

P.E.R.C. NO. 83-105

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SAYREVILLE BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-81-15-99

SAYREVILLE EDUCATION SECRETARIAL
ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission holds that the Sayreville Board of Education violated the New Jersey Employer-Employee Relations Act, specifically subsections N.J.S.A. 34:13A-5.4(a)(1) and (5), when it unilaterally changed two vacant guidance department secretarial positions from 12 month to 10 month positions and proportionately reduced the salaries for these positions.

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Respondent,

-and-

Docket No. CO-81-15-99

SAYREVILLE EDUCATION SECRETARIAL
ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Boehm and Campbell, Esqs.
(Casper P. Boehm, Jr., of Counsel)

For the Charging Party, Rothbard, Harris & Oxfeld,
Esqs. (Nancy Iris Oxfeld, of Counsel)

DECISION AND ORDER

On July 16, 1980, the Sayreville Education Secretarial Association ("Association") filed an unfair practice charge against the Sayreville Board of Education ("Board") with the Public Employment Relations Commission. The charge alleged that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically subsections 5.4(a)(1) and (5),^{1/} when it unilaterally changed two vacant guidance department secretarial positions from 12 month to 10 month positions and proportionately reduced the salaries for

^{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."

these positions. The charge also alleged that the number of steps on the salary guide for one of these positions was reduced.

On July 21, 1980, the Board filed a response. It admitted that it made the changes in question, but asserted that the changes constituted a non-negotiable reduction in force.

On September 10, 1980, the Association filed an amended charge. It added allegations that the duties of the twelve month secretaries and the new ten month secretaries were identical.

On November 13, 1980, the Director of Unfair Practices refused to issue a Complaint. D.R. No. 81-9, 6 NJPER 607 (¶11301 1980). He reasoned that the Board had no obligation to negotiate since its decision to reduce the twelve month positions to ten month positions corresponded with existing vacancies due to a resignation and a retirement. See Ramapo-Indian Hills Ed. Ass'n v. Ramapo-Indian Hills Bd. of Ed., 176 N.J. Super 35 (App. Div. 1980) ("Ramapo-Indian Hills"); contrast Piscataway Tp. Bd. of Ed. v. Piscataway Tp. Principals A'ssn, 164 N.J. Super. 98 (App. Div. 1978) ("Piscataway").

The Association appealed. On January 21, 1981, the Commission instructed the Director of Unfair Practices to issue a Complaint pursuant to N.J.A.C. 19:14-2.1. This rule provides, in part, that a Complaint shall issue if the allegations of the charge, if true, may constitute an unfair practice. P.E.R.C. No. 81-93, 7 NJPER 104 (¶12043 1981). The Commission stated that without a hearing it could not determine the applicability of Ramapo-Indian Hills and Piscataway.

On February 11, 1981, the Director issued a Complaint and Notice of Hearing. The Board filed an Answer reiterating its previous position.

On September 24, 1981, Commission Hearing Examiner Edmund G. Gerber conducted a hearing at which the parties examined witnesses, presented evidence, and argued orally. The parties also filed post-hearing briefs by February 18, 1982.

On June 23, 1982, the Hearing Examiner issued his report. H.E. No. 82-64, 8 NJPER 419 (¶13192 1982) (copy attached). He concluded that the Board violated subsections 5.4(a)(1) and (5) when it unilaterally changed two secretarial positions from 12 month to 10 month positions, reduced the salaries proportionately, and reduced the number of steps on the salary guide for one of these positions. He recommended that the Commission order the Board to: (1) cease and desist from changing the length of the work year unilaterally and refusing to negotiate with the Association concerning such changes; (2) pay the two current secretaries the salaries they would have earned had their positions not been changed from 12 to 10 month positions; and (3) post notices of the violations and required remedial measures.

On July 12, 1982, the Board filed 11 Exceptions and a supporting brief.^{2/} On July 21, 1982, the Association filed a

^{2/} The Exceptions follow:

1. The Hearing Examiner improperly concluded that the role of guidance counselor secretary is required to be either a Class A twelve month position or Class B twelve month position in that he improperly failed to rely on the provisions of the Collective Bargaining Agreement, Joint Exhibit 1 in evidence.

(continued)

response seeking adoption of the Hearing Examiner's report.

The Board also requested oral argument. We granted this request and heard oral argument on January 19, 1983.

We have reviewed the record. We will set forth the pertinent facts developed at the hearing as a background to our analysis of the legal questions presented.

The Association represents a unit of essentially clerical personnel employed by the Board. The Association and

2/ (continued)

2. The Collective Bargaining Agreement, Joint Exhibit 1 in evidence does not require that any position be maintained or continued.

3. The Hearing Examiner failed to give proper weight to N.J.S.A. 18A:28-9 giving the authority to the public employer to make a reduction in force.

4. The Hearing Examiner improperly failed to recognize that the Board of Education could abolish the position of guidance counselor secretary completely.

5. The Hearing Examiner placed improper reliance on the Piscataway, Hackettstown, New Brunswick and Essex County Vocational Schools decisions in that said decisions are not applicable to the facts of the within matter....

6. The decision in Galloway Township Board of Education and Galloway Township Association of Educational Secretaries is not applicable and was improperly applied by the Hearing Examiner....

7. The decision in Deptford Board of Education is also not applicable....

8. The Hearing Examiner failed to give proper weight to the evidence presented by the Board of Education with regard to the educational purposes and managerial prerogatives set forth in the testimony of Dr. Marie Parnell and failed to properly weigh and balance the testimony as required by the decision of the New Jersey Supreme Court in the matter of Woodstown-Pilesgrove....

9. The remedy of the Hearing Examiner with regard to making the two employees whole is inappropriate based upon the evidence presented.

10. Exception is taken to the wording of the posting based upon the above exceptions.

11. Any position should be limited to areas where notices to secretaries of guidance counselors are posted.

the Board entered two collective negotiations agreements effective, respectively, from July 1, 1978 - June 30, 1979 and from July 1, 1980 - June 30, 1982. The agreements are identical with the exception of higher salaries in the latter agreement.

The agreements contain salary guides which list specific salaries for the positions of "A" Clerk 12 month, "A" Clerk 10 month, and "B" Clerk 12 month. The salaries for the "A" Clerk 12 month and "B" Clerk 12 month are identical except that the "B" Clerk 12 position has nine steps on the guide rather than eight and thus culminates in a higher salary, by about \$700, than the "A" Clerk 12 month position. The salary for the "A" Clerk 10 month position is substantially lower (from \$1300 to \$1750) per year than the salaries at each of the eight steps for the "A" Clerk 12 month and "B" Clerk 12 month positions. There is no ninth step on the guide for the "A" Clerk 10 month position.

The agreements also contain salary guides which list salaries, in five steps, for the positions of financial bookkeeper, paymaster, high school secretary, junior high school secretary, and timekeeper as well as a salary, in eight steps, for the position of "A" Clerk (Elem) 10 month. The contracts also contain the following relevant provisions:

Article II C. Protection of Conditions -

The Board agrees that all conditions of employment relating to wages, hours of work, overtime differentials and general working conditions, which are properly the subject of negotiations, shall be

maintained at not less than the standards in effect at the time of the signing of this Agreement, except wherever specific provisions for changes are made elsewhere in this Agreement. It is agreed that provisions of this section shall not apply to inadvertent or bona fide errors made by the Board or Association in applying the terms and conditions of this Agreement if such error is corrected within ninety (90) days from the date of error.

This provision does not give the Board the right to impose or continue wages, hours and working conditions less than [those] contained in this Agreement.

Article XII - Vacations

A. Twelve (12) month employees only will be entitled to vacation with pay in accordance with the following schedule:

[each employee receives one to six weeks vacation depending on the number of years employed]

* * *

D. Senior employees shall be given preference in the selection of vacation period. Vacations shall be scheduled July 1st through June 30th provided operation permits.

For 22 years prior to April 1980, Roseann Hartman was the secretary for guidance counselors in the Sayreville high school. She occupied the position of a 12 month "B" Clerk. In early April she resigned. On April 14, the Board posted a notice of an immediate opening for a ten month "A" Clerk position in the high school guidance counselors' office. On April 21, the Board posted a corrected notice, deleting a reference in the previous notice to certain work to be performed in August. An applicant from outside the district received this position.

For 15 years prior to August, 1980, Marie Toth was the secretary for guidance counselors in the Sayreville Junior High School. She occupied the position of a 12 month "A" clerk. On June 26, after Toth had announced her impending retirement, the Board posted a notice of an opening for a 10 month "A" clerk in the Junior High School guidance counselors' office. An employee who had held a 12 month position in the high school bid for and received this position.

The Association's president immediately objected to the posting because of the Board's unilateral reduction in the employees' work year. The Board, claiming a managerial prerogative to make such reductions, refused to negotiate.

Dr. Parnell, the assistant superintendent of schools and also the high school principal for the 11 years before July, 1981, explained her reasons for reducing the work year of the high school guidance counselors' secretary:

We have no counselors in the high school who work in the summer. And there was a tendency for Mrs. Hartman to take her vacation during the school-year or the bulk of it at least, during the school year. She did that at one time when one major clerical function, the preparation of a high school course of study book had to be done and it created a very serious problem. The secretary's contract allows the secretaries to take their vacation when they choose, so there was no way of limiting her on her ability to take her vacation during the school-year. It presented quite a problem, because we had a secretary in an office that had no counselors for two months and did not have a secretary in an office for about a month when there were five counselors present. It did not seem that we would do anything to Mrs. Hartman and nothing would have been done to her or her position had she chosen to remain. However, since she was now voluntarily [retiring], it seemed that the school had to come to terms with what

had become a very real problem and the only remedy to the situation seemed to be to employ a ten-month clerical position, so that the person would be present at all times that that office functioned and worked since that was, clearly, a ten-month office, [3] so that was why the posting and the job was reassigned to ten months with the full understanding that one can only complete the work that one can do in a given length of time.

Dr. Parnell also testified:

Well, to me it was extremely important to have secretarial help present in an office when that office was a functioning office with counselors employed and students seeking help. To have a secretary present for an empty office, and I might add, the office was so empty that during the summer Mrs. Hartman's desk was moved in to my office, and the high school office, and her work was done there and she very often, because there wasn't a sufficient workload assisted with the high school office work, so this was why the recommendation was made. It seemed a very logical time to make a recommendation around a situation that had become, at best, a little bit ludicrous and it was done also with the intent of not harming any particular individual.[4]

Dr. Parnell never considered the reduction in salary guide steps which accompanied the change of the high school secretarial position from a "B" position (9 steps) to an "A" position (8 steps).

Dr. Parnell also described a drop in student enrollment. In 1969, the high school enrollment totalled 1950 students; now

[3]Dr. Parnell testified, however, that the Supervisor of Guidance, who oversees both the junior high school and senior high school guidance departments, has worked a 12 month year since 1981. The Association president testified that some guidance counselors worked during the summer of 1981.

[4]Dr. Parnell admitted that she was not familiar with junior high school guidance department operations and thus her testimony contains no concrete examples of any difficulties connected with having a 12 month position for the guidance counselors' secretary in that school.

it equals approximately 1500. In 1973, the junior high school enrollment totalled 1725 students; now it is between 1100 and 1200 students. Dr. Parnell insisted, however, that it would not be fair to say there was insufficient work for the guidance counselor secretaries to do. Dr. Parnell observed that while the amount of processing of folders, for example, had declined, the nature of the work had become more sophisticated.

Dr. Parnell described the operation of the high school as a "total thing" which required all employees to work in the interest of the student. Thus, the operation of the high school could not be segmented according to this person's work or that person's work.

Dr. Parnell testified that there was an "overabundance" of clerical work during the summer. Thus, the guidance counselor secretaries would help out with general clerical work if there was insufficient guidance counselor secretarial work. Student employees and CETA employees also helped perform this clerical work.

Before 1980, the high school guidance counselor secretary, in addition to assisting with the general operation of Dr. Parnell's office, performed the following guidance-related functions: typing follow-up cards and class rank lists, preparing folders, and handling transcript requests. The new high school guidance counselor secretary now does the follow-up

cards in June and the folders at some unspecified time.^{5/} Other high school secretaries now type the class rank lists and handle any urgent transcript requests; non-urgent requests are deferred until September.

Dr. Parnell could not testify concerning what functions the junior high school guidance secretary previously performed in the summer and how that work was subsequently distributed. The Association's president testified that the 8th grade ranking cards, which had previously been done during the summer and were now supposed to be done in June, were not done until September, 1981 and that the new secretary had to receive help to finish this task. Dr. Parnell admitted that this occurrence was very possible, but that she intended to rectify the problem by having junior high school administrators, not secretaries, do all the work on marking cards as high school administrators did. Finally, Dr. Parnell testified that no substitutes were hired to replace secretaries absent on a short term basis.^{6/}

In its first two Exceptions, the Board contends that the parties' collective negotiations agreement does not require

^{5/} The Association president testified that in the summer of 1980, the high school folders were not prepared until the new high school secretary started work in September.

^{6/} Based on our independent review of the record and the facts we have set forth, we accept the Hearing Examiner's findings of fact (pp. 2-3) with the exception of his findings that the declining enrollment and a lack of work contributed to the decision to reduce the secretaries' work year. Dr. Parnell explicitly rejected any connection between enrollment statistics and the decision and made it clear that there was an overabundance of summer clerical work which the guidance counselor secretaries helped to do.

guidance counselor secretaries to be employed for 12 months. We disagree and find that the terms of the contract, when read together and considered in light of the parties' past practice, establish such a requirement. Thus, it is undisputed that long before the summer of 1980, guidance counselor secretaries had worked 12 months every year and been designated as "A" or "B" 12 month clerk secretaries. The designation of "A" or "B" 12 month clerk carried specific consequences in terms of such basic terms and conditions of employment as salary, vacations, and sick leave. Working in the summer did not depend upon the availability of guidance department work; instead and in accordance with Dr. Parnell's testimony, the employees understood they would perform and be paid for clerical work in other areas. The parties' contract specifically protected all conditions of employment and prohibited any reduction in the standards concerning these conditions in effect at the time the contracts were signed. In sum, we hold that the Board did not have an unfettered contractual right to turn "A" and "B" 12 month employees into "A" 10 month employees (or vice-versa) with all the concomitant effects on work year, salary, and other terms and conditions of employment.

Moreover, an employer violates its duty to negotiate when it unilaterally alters an existing practice or rule governing a term and condition of employment, such as the length of the work year or the amount of an employee's salary, even though that practice or rule is not specifically set forth

in a contract. See, e.g., Galloway Twp. Bd. of Ed. v. Galloway Twp. Ed. Ass'n, 78 N.J. 25, 48-49, fn. 9 (1978); N.J.S.A. 34:13A-5.4.^{7/} Thus, even if the contract did not bar the instant changes, it does not provide a defense for the Board since it does not expressly and specifically authorize such changes. Contrast, In re Bound Brook Bd. of Ed., P.E.R.C. No. 83-11, 8 NJPER 439 (¶13207 1982).

The third through eighth Exceptions essentially take issue with the Hearing Examiner's determination that the Board did not have a non-negotiable managerial prerogative to make the changes in question. We agree with the Hearing Examiner's reasoning (pp. 3-5) on this issue and incorporate it here. We specifically concur that Piscataway and Hackettstown Board of Education, P.E.R.C. No. 80-139, 6 NJPER 263 (¶11124 1980), aff'd App. Div. Docket No. A-385-80T3 (1982), pet. for certif. den. 89 N.J. 429 (1982), control this case. See also, In re East Brunswick Bd. of Ed., P.E.R.C. No. 82-111, 8 NJPER 320 (¶13145 1982), appeal pending App. Div. Docket No. A-3995-81T3. The only difference between these cases and this one is that here the positions were vacant when the Board made its unilateral changes in salary and work year. However, we have consistently held, with the approval of our appellate courts, that employee representatives represent positions in a negotiations unit, not merely the specific employees who hold these positions at the

^{7/} N.J.S.A. 34:13A-5.3 provides, in part: "Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established."

time of actual certification, recognition, or contract adoption. See, Galloway Tp. Bd. of Ed. v. Galloway Tp. Assn of Educational Secretaries, P.E.R.C. No. 76-31, 2 NJPER 182 (1976), aff'd in part, rev'd in part, 149 N.J. Super. 346 (App. Div. 1977), aff'd in part, rev'd in part, 78 N.J. 1, 17-20 (1978); In re Deptford Bd. of Ed., P.E.R.C. No. 81-78, 7 NJPER 35 (¶12015 1980), aff'd App. Div. Docket No. A-181-80T8 (1982); In re North Brunswick Bd. of Ed., P.E.R.C. No. 79-41, 4 NJPER 451 (¶4205 1978). Regardless of whether an employee has worked in a unit position for years or has just been hired or transferred into that position, the Board cannot unilaterally determine what salary that employee will receive nor change how many months that employee will work.

The above case law generally reflects the application of the balancing process required by Woodstown-Pilesgrove Bd. of Ed. v. Woodstown-Pilesgrove Ed. Ass'n, 81 N.J. 582 (1980). Applying this process to the facts of this particular case, we conclude that the interest of unit employees in being permitted to negotiate their work year and salary outweighs the Board's need to make this determination unilaterally.

The Board's reason for the changes is that the previous high school guidance counselor secretary had taken vacation during the school year and as a result had been absent at times when her services were particularly needed. Dr. Parnell believed that the only way the Board could control when that secretary took vacations was to make that position a 10 month one, thus

eliminating all school year vacations besides those when schools were closed. The parties' contract, however, conditioned the scheduling of vacations upon the following words: "provided operation permits." Thus, it appears that the Board had the contractual flexibility to reschedule that secretary's vacations if it needed her services at a particular time. Further, we have held that a board of education has a managerial right to deny a vacation request if an emergency requires a particular employee's help. Thus, there is no reason the Board could not obtain the necessary school year services from 12 month secretaries. In re Newark Bd. of Ed., P.E.R.C. No. 80-93, 6 NJPER 53 (¶11028 1980). Finally, Dr. Parnell's reason does not implicate educational policy, but instead encroaches upon another area appropriate for collective negotiation: employee vacations. An employer cannot diminish one negotiable term and condition of employment because it has a problem with another negotiable term and condition of employment without even seeking to adjust the perceived problem with the employee representative. We will not presume that an employee representative will be unresponsive to a legitimate problem.

We also reject the Board's argument, not raised before the Hearing Examiner, that N.J.S.A. 18A:28-9 confers a non-negotiable right on it to reduce the work year. Piscataway and Hackettstown rejected this contention because this statute is inapplicable in the absence of the abolition of a position. So do we. We similarly reject the Board's argument that it could

have abolished the position of guidance counselor; it did not do so and thus that contention is irrelevant. Contrast, Ramapo-Indian Hills Ed. Ass'n v. Ramapo-Indian Hills Regional High School Dist., 176 N.J. Super. 35 (App. Div. 1980).

In its brief, the Board suggests that the reductions were justified by a decline in enrollment and a consequent lack of summer work. Dr. Parnell, however, testified that it would be unfair to say that the guidance counselor secretaries did not have enough to do. An overabundance of clerical work existed in the summer and, consistent with the integrated nature of high school operations, the guidance counselor secretaries were expected to and did help with this work. The secretaries were busy at all times. Further, to the extent the Board is merely trying to save money otherwise expended on employee compensation, it must, short of the abolition of a position, negotiate reductions in compensation and work year. Compare, In re East Brunswick Bd. of Ed., P.E.R.C. No. 82-76, 8 NJPER 124 (¶13054 1982).

The Board next disputes the propriety of the Hearing Examiner's recommendation that employees in the former 12 month positions be reimbursed for what they would have earned had the work year and salaries associated with these positions not been changed. The Board stresses that the two employees in the 10 month positions applied for these positions and that one of these employees even transferred from a 12 month position. Further, the Board argues that back pay is inappropriate since

the aggrieved party is the Association and not either of the affected employees.

We do not believe it would effectuate the purposes of the Act to require back pay under all the circumstances of this case. Instead, an award of back pay would be windfall to the two new employees who elected to work 10 months instead of 12 months and who did not suffer from the Board's changes. Compare, Shepard v. NLRB, ___ U.S. ___, 112 LRRM 2369 (1983) (NLRB not required to reflexively order that which a complaining party may regard as "complete relief" for every unfair labor practice).

The Board's last two Exceptions concern the distribution of the notices the Hearing Examiner recommended. The Board contends that requiring posting in all places where notices to employees are customarily posted is too broad and asserts that notices should only be posted where notices to the affected guidance secretaries would normally be posted. Under all the particular circumstances of this case, we agree: the secretaries in the guidance department were the only employees involved in this controversy and the only employees the remedial order will directly affect.

Finally, the Board asks that we include in any order a provision directing it to negotiate with the Association concerning the changes and requiring the Association to negotiate with the Board if it so requests. The Association joins in this request. We will honor the parties' mutual desire.

ORDER

IT IS HEREBY ORDERED that the Sayreville Board of Education:

A. Cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act and refusing to negotiate in good faith with the Sayreville Education Secretarial Association concerning terms and conditions of employment of secretarial employees in the unit, particularly by unilaterally changing the Junior High School Guidance Counselor Secretary position from "A" 12 month to "A" 10 month and the High School Guidance Counselor Secretary position from "B" 12 month to "A" 10 month.

B. Take the following affirmative action:

1. Restore the "A" 12 month Junior High School Guidance Counselor Secretary and the "B" 12 month High School Guidance Counselor Secretary positions.

2. Negotiate with the Association concerning any proposed changes in the work year and salaries of the Junior High School and High School Guidance Counselor Secretaries before making such changes.

3. Post the attached Notice marked as Appendix "A" in all places where notices to guidance department secretaries are customarily posted. Copies of such notice, on forms to be provided by the Commission, shall be posted immediately upon

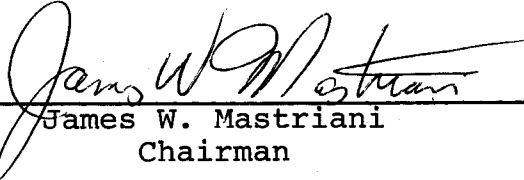
receipt and, after being signed by the Board's authorized representative, shall be maintained by it for at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Board to ensure that such notices are not altered, defaced or covered by other materials.

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

IT IS HEREBY ORDERED that the Sayreville Education Association:

A. Negotiate with the Board upon the Board's request concerning any proposed changes in the work year and salaries of the Junior High School and High School Guidance Counselor secretaries.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Graves, Hartnett and Suskin voted for this decision. Commissioner Butch voted against this decision. Commissioners Hipp and Newbaker abstained.

DATED: Trenton, New Jersey
February 16, 1983

ISSUED: February 17, 1983

APPENDIX "A"

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify Guidance Department Secretaries that:

WE WILL NOT interfere with, restrain or coerce our employees in the exercise of the rights guaranteed to them by the Act by refusing to negotiate in good faith with the Sayreville Education Secretarial Association concerning terms and conditions of employment of secretarial employees in the unit, particularly, by unilaterally changing the Junior High School Guidance Counselor Secretary position from "A" 12 month to "A" 10 month and the High School Guidance Counselor Secretary position from "B" 12 month to "A" 10 month.

WE WILL restore the "A" 12 month Junior High School Guidance Counselor Secretary and the "B" 12 month High School Guidance Counselor Secretary positions.

WE WILL negotiate with the Association concerning any proposed changes in the work year and salaries of the Junior High School and High school Guidance Counselor Secretaries before making such changes.

The Sayreville Education Association will negotiate with the Board upon the Board's request concerning any proposed changes in the work year and salaries of the Junior High School and High School Counselor secretaries.

SAYREVILLE 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

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Respondent,

-and-

Docket No. CO-81-15-99

SAYREVILLE EDUCATION SECRETARIAL
ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Commission find that the Sayreville Board of Education committed an unfair practice when it unilaterally reclassified two vacant positions from 12-month to 10-month positions and further reclassified one of those positions to a lower salary level.

It was recommended that the Commission follow the decisions of Galloway Tp Bd/Ed and Galloway Tp Assn of Educ'l Secys, 78 N.J. 1, 17-20 (1978) and Deptford Bd/Ed, P.E.R.C. No. 81-78, 7 NJPER (¶12015 1980), aff'd App. Div. Docket A-181-80-T8 (1982) and find that the majority representative is the exclusive representative of the job titles in the unit and not just the specific employees.

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:

For the Respondent, Boehm and Campbell, Esqs.
(Casper P. Boehm, Jr., Esq.)

For the Charging Party, Rothbard, Harris & Oxfeld, Esqs.
(Nancy Iris Oxfeld, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

On July 16, 1980, the Sayreville Education Secretarial Association (Association) filed an Unfair Practice Charge with the Public Employment Relations Commission (Commission) alleging that the Sayreville Board of Education (Board) has engaged in an unfair practice within the meaning of N.J.S.A. 34:13A-5.4(a)(1) and (5). ^{1/} It was specifically alleged that there are two classes of secretaries in the Sayreville school system, Class "A" and Class "B." Class "A" secretaries are paid on a salary guide of eight steps.

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; (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."

Class "B" secretaries are paid on a salary guide of nine steps, of which the first eight steps are identical to the Class "A" step guide. In the spring of 1980 the Board posted two separate notices saying that the positions of secretary were available. Both of these positions were listed as Class "A" positions for a 10-month period. These positions were vacant positions but were formerly held by 12-month employees. It was alleged that this constituted an unfair practice within the meaning of the Act.

It appearing that the allegations of the charge, if true, might constitute an unfair practice within the meaning of the Act, a Complaint and Notice of Hearing was issued on February 11, 1981. A Hearing was held on September 24, 1981, at which time both parties were given an opportunity to present evidence, examine and cross-examine witnesses, argue orally and present briefs. ^{2/}

The Board and Association are parties to a collective negotiations agreement. That agreement provides for different clerk classifications: "A" Clerk, 12 month; "A" Clerk (Elem), 10 month; "A" Clerk, 10 month; "B" Clerk, 12 month. The "A" and "B" Clerk 12-month salaries are identical except that the "B" Clerk salary has an extra step at a higher salary. The "A" Clerk 10-month salary is substantially lower through all the steps and again has a maximum eight steps as opposed to the nine of the "B" Clerk. (The "A" Clerk (Elem) 10-month has a salary schedule the same as the "A" Clerk 10 month but is a nine-step guide as opposed to an eight-step guide. This last classification is not in issue here.)

^{2/} All briefs in this matter were received by February 18, 1982.

The instant matter arose when the Board posted two positions which had become vacant at approximately the same time. One position in the Junior High School was a 12-month "A" Clerk and the other in the Senior High School was a 12-month "B" Clerk. Both of these positions were posted as 10-month "A" Clerk positions. It is undisputed the change in classification from 12 month to 10 month resulted in a reduction in pay for these respective positions. The witness for the school board testified that the reason for changing these positions to 10-month positions was that there was essentially not enough work for these individuals to do over the summer, there was a declining enrollment in the school district and that summer employees were available to do the work that was formerly done by these individuals. It is the Association's position that the length of the work year and the total amount of pay received by employees are essential terms and conditions of employment. In Piscataway Tp Bd/Ed and Piscataway Principals Assn, 164 N.J. Super. 98, 395 A.2d 880 (1978), the Piscataway Board of Education reduced the work year of certain principals from 12-month to 10-month positions which entail a proportionate reduction in salary of such persons. The employer argued that such actions constituted a reduction in force. The court there stated:

We have no doubt that the matter of length of the work year and its inseparable concomitant -- compensation -- are terms and conditions of employment, within the intent of the Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., and consequently the subject of mandatory negotiation before being put into effect by the public employer.

See also Hackettstown Bd/Ed, P.E.R.C. No. 80-139, 6 NJPER (¶11124 1980), aff'd App. Div. Docket A-385-80T3 (1982), and New Brunswick Bd/Ed and New Brunswick Ed/Assn., Inc., P.E.R.C. No. 78-47, 4 NJPER 84, aff'd App. Div. Docket A-2450-77 (4/2/79), and Bd/Ed of Essex County Vocational Schools, P.E.R.C. No. 81-102, 7 NJPER ____ (1981).

It is clear therefore that the Board's failure to negotiate the shortening work year of these positions without negotiations prior to implementation is violative of the Act. The Board here attempts to distinguish between the above-cited cases and the facts in this matter. Unlike the above-cited cases there were no present employees of the Sayreville school system affected by the elimination of the 12-month secretarial positions; those positions were vacant through retirement and resignation. It was also pointed out that the employees are new employees and have therefore suffered no reduction in pay from what they formerly have earned.

Contrary to the Board's position the fact that the people filling these positions were new employees is not controlling. As the State Supreme Court noted in Galloway Tp Bd/Ed and Galloway Tp Assn. of Educ'l Secys., 78 N.J. 1, 17-20 (1978), a majority representative is the exclusive representative of the job titles in the unit, not just the specific employees who held those positions where the representative was certified or recognized. In Deptford Bd/Ed, P.E.R.C. No. 81-78, 7 NJPER (¶12015 1980), aff'd App. Div. Docket A-181-80-T8 (1982), the Commission held that a board of education was not free to unilaterally alter a salary structure of a certain position simply because a new employee was hired for that


position.

In the instant case the Association represented the vacant titles or positions and before those positions could be changed there had to be negotiations. There were no such good faith negotiations. Accordingly I recommend that the Commission find that the Sayreville Board of Education violated §5.4(a)(1) and (5) when it unilaterally reduced the positions of Guidance Counselor Junior High School Secretary and Guidance Counselor High School Secretary from 12 months to ten months and reclassified the Guidance Counselor High School Secretary from "B" Clerk to "A" Clerk.

It is further recommended that the Commission order that the Sayreville Board of Education make the two individuals holding the secretarial positions in question whole by paying them the salaries they would have earned had their respective positions not been reclassified and had they been permitted to work a full 12 months.

It is further recommended that the Commission order that the Board post the attached notice marked as Appendix "A" in all places where notices to employees are customarily posted. 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 Board's authorized representative, shall be maintained by it for at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Board to assure that such notices are not altered, defaced or covered by other materials. It is further recommended that the Board notify the Chairman of the Commission

within twenty (20) days of receipt what steps the Board has taken to comply herewith.



Edmund G. Gerber
Hearing Examiner

Dated: June 23, 1982
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 NOT refuse to negotiate with the Sayreville Education Secretarial Association by unilaterally changing the Guidance Counselor Junior High School Secretary classification from "A" 12 to "A" 10 month and unilaterally changing the Guidance Counselor High School Secretary classification from "B" 12 month to "A" 10 month.

WE WILL make whole the two individuals who are currently employed as Guidance Counselor Secretaries in the Junior High School and Senior High School and reimburse them what they would have earned had those employees been paid at the correct classifications of "B" 12-month Clerk and "A" 12-month Clerk respectively.

SAYREVILLE 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.