other factors. Was there a mandatory obligation to negotiate the increased number of subject content periods assigned daily to teachers by the Board? Is this assignment a term and condition of employment? If the Board's action was not mandatorily negotiable, then there was no unfair practice. However, assuming the first question is answered affirmatively, was the scheduling of a sixth subject content period already negotitated? Were there such scheduling exigencies as would require the scheduling of a sixth subject content period for certain teachers? What constitutes "scheduling exigencies"? Were they present herein? If it is determined that there was no

negotiations on this issue and that no scheduling exigencies were extant herein, then the Board has committed an unfair labor practice.

ANALYSIS: FINDINGS OF FACT & DISCUSSION OF LAW

Article VII, Section C-1 of the parties' contract (working hours) states that the scheduled teaching load shall not exceed six teaching periods daily and shall not exceed twenty-eight hours of classroom teaching per week. Under the terms of the contract, any scheduled assignment or (noncompensated extracurricular activity) during school hours is considered a "teaching period." <sup>2/</sup> Thus, the term "teaching period" encompasses not only traditional instructional periods but also traditional noninstructional, pupil-contact duties such as hall duty, homeroom, library duty, etc. Article VII further states:

However, as a general practice, no more than 5 subject content periods shall be assigned to ... (a) teacher except where scheduling exigencies require the assignment of a sixth subject content period. (emphasis added) <sup>3/</sup>

- <sup>2/</sup> The pertinent contractual language in Article VII, Section C-1 has existed in the parties' contracts for at least eight years, encompassing five to six contracts between the parties.
- <sup>3/</sup> Exhibit J1. The undersigned notes that there is no dispute herein concerning the contract provision which states that teaching load shall not exceed 28 hours of classroom teaching per week, nor is there a dispute concerning the provision which states that teaching load shall not exceed six periods daily. The dispute centers around the increase in instructional periods -- herein called subject content periods -- from five to six under circumstances which are alleged to violate the parties' contract and the past practice which has developed between the parties concerning same.

From school year 1977-78 through school year 1981-82, there have been six teachers in the Business Department. <sup>4/</sup> Based upon consideration of the testimony, especially that of Mr. Kaminski, and an analysis of Exhibits J4, J5 and R1, the Hearing Examiner has constructed a chart (Chart No. 1 p. 7, infra,) showing the frequency and distribution of subject content period assignments in the business department. The chart provides a summary by semester, covering the period from school year 1977-78 through school year 1981-82, of the number of teachers in the business department who have been assigned six subject content periods, five subject content periods and a lab schedule. <sup>5/</sup>

<sup>4/</sup> The undersigned notes that the Business and Industrial Arts faculties are combined into one department. However, the only part of that department with which this proceeding is concerned is the business portion. For simplification, the undersigned has referred to the business portion of the Business-Industrial Arts Department as the business department.

<sup>5/</sup> Exhibits J4, J5, and R1 indicate that during each semester, one business department teacher has a sixth subject content period load schedule comprised of three traditional instructional classes and three periods of Distributive Education Lab. Mr. Kaminski testified that DE Lab, as it is called, involves supervision by the lab teacher of a student in an educationally related work environment. The "lab" is the student's actual place of employment to which the lab teacher travels periodically to observe. Mr. Kaminski testified without contradiction that DE Lab is more analogous to a noninstructional duty period than to actual classroom instruction. Mr. Kaminski testified that a workload imbalance existed between a work schedule with only three instructional periods and three DE Lab periods and another work schedule comprised of one supervisory and five instructional periods (or occasionally, zero supervisory and six instructional periods).

In this proceeding, the Board sought to categorize a teaching load of three instructional periods and three DE Labs as a six subject content period load. Based upon the record, the undersigned rejects that categorization. In calculating the subject content period loads in the business department, the undersigned counted the DE Lab schedule as a unique category, neither belonging with the five subject content period group nor the sixth subject content period group.

Chart No. 1 reveals that in years prior to 1981-82, the most frequently assigned subject content period load has been five subject content periods. In the most recent years, prior to 1981-82, the business department subject content period loads have been evenly split between six subject content periods and five subject content periods with the heavier concentration of six subject content period loads being assigned in the spring semester.

Chart No. 1

Business Department

| Year                               | 1977-78 |   | 1978-79 |   | 1979-80 |   | 1980-81 |   | 1981-82 |   |
|------------------------------------|---------|---|---------|---|---------|---|---------|---|---------|---|
| Semester                           | F       | S | F       | S | F       | S | F       | S | F       | S |
| Teachers with six S.C.P. Schedule  | 0       | 1 | 3       | 3 | 1       | 4 | 1       | 4 | 5       | 5 |
| Teachers with five S.C.P. Schedule | 5       | 4 | 2       | 2 | 4       | 1 | 4       | 1 | 0       | 0 |
| Teachers with Lab Schedule         | 1       | 1 | 1       | 1 | 1       | 1 | 1       | 1 | 1       | 1 |

Kaminski's testimony showed that in the four years prior to the 1981-82 school year, a business department teacher had a bit less than a 50-50 chance of getting a six subject content period load assignment.

The Hearing Examiner further notes that the chances that a business department teacher had received a six subject content period load in both the fall and spring semesters of any given year was even less likely.

In the fall semester of 1981-82, the entire business department (with the exception of the teacher with the DE Lab

schedule) was assigned to teach six subject content periods. <sup>6/</sup> Generally, that schedule remained in effect, vis-a-vis subject content period load, for the entire school year. Prior to the 1981-82 school year, the entire department (except the teacher who taught DE Lab) had never been assigned a six subject content period load for even one semester. In 1981-82, the entire department (except the DE Lab teacher) was assigned to teach six subject content periods in both semesters.

There are six teachers in the physical education department. The number of physical education department teaching staff has remained unchanged for ten years.

Physical education teacher Valle testified that, during the school years prior to 1981-82, from time to time she taught six subject content periods. In 1981-82, all physical education teachers taught six subject content periods.

Based upon Ms. Valle's testimony and Exhibit J6, the Hearing Examiner constructed a second chart (Chart No. 2, p. 10, infra), showing the frequency and distribution of subject content period teaching loads in the physical education department. In examining Chart No. 2, it is apparent that in the years prior to the 1981-82 school year, there was a greater frequency of six subject content period teaching loads among physical education teachers than among business department teachers. However, the numbers on Chart No. 2 require a further explanation.

<sup>6/</sup> Tr. 10, 28-29. Exhibit J5.



Valle testified without contradiction that approximately five years ago, in the course of several regular physical education department meetings, the topic of increasing class size and how to best manage it was explored. There was a growing concern within the department that a better alternative was needed in teaching and managing physical education classes from the viewpoint of both students and teachers. What they -- the physical education teachers and administrators -- devised was an "assisting teacher" practice: in lieu of assigning a physical education teacher a supervisory duty (i.e., a five subject content period/one supervisory period schedule), the physical education teacher was assigned as an assisting teacher in a regular physical education class (a schedule comprised of five regular subject content periods and one assisting teacher period). In that class, another physical education teacher was the regular teacher responsible for instruction, evaluation and grading. The assisting teacher was there primarily as a monitor, assisting in the supervision of general student behavior and safety.

However, Valle testified that in years prior to 1981-82, some physical education teachers had a regular (independent) sixth subject content period (as opposed to a sixth period as an "assisting teacher"). In 1980-81, Valle testified that approximately half the teachers in the physical education department had a regular sixth subject content period (i.e., a schedule of six regular subject content periods) and half had an "assisting teacher" sixth subject content period (i.e., a schedule of five regular subject content

periods and one "assisting teacher" period). In years prior to 1980-81, the mix varied. <sup>7/</sup>

Chart No. 2

Physical Education Department

| Year                               | 1977-78 |   |   |   | 1978-79       |   |   |   | 1979-80 |   |   |   | 1980-81 |   |   |   | 1981-82 |   |   |   |
|------------------------------------|---------|---|---|---|---------------|---|---|---|---------|---|---|---|---------|---|---|---|---------|---|---|---|
| Quarter                            | 1       | 2 | 3 | 4 | 1             | 2 | 3 | 4 | 1       | 2 | 3 | 4 | 1       | 2 | 3 | 4 | 1       | 2 | 3 | 4 |
| Teachers with six S.C.P. Schedule  | 5       | 3 | 3 | 3 | Not on Record |   |   |   | 5       | 5 | 5 | 5 | 5       | 5 | 5 | 6 | 6       | 6 | 6 | 6 |
| Teachers with five S.C.P. Schedule | 1       | 3 | 3 | 3 |               |   |   |   | 1       | 1 | 1 | 1 | 1       | 1 | 1 | 0 | 0       | 0 | 0 | 0 |

A change in this practice occurred in the 1981-82 school year: in that year all physical education teachers were assigned six regular subject content periods -- wherein each teacher was responsible for teaching, evaluation and grading of six classes.

In its defense, the Board has raised the arguments that the additional instructional assignments made by the Board fall within the Board's managerial prerogative to assign work within the school day, and that the specific contract language and the parties' practice thereunder permits the Board to make such assignments as are being disputed herein.

There have been numerous court and Commission decisions

<sup>7/</sup> Tr. 76, 82-84. Note, neither Chart No. 2 nor Exhibit J6 distinguish between a regular sixth subject content period and a sixth period spent as an assisting teacher. Thus, Ms. Valle's testimony is the most accurate indication (in fact, the only indication) in the record of the frequency of assignments of regular six subject content period loads to physical education teachers in years prior to 1981-82.

holding that teacher workload is a mandatorily negotiable issue. <sup>8/</sup>  
 Further, in In re Buena Reg. Bd. of Ed., P.E.R.C. No. 79-63, 5  
NJPER 123 (¶ 10072 1979), the Commission specifically addressed  
 the circumstance of whether a change of a duty period to an additional  
 teaching period is a mandatory subject for collective negotiations.  
 The Commission stated:

Whether the change is from a non-teaching, supervisory duty period or a preparation period, there is still a net increase in the number of teaching periods per day. The Commission doubts that the Board would seriously contest that a teaching period, in itself, requires more work than either a preparation period or a non-teaching supervisory duty period. The additional teaching period, unlike the other types of duty, generates further precedent and subsequent work in terms of additional class preparation, correction of tests and homework, preparation of report cards, other administrative paper work, etc. Accordingly, the Commission concludes that any decision which would result in a change in the number of classroom teaching periods per day must be negotiated as it directly relates to workload ...

The Commission, in response to the Board's argument that the instant matter is a managerial prerogative involving basic educational

<sup>8/</sup> In re Fair Lawn Bd. of Ed., P.E.R.C. No. 79-44, 5 NJPER 48 (¶ 10032 1979); In re Newark Bd. of Ed., P.E.R.C. No. 79-24, 4 NJPER 486 (¶ 4221 1978), aff'd P.E.R.C. No. 79-38, 5 NJPER 41 (¶ 10026 1979), aff'd App. Div. Docket No. A-2060-78 (2/26/80); In re Lincoln Park Bd. of Ed., P.E.R.C. No. 78-88, 4 NJPER 257 (¶ 4131 1978); In re Rahway Bd. of Ed., P.E.R.C. No. 79-30, 5 NJPER 23 (¶ 10015 1978); In re Byram Tp. Bd. of Ed., P.E.R.C. No. 76-27, 2 NJPER 143 (1976), aff'd 152 N.J. Super. 12, (App. Div. 1977); Red Bank Bd. of Ed. v. Warrington, 138 N.J. Super. 564 (App. Div. 1976); Burlington Cty. College Faculty Assn. Bd./Trustees, 64 N.J. 1 (1973); In re Middlesex Cty. College Bd./Trustees, P.E.R.C. No. 78-13, 4 NJPER 47 (¶ 4023 1977); In re State of New Jersey (Stockton State College), P.E.R.C. No. 77-31, 3 NJPER 62 (1977).

policy, notes that the present decision does not interfere with the Board's right to decide to increase pupil instructional time. However, once the Board decides to implement this decision by increasing the number of classroom teaching periods per day there is a change in workload which is mandatorily negotiable. The crucial point is that the Board still retains the ability to accomplish its objective of increasing pupil instructional time through numerous other methods.... [emphasis added]. 9/

The disputed assignments in this matter relate to increased teacher workload and not to the Board's decision to increase instructional time or class offerings. The Board's decision to augment the number and types of classes offered to students is a managerial prerogative. The implementation of that decision was achievable in a number of ways. The Board's choice of a method of implementation increased the workload of certain teachers. Teacher workload is a mandatory subject for negotiations.

The Board next looks to the contract language and the practice followed thereunder to sanction its actions. The language of the contract is clear: it states that a teacher shall normally be assigned five subject content periods except where scheduling exigencies require the assignment of a sixth subject content period.

Webster's New World Dictionary, Second College Edition (World Publishing Co. 1974), defines exigency as follows:

1. urgency
2. a situation calling for immediate action or attention
3. pressing needs; demands; requirements.

9/ In re Buena Reg. Bd. of Ed., P.E.R.C. No. 79-63, 5 NJPER 123, 124 (¶ 10072 1979). See also In re Newark Bd. of Ed., P.E.R.C. No. 79-38 and P.E.R.C. No. 79-24, supra, n.8.

Blacks Law Dictionary, Revised 4th Edition, (West Publishing Co. 1968) defines exigency as:

Demand, want, need, imperativeness; emergency, something arising suddenly out of the current of events; any event or occasional combination of circumstances, calling for immediate action or remedy; a pressing necessity; a sudden and unexpected happening or an unforeseen occurrence or condition. Something arising suddenly out of circumstances calling for immediate action or remedy, or where something helpful needs to be done at once, yet not so pressing as an emergency.

The Board asserts that the language "scheduling exigencies" was a term of art which must be "clarified" by reference to extrinsic events. The Superintendent testified that after he came to the district, he investigated the subject content period issue and was informed by Board administrators that this language had been interpreted by them to mean "when deemed necessary" by the administration. This sentiment was echoed by another Board witness.

The Association argues that the plain meaning of the scheduling exigencies language is clear enough -- it means something arising suddenly and needing immediate attention. Further, the Association asserts that the record bespeaks a clear past practice under this language vis-a-vis the assignment of a sixth subject content period; that practice was not when the Board deemed necessary but rather when a given set of conditions were extant.

The language of Article VII, Section C of the parties' contract is relatively clear. It states that "as a general practice"

teachers will be assigned five subject content periods; except where scheduling exigencies require that six subject content periods must be assigned. In order to interpret this provision consistently with itself, one must read "scheduling exigencies" in para materia with "as a general practice." The contract language is then consistent -- it speaks in terms of usual and unusual, normal and abnormal. Thus, based merely upon the language of the contract, scheduling exigencies must mean, at a minimum, something out of the ordinary circumstances -- "something arising suddenly ... unexpected happening ... where something helpful needs to be done at once, yet not so pressing as an emergency" (Blacks, supra, p. 13).

There is no indication in the record of unusual circumstances arising in school year 1981-82. If anything, the record evidence suggests quite the opposite: the student population has been stable in this district for a number of years; 10/ there was no demonstration that student class selections for 1981-82 deviated significantly from what they had been in past years; and no other facts were adduced which would indicate any comparatively abnormal circumstances. 11/ Finally, the undersigned notes that there was

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10/ Tr. 126

11/ The record indicates that the determination of class scheduling is a multistage process involving the collection of data and thereafter formulating a schedule based upon consideration of this data and educational policy. Several factors are considered: total number of students, class size, mandatory subject classes, elective subject classes selected by students, space availability and staff qualifications and availability.

no showing in the record that the Board was suddenly confronted with new information vis-a-vis class scheduling which called for some quick adjustments to be made. Again, the record supports the the opposite inference -- that by the spring of 1981 (the spring prior to the disputed workload scheduling changes) the Board was aware of (or had access to) all of the relevant scheduling parameters which it needed in order to develop the class schedule and corresponding teacher assignments.

Thus, based upon the contract language and the lack of any factual basis in the record which would indicate that circumstances in the 1981-82 school year differed significantly from those of past school years vis-a-vis class scheduling parameters, the undersigned is constrained to conclude that the Board increased teacher workload unilaterally and without negotiations.

However, the Board argues that the contract language should be interpreted not merely standing alone, but with reference to "extrinsic" factors. The only testimony which the Board proffered concerning the language of Article VII Section C was the testimony of the Superintendent and one other administrator who indicated that they interpreted Article VII Section C to mean that they could assign a sixth subject content period teaching load whenever they deemed it necessary to do so. The Association contests that interpretation. In evaluating such testimony, the Hearing Examiner notes that it is conclusionary in nature, that it is highly self-serving and that it is, at least in part, hearsay.

Thus, the undersigned is disinclined to rely on such testimony.

The record is devoid of any facts which would support the Board's interpretation of the contract language. None of the parameters which are utilized to determine scheduling were shown to have changed in 1981-82 to any significant degree. The only facts in the record which shed light upon how the parties -- de facto -- interpreted the language of their contract is the actual history of subject content period load assignments which were made over the years pursuant to Article VII Section C. The record indicates that the practice which developed in the years prior to the 1981-82 school year enabled the Board to periodically assign some of the teachers in the business and physical education departments six subject content period teaching loads. <sup>12/</sup> In the 1981-82 school year, the Board assigned all teachers in the business and physical education departments a six subject content period teaching load for both semesters -- a clear and substantial departure from the earlier practice. The pertinent language of the contract (Article VII Section C), standing alone, is not supportive of the Board's argument concerning the meaning of the contractual language; further, there are no facts in the record to support the interpretation of that language advanced by the Board. Acceptance of the Board's interpretation (whenever deemed necessary by administration) of the pertinent language of Article VII Section C ("as a general

<sup>12/</sup> It should be noted that the frequency and distribution of the assignments of six subject content period loads varied: during a given school year, some teachers might have been assigned six subject content periods for both semesters; others might have been assigned six subject content periods for only one semester; and still others might have been assigned only five subject content periods and one duty period in both semesters.



rule" and "except where scheduling exigencies require") would be to give no meaning to that language at all. In addition to being contrary to the general principles of contract interpretation, it is also contrary to the factual record presented herein.

The Board points to the Association's attempt to change the pertinent language of Article VII Section C during contract negotiations as supportive of the Board's position concerning the meaning of that language. The undersigned disagrees. The record indicates that the Association's membership was not happy with the periodic assignment of a sixth subject content period. That the Association attempted to alter this practice through negotiations was neither unusual nor inconsistent with its position herein. However, the record further indicates that the teachers recognized that they -- the Board, the teachers and the students -- had a problem which needed to be addressed, not ignored. To their credit, the teachers accepted the periodic sixth subject content period load assignments in the years prior to school year 1981-82; the record indicates several reasons for this acceptance: in the business department, Mr. Kaminski said that a new department supervisor had been designated and that he had refrained from pushing the sixth subject content period issue in order to cooperate with the new supervisor; further, teachers were promised that additional teaching staff would be forthcoming and that these assignments would not be a permanent situation; finally, the record shows that at least one departmental administrator responded

to an inquiry by one of the teachers in the department about why he was getting a sixth subject content period load by alluding to the Article VII Section C language as giving the Board the right to make the sixth subject content period assignment. <sup>13/</sup> Finally, there is a common sentiment underlying parts of the testimony of both Kaminski (a business teacher) and Valle (a physical education teacher): they realized that a problem existed for the teachers, the administrators and the students; while the teachers were not happy and grumbled a bit about the sixth subject content period assignment whenever their number came up for it, they had approached the problem with the sort of cooperative attitude which the Appellate Division alluded to in In re Caldwell-West Caldwell Bd. of Ed., P.E.R.C. No. 80-64, 5 NJPER 536 (¶ 10276 1979), aff'd in part, rev'd in part, 180 N.J. Super. 440 (1981).

However, in 1981-82, the Board sought to extend the sixth subject content period assignment practice from the periodic basis on which it had been practiced to making it the rule for two entire departments. It was at this point that the Association drew the line.

#### CONCLUSIONS

Based upon the entire record in this matter and the foregoing analysis, the undersigned concludes that the Board unilaterally and without negotiations increased the workload of

<sup>13/</sup> However, that particular assignment was one of the periodic six subject content period assignments which the Board had made in the years prior to 1981-82. See also, Tr. 59, 74 and 77.

teachers in the business and physical education departments when it assigned each teacher in the above-referred departments a sixth subject content period teaching load for both semesters during school year 1981-82. The undersigned further concludes that the complaint in this matter addresses a workload issue. The record does not suggest that negotiations thereon would interfere with any managerial prerogative of the Board.

The undersigned further concludes that neither the pertinent contract language nor the practice followed by the parties pursuant thereto supports the Board's assertion that it possessed the right to assign six subject content periods to all of the teachers in the business and physical education departments at all times. The contract language and the associated past practice have given the Board an ability to periodically assign six subject content period loads to some teachers. The Board's actions in this matter constituted an extension of that practice which was not justified by either the language of the contract nor the past practice established in the record.

Accordingly, the undersigned concludes that the Board's conduct in this matter was violative of §§ 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act. No evidence was adduced in the record of conduct violative of § 5.4(a)(3) of the Act.

#### REMEDY

The recommended remedy in this matter shall contain a cease and desist order to the Board to refrain from its conduct of

unilaterally and without negotiations increasing the workload of teachers. The recommended remedy shall also contain an order to the Board to negotiate with the Association concerning the changes Board to negotiate with the Association concerning the changes already made. The undersigned will here further address that recommendation.

In the business and physical education departments, a practice had arisen between the parties based upon the circumstances which existed in the district (in the years prior to 1981-82) and pursuant to the parties' agreement, that practice allowed the Board to periodically schedule for some teachers in those departments, a sixth subject content period. What the Board did herein -- unilaterally -- was to assign six subject content period loads to all teachers in those departments at all times. This was a substantial addition to the prior overall workload level, violative of the parties' agreement and their prior practice.

In devising a remedy herein, the workload level that was extant prior to the 1981-82 changes must be identified. An examination of the record herein indicates that in the business and physical education departments in the years prior to 1981-82, the Board had assigned six subject content period teaching loads in up to one-half of the total available teacher-semester (the number of teachers in the department multiplied by two semesters per year). <sup>14/</sup> In those departments in 1981-82, the Board assigned six subject content period teaching loads in all of the total available teacher-semester. Accordingly, the undersigned's

14/ Chart No. 1. Footnote 5a. Tr. 70-87. Chart No. 2.

recommended order shall direct a return to the workload levels that were extant prior to the 1981-82 changes and negotiations concerning the increase in teacher workload in 1981-82 (resultant from the workload changes made by the Board in 1981-82) over the workload levels extant in years prior to 1981-82.

RECOMMENDED ORDER

Accordingly, for the reasons set forth above, IT IS  
HEREBY ORDERED:

(A) that the Respondent, Randolph Township Board of Education, shall cease and desist from:

(1) Interfering with, restraining or coercing employees in the exercise of rights guaranteed by the Act by unilaterally increasing teacher workload by assigning six subject content period teaching schedules to all teachers in the business and physical education departments for both semesters of the school year.

(2) Refusing to negotiate in good faith with the Association by unilaterally altering terms and conditions of employment of employees represented by the Association by unilaterally assigning six subject content period teaching schedules to all teachers in the business and physical education departments for both semesters of the school year.

(B) that the Respondent, Randolph Township Board of Education take the following affirmative action:

(1) Restore the workload level of the teachers in the business and physical education departments to that which was

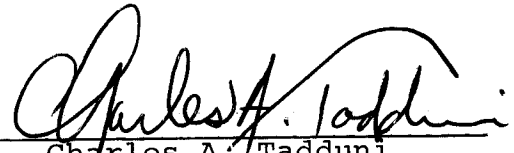
extant prior to the teaching schedule changes made by the Board in the 1981-82 school year.

(2) Negotiate with the Association upon demand concerning the increase in the workload of teachers in the business and physical education departments in the 1981-82 school year over the workload levels extant for those teachers prior to the 1981-82 school year.

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

(4) Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent Board has taken to comply herewith.

It is hereby further Ordered that those portions of the Complaint which allege violations of § 5.4(a)(3) of the Act be dismissed.

  
Charles A. Tadduni  
Hearing Examiner

DATED: June 9, 1983  
Trenton, New Jersey

# 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 cease and desist from interfering with, restraining or coercing our employees in the exercise of rights guaranteed to them by the Act by assigning six subject content period teaching schedules to all teachers in the business and physical education departments for both semesters of the school year.

WE WILL restore the workload level of the teachers in the business and physical education departments to that which was extant prior to the teaching schedule changes made by the Board in the 1981-82 school year.

WE WILL negotiate with the Association upon demand concerning the increase in the workload of teachers in the business and physical education departments in the 1981-82 school year over the workload levels extant for those teachers prior to the 1981-82 school year.

Randolph Township Board of Education

(Public Employer)

Dated \_\_\_\_\_

By \_\_\_\_\_ (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with James Mastriani, Chairman, Public Employment Relations Commission, 429 E. State State Street, Trenton, New Jersey 08608 Telephone (609) 292-9830.