P.E.R.C. NO. 92-122

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MERCER COUNTY BOARD OF
SOCIAL SERVICES,

Respondent,

-and- Docket No. CO-H-90-374

MERCER COUNTY BOARD OF SOCIAL
SERVICES SUPERVISORS ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge filed by the Mercer County Board of Social Services Supervisors Association against the Mercer County Board of Social Services. The charge alleged that the Board violated the New Jersey Employer-Employee Relations Act by refusing to negotiate over compensation for an alleged increase in workload for unit members. Any claim for increased compensation for increased hours must be made pursuant to the contractual overtime provision. Any claim for additional compensation for having to work harder during the regular work day as a result of the reduction in staff must be raised during successor contract negotiations.

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Charging Party.

Appearances:

For the Respondent, Cohen, Shapiro, Polisher, Shiekman & Cohen, attorneys (Jeffrey Braff, of counsel)

For the Charging Party, Zazzali, Zazzali, Fagella & Novak, attorneys (Richard A. Friedman, of counsel)

DECISION AND ORDER

On June 26, 1990, the Mercer County Board of Social Services Supervisors Association filed an unfair practice charge against the Mercer County Board of Social Services. The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1) and (5),[1/] by refusing to negotiate over compensation for an alleged increase in workload for unit members.

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 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....

On December 11, 1990, a Complaint and Notice of Hearing issued. On December 27, the Board filed its Answer admitting that the Association asked to negotiate but denying that there was any workload increase. The Board also asserts that it had no mid-contract duty to negotiate over compensation.

On January 25, 1991, Hearing Examiner Elizabeth J. McGoldrick conducted a hearing. The parties examined witnesses and introduced exhibits. They waived oral argument but filed post-hearing briefs.

On April 29, 1992, the Hearing Examiner recommended dismissing the Complaint. H.E. No. 92-29, 18 NJPER ___ (¶_____ 1992). She found that any workload increases were, at most, de minimis, and did not require negotiations.

On May 6, 1992, the Association filed exceptions. It contends that there was a significant increase in workload caused solely by a reorganization. In particular, it contends that supervisors work longer hours to complete their work.

On May 18, 1992, the Board filed a reply and cross-exceptions. It agrees with the Hearing Examiner's conclusions except to the extent she rejected its contractual defense.

We have reviewed the record. The Hearing Examiner's findings of fact (H.E. at 3-8) are accurate. We incorporate them.

Because of budgetary requirements, the Board reduced its staff by seven. To prevent units from being understaffed, it reduced the number of units from 15 to 14 and distributed the

caseload among the remaining units. The Association claims that because of that reorganization, the number of cases that supervisors must handle has increased. It sought mid-contract negotiations over compensation for the alleged increase in workload and the employer refused. This charge ensued.

Compensation is mandatorily negotiable, especially as it relates to hours worked. See Woodstown-Pilesgrove Bd. of Ed. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582, 591 (1980). But not all mid-contract claims for additional compensation after a reduction in force are mandatorily negotiable. In re Maywood Bd. of Ed., 168 N.J. Super. 45 (App. Div. 1979), certif. den. 81 N.J. 292 (1979). In deciding whether a compensation claim is severable from the managerial decision to reduce the size of the workforce; we look for significant, measurable increases in workload, such as an increase in the workday or the loss of duty-free time. See, e.g., Caldwell-West Caldwell Bd. of Ed., P.E.R.C. No. 87-137, 13 NJPER 360 (¶18148 1987), recon. den. P.E.R.C. No. 87-163, 13 NJPER 589 (¶18220 1987); see also Newark Bd. of Ed., P.E.R.C. No. 92-94, 18 NJPER 140 (¶23066 1992). Contrast Rahway Bd. of Ed., P.E.R.C. No. 88-29, 13 NJPER 757 (¶18286 1987).

Here, the parties have prepared for the possibility that employees will have to work beyond the normal work day, by negotiating an overtime provision. Any claim for increased compensation for increased hours must be made pursuant to that provision. Any claim for additional compensation for having to work

harder during the regular work day as a result of the reduction in staff must be raised during successor contract negotiations. See Newark at 142 n. 1. The Board is willing to negotiate over such a claim at that time.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Grandrimo, Regan, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: June 25, 1992
Trenton, New Jersey
ISSUED: June 26, 1992

H.E. NO. 92-29

STATE OF NEW JERSEY
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PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MERCER COUNTY BOARD OF SOCIAL SERVICES,

Respondent,

-and- Docket No. CO-H-90-374

MERCER COUNTY BOARD OF SOCIAL SERVICES
SUPERVISORS ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends that the Commission find that the Mercer County Board of Social Services did not violate the New Jersey Employer-Employee Relations Act when it refused to negotiate over perceived work load increases. The Hearing Examiner found that the work increases were, at most, de minimis, and did not require negotiations.

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.

H.E. NO. 92-29

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Appearances:

For the Respondent, Cohen, Shapiro, Polisher, Shiekman & Cohen, Attorneys (Jeffrey Braff, of counsel)

For the Charging Party, Zazzali, Zazzali, Fagella & Novak, Attorneys (Richard A. Friedman, of counsel)

HEARING EXAMINER'S REPORT AND RECOMMENDED DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on June 26, 1990 by the Mercer County Board of Social Services Supervisors Association ("Association") alleging that the Mercer County Board of Social Services ("Board") 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"). The Association alleged that the Board violated

§§5.4(a)(1) and (5) of the Act by refusing to negotiate over compensation as a result of increased work load.[1/]

A Complaint and Notice of Hearing (Exhibit C-1) was issued on December 11, 1990 and the Board filed an Answer (Exhibit C-2) on December 27, 1990. The Board admitted that the Association asked to negotiate over increased work load but it denied that any increase occurred. The Board asserts that it had no mid-contract duty to negotiate over compensation for the alleged increase. A hearing was held in this matter on January 25, 1991 at which the parties examined witnesses, presented evidence, and argued orally.[2/] Both parties filed post-hearing briefs which were received by April 19, 1991.

Upon the entire record I make the following:

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 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.

2/ At the hearing the charging party moved to strike the Board's Affirmative Defense No. 7. I deny the motion; the Board is entitled to raise any defenses and to try to prove them through testimony, evidence or legal argument. N.J.A.C. 19:14-3.1.

The Transcript will be referred to as "T".

Findings of Fact

1. The Board is a public employer within the meaning of the Act. It employs the Income Maintenance Supervisors ("Supervisors") who are the subject of this charge.

2. The Association is a public employee representative within the meaning of the Act and represents Supervisors employed by the Board. Fourteen Supervisors employed in the Board's Income Maintenance section supervise units of income maintenance workers, income maintenance technicians, specialists, and clerical staff engaged in determining eligibility for public assistance benefits in the form of Aid to Families with Dependent Children ("AFDC"), Food Stamps, medical benefits and energy assistance.

Supervisors review, approve and authorize benefits, interpret regulations and policies, and handle personnel matters such as on the job development (T15-T17). These Supervisors report to William Krisak, Administrative Supervisor of Income Maintenance (T102-T104).

3. The parties' most recent collective negotiations agreement, Exhibit J-1, was effective from July 1, 1988 to December 31, 1990. J-1 contains the following provisions:

> Article 5
> HOURS OF WORK
> The normal work week shall consist of 35 hours per week, 7 hours per day, 5 days per week. The hours of work will be from 8:30 A.M. to 4:30 P.M., Monday through Friday.
>
> Article 18
> OVERTIME
> A. Employees covered by this Agreement will be compensated at the rate of time and one-half for authorized hours accrued in excess of the normal hours

> of the established work week. Hours worked on a holiday shall be compensated at time and one-half in addition to the holiday credit. Overtime will be computed as one and one-half times the regular hourly rate of pay of that employee.
>
> B. The employee may elect to be compensated in compensatory time for overtime hours between 35 and 40 of any work week. Compensatory time will be computed as 1 1/2 hours for each hour of overtime worked. Compensatory time off will be taken at times to be mutually agreeable to the employee and his/her supervisor; however, all compensatory time must be taken by the end of the calendar year in which it is earned. If cannot be mutually scheduled by December 15th, it shall be paid in salary.
>
> Article 31
> FULLY BARGAINED
> The parties agree that they have fully bargained and agreed upon all terms and conditions of employment, and that this Agreement represents and incorporates the complete and final understanding and settlement by the parties of all bargainable issues which were or could have been the subject of negotiations.

J-1 also contains a salary and compensation clause, and four appendices containing salary schedules (J-1, Article 15, pp. 24-28; 51-54). J-1 does not have a clause fixing the numbers of cases, computer documents or pieces of work to be processed by or assigned to Supervisors (T76).

4. Eighteen Supervisors were employed before 1987; six income maintenance units exclusively handled Food Stamp cases, 12 units exclusively handled AFDC cases (T119-T120, T122-T123). From 1987 to 1990, 15 Supervisors handled both types of cases as well as medical and energy assistance cases (T80, T89-T91, T122-T123).

In May 1990 the Board reorganized the income maintenance section by dropping one unit and adjusting the caseloads of other

units (T117-T118, CP-10).[3/] Thereafter, 14 units handled the caseload previously handled by 15 units (T125). Thus, the caseloads of six income maintenance units affected by the reorganization increased after April 1990 (T125, T129-130, CP-1, CP-2, CP-10).[4/]

Cases are assigned to income maintenance units according to case numbers assigned at initial client intake (T19, T117-T118). The May 1990 redistribution was effected by reassigning case numbers (T117-118, CP-10). Supervisors performed the same type of work before and after May 1990 (T95-T96).

5. The Board has only indirect methods of calculating Supervisors' work load (T19, T64-T65, T88-T89, CP-1, CP-2, CP-3 through CP-9, R-1, R-2, R-3). The "Computer Documents Submitted" report is a monthly report of changes and updates to the agency's computer database (T22). This report is a rough measure of Supervisors' case loads; it includes the total number of such changes submitted each month (T22, T24, CP-3 through CP-9).

3/ A memo dated April 11, 1990 from Krisak to all IM Supervisors states:

> Because of budgetary requirements, the IM department is committed to dropping seven staff members. In order to facilitate this, and to prevent units from being understaffed, we are dropping an active unit ("C" section), and will redistribute the case loads of the other units" (CP-10).

The Supervisor in charge of "C" section was reassigned to supervise an administrative function, but was not laid off (CP-10, T101).

4/ Caseload increases do not equate to work load increases; the latter term has a legal definition which includes the concepts of out-of-title work and extended work periods.

However, these statistics do not translate directly to Supervisors' work load; they represent the activities carried out by Supervisors' subordinates and then reviewed and approved by Supervisors (T60-T61, T72).

6. Roseann Loforte, a Supervisor with 14 years experience, records her unit's case reviews, case changes, and investigations conducted each month (T20-T21). Loforte's unit received an additional 155 cases after the redistribution (T54). Although the number of computer documents submitted varies daily and monthly, Loforte's unit submitted an average of 127.1 additional documents per month after the reorganization (T24, T63, CP-1). The six income maintenance units most affected by the reorganization had average increases from 59.8 to 116.5 per month in computer documents submitted during the six months following the reorganization (T93, CP-1). Loforte's unit submitted an average of 116.5 documents per month during the six months after reorganization (T93).

Loforte had to work longer hours to complete the additional work (T96). She worked an additional 15 minutes before the workday and did not take breaks in order to complete the increased case load (T56-57, T83). This additional time was not authorized overtime (T83-T84). On occasion in the period before May 1990 Loforte worked extra hours (T85). Other Supervisors also worked extra hours both before and after the reorganization (T121).

7. An examination of the statistic "Total Cases Submitted By Unit" for B unit over a 22 month period reveals that B unit's cases load fluctuated by as much as 110 cases before May 1990 and by

45 cases per month after May 1990 (CP-3). The range of "Total Cases Submitted" for B unit was 139 cases, from 197 to 336 cases during the above period (CP-3).

8. The number of cases assigned and processed by the units varies from daily, weekly and annually; there is no numerical norm of cases (T58-T59, T63, T72-73, T106-T107, T116). The State Division of Economic Assistance provides a monthly report of case loads (T108-T109, R-1). A compilation of this report shows that the number of cases assigned to the income maintenance units in Mercer County varied over the two-year period from May 1988 to May 1990 by as many as 888 cases (R-1). The number of AFDC cases assigned to Mercer County varied from 4696 to 4917 from July 1988 to July 1990; the number of Food Stamp cases assigned to Mercer County ranged from 2586 to 3038 during the same period, differences of 221 and 452, respectively (T111-T113, T114-T116, R-2, R-3). The variation in case levels is due to economic conditions, actions taken by recipients, and changes in eligibility regulations (T82, T116). The caseload fluctuated both before and after May 1, 1990 (T83). For example, six months prior to the redistribution, Supervisors were handling an average of 479 cases per month. Two months after the reorganization they were handling an average of 492 cases (R-1).

9. The Association made several requests to the Board to negotiate over compensation for the alleged increase in work load and the Board refused some of those requests (C-1, C-2). The Board was willing to negotiate over compensation for work load increases

in connection with negotiations for a successor contract but refused to negotiate over work load increases from April 1990 to December 31, 1990 (C-2).

ANALYSIS

The issue is whether the Board violated the Act when it reduced the number of income maintenence Supervisors and redistributed the work of income maintenance units, without negotiating over compensation for the alleged increased work load of Supervisors. The Association argues that the Board has an obligation to negotiate over the effects of reducing the number of Supervisors. The Board denies that there was an increase in work load and also asserts that it had no obligation to negotiate with the Association over the effects of its reorganization because the parties' agreement contains a fully bargained clause, a management rights clause and a salary compensation clause.[5/] Under the circumstances here, I find that there was no change in terms or conditions of employment giving rise to a negotiations obligation because the alleged work load increase was not proven by a preponderance of the evidence, or was proven to be de minimis. Accordingly, I find that the Board did not violate the Act.

5/ The Board is willing to discuss work load increases in successor contract negotiations. Thus, this dispute is limited to the period from the date the increases are alleged to have occurred to the expiration of the most recent agreement, or from May 1990 to December 31, 1990.

Work Load Increase Issue

A majority representative has the right to negotiate over terms and conditions of employment. The public employer has a corresponding duty to negotiate in good faith over those terms and violates the Act when it unilaterally changes terms or conditions without negotiating or refuses to negotiate over such changes. N.J.S.A. 34:13A-5.3 and 5.4(a)(5).

Terms and conditions of employment have been defined as those matters which intimately and directly affect the work and welfare of public employees. State of New Jersey v. State Supervisory Employees Assn., 78 N.J. 54, 67 (1978) Employee work load has been found to be a term and condition of employment. Red Bank Bd.Ed. v. Warrington, 138 N.J. Super. 564, 574 (App. Div. 1976) and In re Byram Twp. Bd.Ed., 152 N.J. Super. 12, 26 (App. Div. 1977). Where a public employer unilaterally alters a term and condition of employment such as work load, it constructively refuses to negotiate and thereby violates the Act. Galloway Twp. Bd. of Ed. v. Galloway Twp. Ed. Assn., 78 N.J. 25, 48 (1978).

Work load increases are mandatorily negotiable in limited circumstances. When the issue arises in a public school context, where teachers' work is compartmentalized into pupil-contact time

and duty-free/preparation time, increases in pupil-contact time are considered work load increases and are mandatorily negotiable.[6/]

If the increase is the result of a reduction in force ("RIF"), work load is not mandatorily negotiable. See, In Re Maywood Bd. of Ed., 168 N.J. Super. 45, (App. Div. 1979), certif. den. 81 N.J. 292 (1979) Similarly, where the increase is the result of a reorganization, or a decision not to fill vacancies arising from resignation or retirement, and there is no evidence of longer work day or hours, loss of break time, or the performance of work of a higher level, the Commission has found resulting work increases not negotiable. See, e.g., Newark Bd. of Ed. P.E.R.C. No. 92-94, 18 NJPER 140 (¶23066 1992)(arbitration restrained, where, following retirement of one cafeteria manager, Board required remaining managers to supervise an additional school); Caldwell-West Caldwell Bd. of Ed., P.E.R.C. No. 87-137, 13 NJPER 360 (¶18148 1987), recon. den. P.E.R.C. No. 87-163, 13 NJPER 589 (¶18220 1987)("Caldwell-West Caldwell Bd. of Ed.")(arbitration restrained where Board reduced staff of social workers, increased caseload and number of schools assigned to grievant); and Old Bridge Bd. of Ed., P.E.R.C. No. 86-113, 12 NJPER 360 (¶17136 1986), aff'd App. Div. Dkt. No.

6/ See, Red Bank; In re Byram Twp. Bd.Ed.; City of Bayonne Bd.Ed., P.E.R.C. No. 80-58, 5 NJPER 499 (¶10255 1979), aff'd App. Div. Dkt. No. A-954-79 (1980), pet. for certif. den. 87 N.J. 310 (1981); Newark Bd.Ed., P.E.R.C. No. 79-38, 5 NJPER 41 (¶10026 1979), aff'd App. Div. Dkt. No. A-2060-78 (2/20/80); Dover Bd.Ed., P.E.R.C. No. 81-110, 7 NJPER 161 (¶12071 1981), aff'd App. Div. Dkt. No. A-3380-80T2 (3/16/82).

A-4429-85T6 (3/25/87), cert. den. 108 N.J. 665 (1987)(arbitration restrained over school board's decisions not to fill position of secretary who had resigned and to redistribute that secretary's work among remaining secretaries)

The Association based its case on the allegation that the reorganization resulted in a caseload increase for six income maintenance units which automatically increased the work of their Supervisors. It also argued that at least one Supervisor worked longer hours to complete her work. I find, however, that the record does not support the contention that the reorganization dramatically increased the income maintenance units' caseloads or extended the workday of these Supervisors. Fluctuations in both total cases and in individual units' experience are a pattern. The record shows that the parties do not perceive that there is a norm of cases assigned to Supervisors. Six months prior to the redistribution, Supervisors were already handling an average of 479 cases per month. Two months after the reorganization they were handling an average of 492 cases. The fluctuations in case loads due to the redistribution of "C" units' cases is no more dramatic than fluctuations caused by changes in the economy, regulatory changes, or status changes brought about by recipients' own actions. "B" unit's caseload fluctuated by as much as 110 cases per month in the period before the reorganization.

Further, there is no evidence that Supervisors were required to work longer hours. The Association's evidence was insufficient

to prove that most Supervisors' workdays were extended because of the effects of the redistribution of one units' cases. Furthermore, there was unrebutted testimony that at least, occasionally, Supervisors worked additional time both before and after the reorganization.

Finally, there is no evidence that these Supervisors were required to perform work at a higher level or out of their job classification. Such a finding could be the basis for concluding that work load had increased. See, e.g., Borough of Rutherford, P.E.R.C. No. 92-80, 18 NJPER 94 (¶23042 1992)

Accordingly, I conclude that the reorganization's effect on Supervisors' work load was de minimis at most. In Caldwell-West Caldwell Bd.Ed. the Appellate Division held:

> The Board must have some flexibility in making managerial decisions. The concept of preexisting practices should not be so rigidly adhered to as to require negotiation of every minute deviation. . . Without some measure of flexibility constant battles would be waged over every change in format....180 N.J. Super. 447-448.

These principles apply here. Any work load increase resulting from the reorganization was minor. Even the relatively small increase in caseload evidenced by the rise in the number of computer documents is probably not permanent. Given the nature of the Board's mission, it is predictable that the employees' work level could rise one month and fall the following month based upon the number of applicants for income maintenance assistance. Certainly the Court's admonition that "pre-existing practices should

not be so rigidly adhered to as to require negotiation of every minute deviation" applies here to the extent that the Association must recognize that there will always be fluctuations in the caseload which do not reasonably justify negotiations. Therefore, the 5.4(a)(5) and derivative (a)(1) allegations should be dismissed.7/

Conclusions of Law

The Board did not violate §§5.4(a)(1) or (5) of the Act by failing to negotiate over compensation for work level increases. 8/

7/ Accord, Middlesex County Board of Social Services, P.E.R.C. No. 87-41, 12 NJPER 804 (¶17307 1986); Fair Lawn Bd. of Ed., P.E.R.C. No. 87-135, 13 NJPER 356 (¶18146 1987)

The Board raised as a defense that the parties' agreement, J-1, permitted it to make any unilateral work load changes without negotiating. The Board's reliance on the fully bargained article is without merit. For a fully bargained article to operate as a waiver of a negotiable right, it must be clear from the wording of the clause that it covers that right. See, Deptford Bd. of Ed., P.E.R.C. No. 81-78, 7 NJPER 35 (¶12015 1980)

8/ The Board should not interpret this decision to mean that it can avoid or refuse to negotiate over compensation for increases in work load--when such changes can be proven. The Board risked violating the Act when it refused to negotiate because if it had unilaterally increased work load significantly, absent a RIF, it would have violated the Act. The Board could have avoided a hearing by giving the Supervisors' Association the opportunity to make known its demands, and then rejecting those demands on the basis that it did not increase work load. The Commission generally favors the voluntary resolution of disputes, and this dispute could have been resolved through less formal, and less expensive alternatives.

Recommended Order

Based upon the above findings and analysis I recommend that the Commission ORDER that the Complaint be dismissed.

Elizabeth J. McGoldrick
Hearing Examiner

Dated: April 29, 1992
Trenton, New Jersey