P.E.R.C. NO. 83-41

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RANDOLPH TOWNSHIP BOARD
OF EDUCATION,

Respondent,

-and- Docket No. CO-82-101-98

RANDOLPH EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge that the Randolph Education Association had filed against the Randolph Township Board of Education. The charge had alleged that the Board violated the New Jersey Employer-Employee Relations Act and its agreement with the Association when it unilaterally reduced the preparation time of third grade teachers from 200 to 150 minutes per week. The Commission, adopting a Hearing Examiner's findings of fact and conclusions of law, finds that the collective agreement authorized the change the Board made.

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Appearances:

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

For the Charging Party, John W. Davis, UniServ
Representative, New Jersey Education Association

DECISION AND ORDER

On November 6, 1981, the Randolph Education Association ("Association") filed an unfair practice charge against the Randolph Township Board of Education ("Board"). The Association alleged that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), specifically subsections 5.4(a)(1),(3), and (5),[1/] when, during the 1981-82 school year and the term of the current collective negotiations

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; (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."

agreement, the Board unilaterally reduced the preparation time of third grade teachers from 200 to 150 minutes per week.

On April 7, 1982, the Director of Unfair Practices issued a Complaint and Notice of Hearing. On May 10, 1982, the Board filed an Answer in which it asserted, inter alia, that the parties' contract authorized this change.

On May 10, 1982, Commission Hearing Examiner Charles A. Tadduni conducted a hearing at which the parties examined witnesses, presented evidence, and argued orally. The parties filed post-hearing briefs by June 21, 1982.

On July 30, 1982, the Hearing Examiner issued his report and recommendations, H.E. No. 83-3, 8 NJPER ___ (¶_____ 1982) (copy attached). He found that the Board did not violate the Act since the parties' collective agreement permitted the Board to reduce the preparation time of the affected teachers under the circumstances of this case.

On August 20, 1982, the Association filed Exceptions.[2/] It primarily asserts that the Hearing Examiner erred in not finding that the Board violated its contractual obligation to continue existing employee benefits when it reduced preparation time. It also argues that the Hearing Examiner erred in considering other contractual provisions concerning length of work day,

2/ The Association also requested oral argument. Because we find the parties' written arguments sufficient to decide this case, we deny this request.

weekly teaching load, number of preparation periods, number of consecutive teaching hours, and duty-free lunch period, and in finding that these provisions, read together, authorized the decrease in preparation time. On August 30, 1982, the Board filed a brief supporting the Hearing Examiner's report.

We have reviewed the record. The Hearing Examiner's findings of fact (Slip Opinion at pp. 3-6) are supported by substantial evidence. We adopt and incorporate them here.[3/] We also agree with the Hearing Examiner that the Board did not violate subsections 5.4(a)(1),(3), and (5) of the Act when, as a result of a change in student class schedules, it unilaterally decreased the weekly preparation time of third grade teachers by 50 minutes and correspondingly increased the student contact time of such teachers by 50 minutes.

We specifically reject the Association's contention that the Hearing Examiner erred in considering other contractual provisions besides the maintenance of benefits clause. Contractual clauses cannot be read in a vacuum. In cases involving allegations of a decrease in preparation time, we have repeatedly

3/ The Association asserts that the Hearing Examiner misconstrued its proposal concerning preparation time during the 1981-82 and 1982-83 contract negotiations. The Association specifically contends that it sought an increase in preparation time to 250 minutes per teacher per week, not merely, as found by the Hearing Examiner, a contractual specification of the total weekly preparation time for elementary teachers. We believe the Hearing Examiner's interpretation of the clause to be reasonable.

held that it may be necessary to read the contract as a whole and that contractual provisions setting, for example, the length of the work day, the number and length of teaching periods, and the number of preparation and other duty-free periods are relevant and may, when read together, authorize the decrease. See, e.g., In re Bound Brook Bd. of Ed., P.E.R.C. No. 83-11, 8 NJPER 439 (¶13207 1982); In re Randolph Twp. School Bd. of Ed., P.E.R.C. No. 81-73, 7 NJPER 23 (¶12009 1980); In re Pascack Valley Reg'l High School, P.E.R.C. No. 81-61, 6 NJPER 554 (¶11280 1980). See also, In re Maywood Bd. of Ed., 168 N.J. Super. 45, 59-60 (1979); cf. In re Freehold Borough Bd. of Ed., P.E.R.C. No. 83-38, 7 NJPER 604 (¶13369 1981).

We also accept the Hearing Examiner's contractual and legal analysis (Slip Opinion at pp. 6-11) and incorporate his discussion. This discussion parallels the analysis in another case between these same parties, Randolph Twp. Bd. of Ed., supra at p. 24.[4/] We specifically hold that this particular contract authorized this particular change. Accordingly, we dismiss the Complaint.

4/ The Association contends that the previous Randolph case and the instant case are not similar. We disagree. There, the Board required a teacher to give speech therapy lessons from 3:00 p.m. to 3:30 p.m. twice a week while the school day for the other teachers ended at 3:15 p.m. The contract stated that the work day would not exceed 7 1/2 hours and the teaching load would not exceed 28 hours a week or six periods a day. We rejected the Association's reliance on a claimed past practice of working less than 7 1/2 hour days and 28 hours per week and held that the contract expressly authorized the increase in working time.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Hartnett and Suskin voted in favor of this decision. Commissioners Hipp and Newbaker abstained. Commissioner Graves was not present.

DATED: Trenton, New Jersey
October 7, 1982
ISSUED: October 8, 1982

H. E. No. 83-3

STATE OF NEW JERSEY
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PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

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-and-

Docket No. CO-82-101-98

RANDOLPH EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Commission find that the Randolph Township Board of Education did not violate subsections 5.4(a)(1), (3) and (5) of the New Jersey Employer-Employee Relations Act when it decreased the weekly preparation time of teachers by 50 minutes per week. Although the Board's actions herein affected terms and conditions of employment of unit employees -- preparation time -- the changes made by the Board were specifically within the scope of the applicable contractual provisions agreed upon by the parties.

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

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Appearances:

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(Robert M. Tosti, Esq.)

For the Charging Party
John W. Davis, UniServ Representative
New Jersey Education Association

HEARING EXAMINER'S RECOMMENDED REPORT AND DECISION

An Unfair Practice Charge (the "Charge") was filed with the Public Employment Relations Commission (the "Commission") on November 6, 1981, by the Randolph Education Association (the "Charging Party") alleging that the Respondent, the Randolph Township Board of Education (the "Respondent"), 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. (the "Act"). It is alleged in the Charge that by altering the student class schedule, the Board caused certain teachers to lose some preparation time which they had formerly enjoyed. The Charging Party contends that

this conduct by the Respondent is violative of N.J.S.A. 34:13A-5.4 (a)(1), (3) and (5). 1/

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 May 10, 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 June 21, 1982.

Positions of the Parties

In its Unfair Practice Charge, the Association has alleged that the Board and the Association are parties to a contract covering the period from July,1981 to June, 1983; that said contract includes a maintenance of benefits clause; that in the past, elementary school teachers have enjoyed preparation time which derived, in part, from their pupils' attendance of physical education classes for two 50-minute periods per week; that during the 1981-82 school year, the preparation time of third grade elementary teachers was reduced by 50 minutes per week (from a total of 200 minutes to 150 minutes per week); that during the negotiations, the Board did not raise

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; (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."

the issue of preparation time; that any changes made in Article 7 ("Working Hours") dealt with the limitation on consecutive teaching time and the distribution of preparation periods over the work week; and that the contractual maintenance of benefits clause entitles unit members to continue to enjoy the same total aggregate number of minutes of preparation time per week (200 minutes per week) as they had enjoyed prior to the September 1981 change in the amount of preparation time given to third grade teachers.

In its answer, although acknowledging the existence of the maintenance of benefits clause, the Board argues against its applicability to these circumstances. The Board argues that all elements of the allegations herein are covered by specific contractual provisions and further maintains that its actions have not been violative of any contractual provision. The Board notes that the circumstances giving rise to this dispute were occasioned by certain work assignment changes. It is contended that all of the changes in assigned work fall within the scope of the contract.

Findings of Fact

Based upon the entire record in this proceeding, the Hearing Examiner finds:

1) The Randolph Township Board of Education is a public employer within the meaning of the Act, is subject to its provisions and is the employer of the employees with which this matter is concerned.

2) The Randolph Education Association is an employee organization within the meaning of the Act and is subject to its provisions. The Association is the statutory majority representative of a collective negotiations unit comprised of employees of the Randolph Township Board of Education in the following titles: Teachers, Learning Consultants, Librarians, Guidance Counsellors, Home-School Adjustment Counsellor, Transportation Coordinator, Nurses, Athletic Director, Secretaries, Custodians, Matrons, Maintenance Personnel, Coaches, Holders of Co-curricular Contracts, and Cafeteria Workers.

3) During the 1980-81 school year, third grade elementary school teachers in each of the district's four elementary schools (Shongun, Irania, Fernbrook and Center Grove) had 200 minutes of preparation time per week. Said preparation time was not always evenly distributed, and sometimes an elementary school teacher would find that his/her schedule contained no preparation periods on one day and two preparation periods on another day. The hours of work during the 1980-81 school year were from 8 a.m. to 3:30 p.m. (7-1/2 hours). Further, each teacher had a daily, duty-free lunch period.

During the negotiations for the 1981-82 and 1982-83 contract, the Association sought to and did achieve a more even distribution of preparation periods over the course of elementary teachers' weekly work schedules than had been the case in previous years. In these negotiations, the Charging Party also sought to

secure a specification of the total amount of weekly preparation time to be given to elementary teachers. However, this goal was not achieved. 2/

When the third grade teachers reported for work on September 14, 1981, they discovered that their weekly schedules contained only 150 minutes of preparation time, with at least one preparation period occurring on each day of the work week for each teacher. This was a decrease of 50 minutes of preparation time per week to each third grade elementary school teacher from that which they had enjoyed in the 1980-81 school year. Also, each third grade teacher was assigned 50 minutes of additional student contact time. The additional contact time corresponded to the lost preparation time.

The Agreement between the parties covering the period from July 1, 1981 to June 30, 1983 (Exhibit J-1) provides that the teachers' work day shall be no longer than 7-1/2 hours, exclusive of certain conference and meeting obligations (Article VII(B)); that the weekly teaching load shall not exceed 28 hours (Article VII (C)(2)); that in general, elementary teachers shall not be required to teach continuously for longer than three hours (Article VII(C)(4)); that each elementary teacher shall have one preparation period per day, five days per week (Article VII(C)(4)); and that teachers shall have a daily duty-free lunch period (Article VII(D)).

Although student contact time (teaching load) was increased, the Charging Party has not complained about such increases.

2/ See Exhibits P2 and J1.

Nor has the Charging Party alleged that the Respondent's conduct violated any provision of the contract concerning length of work day, weekly teaching load, duty-free lunch period, consecutive teaching time or the article which states that teachers shall have one preparation period per day, five days per week. 3/

The focus of Charging Party's case is upon the loss of preparation time: Charging Party contends that pursuant to the past benefits clause in the contract (Article XXXIII(C)), unit members are entitled to enjoy the same amount of preparation time for school year 1981-82 as was given to them during school year 1980-81.

Discussion and Analysis of Law

In In re New Brunswick Bd/Ed, P.E.R.C. No. 78-47, 4 NJPER 84 (¶4040 1977) mot. for reconsid. den., 4 NJPER 56 (¶4073 1978), the Commission recognized that terms and conditions of employment may arise from sources other than the parties' collective negotiations agreement, such as a past practice. Further, the Commission indicated its approval of the principle that where there is clear and unambiguous contract language granting a benefit to employees, but through past practice the employer has granted a more generous benefit, the contract provision takes precedence over the past

3/ During the 1980-81 school year, elementary school teachers had (and still had during the 1981-82 school year) unassigned time (i.e. time which is uncommitted or free of specific duties) at the end of each school day amounting to a total of 200 minutes per week. Some of this time is utilized for faculty meetings, parent conferences, student conferences or the like; however, the record indicates that not all of this time is taken up by such ancillary teaching responsibilities. Some of it is never committed to such duties and thus teachers are free to utilize such residual time as additional preparation time where they choose to do so. Tr. 16, 21, 23-27.

practice. 4/ In a case involving the same parties and a substantially similar issue as is presented in the instant matter, In re Randolph Twp Bd/Ed, P.E.R.C. No. 81-73, 7 NJPER 23 (¶12009 1980), the Association contended that the Board had violated the Act when it unilaterally increased the teaching time of a teacher. While admitting that it made the changes in teaching time as alleged, the Board argued that it had the right to make such changes under the parties' collective negotiations agreement. The Association countered by asserting that there was a past practice of working less than the period of time which the aggrieved teacher was then being required to work and that such past practice controls over the terms of the agreement. The Commission categorically rejected that theory and stated:

> It is not necessary to address any past practice of working less than that period of time required of Ms. Lisa by the Board since the provisions of the collective agreement controls over past practices where, as here, the mutual intent of the parties concerning work hours "can be discerned with no other guide than a simple reading of the pertinent language." (citations omitted) 5/

In the Randolph matter, the Commission cited In re Maywood Bd/Ed, 168 N.J.Super. 45 (App. Div. 1979):

> ...[a] change in terms and conditions of employment is lawful when consistent with past practices or authorized by a collective bargaining agreement....168 N.J.Super. at 59-60. (emphasis added). 6/

4/ In re New Brunswick Bd/Ed, P.E.R.C. No. 78-47, 4 NJPER 84 (¶4040 1977), pp. 4-5 and 8-9.

5/ In re Randolph Twp. Bd/Ed, P.E.R.C. No. 81-73, at 5, 7 NJPER 23 (¶12009 1980).

6/ Id., at 4.

In Randolph, the Commission determined that the Board's action in changing a term and condition of employment was permissible under the parties' collective negotiations agreement and therefore concluded that such action was not a violation of the Act. 7/

In the instant matter, the Board made a decision to decrease student gym class time (by 50 minutes per week) and to increase students' class time in traditional (or academic) subject areas (by 50 minutes per week). Essentially, this was a decision to restructure the students' curriculum -- a managerial decision and an issue not contested by the Charging Party. The net effect of this decision on third grade teachers was to decrease their preparation time by 50 minutes per week and to increase their student contact (or teaching) time by 50 minutes per week.

The parties' contract calls for no more than 28 teaching hours per week for elementary school teachers. During 1980-81, elementary school teachers taught less than the 28-hour limit; after the above-indicated schedule change was implemented by the Board, elementary school teachers continued to teach less than the 28-hour contractual limit. Accordingly, the Board's reallocation of the teaching load of third grade teachers was permissible within the framework of the extant contractual teaching load provision.

The 1981-83 contract provides that the workday for elementary school teachers shall not exceed 7-1/2 hours per day.

7/ Accord, In re Pascak Valley Reg. H. S. Dist. Bd/Ed, P.E.R.C. No. 81-61, 6 NJPER 554 (¶11281 1980).

During the 1980-81 school year, the workday for elementary school teachers did not exceed 7-1/2 hours per day. Since the Board implemented its decision concerning the third grade curriculum at the start of the 1981-82 school year, the elementary teachers' workday has remained unchanged -- the elementary school teachers' workday has not exceeded 7-1/2 hours per day.

The contract also calls for one preparation period per day, five days per week, for each elementary school teacher. Further, the contract limits continuous teaching time to no more than three hours under normal circumstances. There is also a requirement for a duty-free lunch period in the contract. None of these provisions are alleged to have been violated, and in fact none have been violated by the Board herein. To summarize: after the Board implemented its curriculum decision at the start of the 1981-82 school year, preparation time of third grade teachers was decreased by 50 minutes per week. However, the Board continued to provide one preparation period per day for the third grade teachers, a duty-free lunch period and did not exceed the 3-hour limitation on continuous teaching. The elementary teachers' workday has not exceeded 7-1/2 hours per day. The contract requires nothing further with specific regard to preparation time. The contract does not specify the total amount of preparation time to which teachers are entitled. Rather, the contract article concerning work hours is drawn in terms of (1) total permissible hours of each workday (2) total teaching hours per week (3) a limitation on consecutive hours of teaching (4) the requirement of one preparation

period -- of unspecified length -- per day for five days per week and (5) a requirement for a duty-free lunch period. The Board's decision to reallocate third grade class time --a managerial prerogative -- and its implementation thereof did not violate any of the foregoing contractual provisions.

The Association's argument would forever preclude the Board from assigning work to teachers up to the contractually agreed upon teaching load limitations. For example, if in 1980-81 elementary teachers had been given a schedule as follows: 20 hours teaching, three assigned duty hours, three hours for lunch and one preparation period of unspecified length per day, over the course of a maximum 37-1/2 hour work week -- by following the Association's argument, the Board could never assign additional teaching time to the elementary teachers to bring them up to the 28-hour per week teaching load limit set forth in the contract without violating either the preparation time past practice or a provision of the contract. This result is contrary to that envisioned by the court in Maywood and the Commission in Pascak Valley and Randolph, supra.

The legal theory advanced by the Association in this matter would permit an express term of the contract to be negated through the assertion of a past practice. This is contrary to the principle established by the Commission and the courts of this state. Where there is clear contract language to indicate the intent of the parties, a past practice may not be asserted to negate the applicable contract language. 8/

8/ See In re New Brunswick Bd/Ed, supra, n. 3 and In re Maywood Bd/Ed, supra, p. 7.

Accordingly, the undersigned concludes that the Board's restructuring of the third grade curriculum, which resulted in third grade teachers receiving a 50-minute decrease in preparation time per week and a 50-minute increase in teaching load (or contact time) per week, was permissible within the terms of the contract. Although the Board's actions affected terms and conditions of employment of unit employees -- teaching load and preparation time -- the changes made by the Board were clearly within the scope of the applicable contractual provisions agreed upon by the parties. In the instant circumstances, the Association's past practice argument is misplaced. Inasmuch as the Board did not violate any contractual provision, there was no violation of the Act herein.

Conclusions of law

Based upon the entire record in this matter and the analysis and conclusions set forth above, the Hearing Examiner concludes that the Association has failed to prove by a preponderance of the evidence that the Board has violated subsection 5.4(a)(5) of the Act. Further, the Charging Party failed to adduce any evidence of the Respondent having violated subsections 5.4(a)(1) or (a)(3) of the Act.

Recommended Order

For the reasons above set forth, the Hearing Examiner recommends that the Complaint in this matter be dismissed in its entirety.

Charles A. Tadduni

Dated: July 30, 1982
Trenton, NJ

Charles A. Tadduni
Hearing Examiner