P.E.R.C. NO. 85-115

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ELMWOOD PARK BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-85-176-88

ELMWOOD PARK CUSTODIANS AND
MAINTENANCE ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission holds that the Elmwood Park Board of Education violated the New Jersey Employer-Employee Relations Act when it failed to negotiate with the Association before implementing a new work schedule which required certain employees to work on weekends.

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ELMWOOD PARK CUSTODIANS AND
MAINTENANCE ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Mathew P. DeMaria, Esq.
(William J. Ross, Esq.)

For the Charging Party, Bucceri & Pincus, Esqs.
(Sheldon H. Pincus, of Counsel)

DECISION AND ORDER

On January 18, 1985, the Elmwood Park Custodians and Maintenance Association ("Association") filed an unfair practice charge against the Elmwood Park Board of Education ("Board") with the Public Employment Relations Commission. The charge alleges that the Board violated subsections 5.4(a)(1),(2),(3) and (5)[1/] of the

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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; (2) Dominating or interfering with the formation, existence or administration of any employee organization; (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
(Footnote continued on next page)

New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it unilaterally implemented a new work schedule for its maintenance employees.

On January 29, 1985, a Complaint and Notice of Hearing was issued. On February 20, 1985, the Board filed an Answer denying that its actions constituted an unfair practice.

On February 26, 1985, Hearing Examiner Alan Howe conducted a hearing. The parties stipulated facts and introduced exhibits. They waived oral argument and relied on briefs previously submitted.

On March 12, 1985, the Hearing Examiner issued his report and recommended decision. H.E. No. 85-32, 11 NJPER ___ (Para. _____ 1985) (copy attached). He found that the Board violated subsections 5.4(a)(1) and (5) when it unilaterally altered the work schedule of the maintenance employees. He recommended an order requiring a return to the status quo prior to the change and good faith negotiations concerning any proposed changes in the work schedule.

On March 29, 1985, after receiving an extension of time, the Board filed its exceptions. It contends that it had a contractual right and managerial prerogative to assign work on Saturday and Sunday.

On April 8, 1985, the Association filed its response. It contends that the change in work hours is a mandatory subject for

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(Footnote continued from previous page)
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."

negotiations and that the Board did not have a contractual right to change the hours.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 2-5) are accurate and we adopt and incorporate them here.

Based on these findings of fact, we hold that the Board violated subsection 5.4(a)(5) when it failed to negotiate with the Association before implementing a new work schedule which required employees to work on weekends. In sum, the Board unilaterally changed a term and condition of employment and did not have a contractual right to do so.

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.

A public employer may violate this obligation in two separate fashions: (1) repudiating a term and condition of employment it had agreed would remain in effect throughout a contract's life, and (2) implementing a new rule concerning a term and condition of employment without first negotiating in good faith to impasse or having a contractual defense.

In the instant case, the Association does not have an explicit contractual right protecting against work schedule changes. Accordingly, only the second type of violation is at issue. In order for us to find such a violation, the Association bears the burden of proving: (1) a change (2) in a

term and condition of employment (3) without negotiations. The Board, however, may defeat such a claim if it has a managerial prerogative or contractual right to make the change.

Here, before January 2, 1985, maintenance employees worked established shifts of 7:00 a.m. - 4:00 p.m. and 3:00 p.m. to 11:00 p.m. from Mondays through Fridays. Effective January 2, 1985, the Board created a new work shift from 3:00 p.m. to midnight Wednesday through Sunday. The Board did not negotiate with the Association before making this change. Accordingly, the Board has violated subsection 5.4(a)(5) unless we find either that the change involved a managerial prerogative, rather than a term and condition of employment, or that the Board had a contractual right to make the change without negotiations.2/

Under the circumstances of this case, we do not believe the Board had a managerial prerogative to make this change without negotiations. It has long been recognized that the hours an employee works is one of the most fundamental terms and conditions of employment. Bd. of Ed. v. Englewood v. Englewood Teachers Assn, 64 N.J. 1 (1973); Local 195, IFPTE v. State, 88 N.J. 393 (1982); Cape May County, P.E.R.C. No. 83-98, 9 NJPER 97 (Para14053 1983); North Brunswick Twp. Bd. of Ed., P.E.R.C. No. 79-14, 4 NJPER 451 (Para4205 1978). In this case, the change has particularly dramatic

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2/ In some cases, a majority representative may also waive a right to negotiate through inaction. This is not such a case.

and adverse consequences for the maintenance employees: these employees lose the ability to enjoy work-free weekends and thus the opportunity to be with family and friends when they are most likely to be free. By contrast, the employer's need for the change is not clear from the record and in any event appears to be relatively slight. To the extent the Board needs employees to cover the weekend boiler watch, it has the right to make the necessary assignments. It has done so in the past and may continue to do so. What it cannot do, however, is reduce overtime compensation by unilaterally redefining the employees' normal work hours. East Brunswick Bd. of Ed., P.E.R.C. No. 82-76, 8 NJPER 124 (Para13054 1982).

Under the circumstances of this case, we also do not believe that the Board had a contractual right defeating its otherwise applicable obligation to negotiate before making this change. First, the Board's reliance on individual employment contracts is misplaced since the Board must negotiate with the majority representative, not individual employees, over terms and conditions of employment. Lullo v. IAFF, 55 N.J. 409 (1970); Wright v. City of East Orange Bd. of Ed., 194 N.J. Super. 181 (App. Div. 1984), aff'd ___ N.J. ___ (1985). Second, the Board's reliance on the collective negotiations contract is misplaced since a waiver of section 5.3 rights will not be found unless a contract clearly and unequivocally authorizes a unilateral change and since this contract does not do so. Sayreville Bd. of Ed., P.E.R.C. No. 83-105, 9 NJPER

138 (Para14066 2983); North Brunswick, supra; State of New Jersey, P.E.R.C. No. 77-40, 3 NJPER 78 (1977). There is no management rights clause or other provision specifically authorizing a unilateral work schedule change; the only clause advanced by the Board establishes a 40 hour work week, but that clause obviously does not speak to the days or hours of work.[3/] Accordingly, we find that the Board violated subsections 5.4(a)(5) and, derivatively, (a)(1) when, without a managerial prerogative or contractual right, it unilaterally altered its maintenance employees' work schedules. Galloway Tp. Bd. of Ed. v. Galloway Tp. Educational Secretaries, 78 N.J. 1 (1978); North Brunswick, supra; Township of Willingboro, P.E.R.C. No. 78-20, 3 NJPER 369 (1977); Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55 (1975).

We finally consider the appropriate remedy. The Association does not have a contractual right to have the previous work hours continued until the contract expires, but it does have a statutory right to have the previous work hours restored until the Board negotiates in good faith to impasse. Accordingly, we will

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3/ Again, the question of whether there is a contractual violation is different from the question of whether there is a contractual defense. That the Association may not have a right to prohibit a work schedule change does not mean the Board has a right to make a work schedule change. It merely means the parties have not contractually allocated control over the subject to one side or the other, and the parties must instead negotiate over any proposed changes.

order a restoration of the status quo pending completion of good faith negotiations.

ORDER

The Elmwood Park Board of Education is ordered to:

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, particularly, by refusing to negotiate in good faith with the Association with respect to changes in the work hours of maintenance employees.

2. Refusing to negotiate in good faith with the Association concerning terms and conditions of employment by unilaterally changing the work hours of maintenance employees in the Association's negotiations unit.

Take the following affirmative action:

1. Within sixty (60) days hereof, restore the status quo ante as of January 2, 1985 with respect to the work hours of those maintenance employees whose hours were changed and thereafter, upon demand, negotiate in good faith any proposed changes in the work hours of affected maintenance employees with the Association prior to implementation.

2. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice, on forms to be provided by the Commission, shall be posted immediately by the Respondent upon

receipt thereof, and after being signed by the Respondent's representative, said notice shall be maintained for a period of at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondent to insure that such notices are not altered, defaced or covered by other materials.

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

The Complaint is dismissed insofar as it alleges that the Board violated subsections 5.4(a)(2) and (3).

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Graves, Suskin and Wenzler voted in favor of this decision. None opposed. Commissioner Hipp abstained.

DATED: Trenton, New Jersey
May 15, 1985
ISSUED: May 16, 1985

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 our employees that:

WE WILL cease and desist from interfering with, restraining or coercing our employees in the exercise of the rights guaranteed to them by the Act, particularly, by refusing to negotiate in good faith with the Association with respect to changes in the work hours of maintenance employees.

WE WILL cease and desist from refusing to negotiate in good faith with the Association concerning terms and conditions of employment by unilaterally changing the work hours of maintenance employees in the Association's negotiations unit.

WE WILL, within sixty (60) days hereof, restore the status quo ante as of January 2, 1985 with respect to the work hours of those maintenance employees whose hours were changed and thereafter, upon demand, negotiate in good faith any proposed changes in the work hours of affected maintenance employees with the Association prior to implementation.

ELMWOOD PARK 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.

H.E. No. 85-32

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

In the Matter of

ELMWOOD PARK BOARD OF EDUCATION

Respondent,

-and-

Docket No. CO-85-176-88

ELMWOOD PARK CUSTODIANS AND MAINTENANCE ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Board violated Subsections 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act when it unilaterally, and without prior negotiations with the Association, changed the work hours of certain maintenance employees effective January 2, 1985. The Hearing Examiner, citing longstanding precedent of the Courts and the Commission, concluded that the Board was obligated to negotiate with the Association its decision to change the shift hours of the custodians.

By way of remedy, the Hearing Examiner recommended that the Board be ordered to restore the status quo ante within sixty (60) days, i.e., restore the shift hours of the maintenance employees whose hours were changed to those in effect prior to January 2, 1985, and thereafter negotiate in good faith with the Association regarding any proposed change in shift hours prior to implementation.

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 Recommeded 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. 85-32

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

In the Matter of

ELMWOOD PARK BOARD OF EDUCATION,

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ELMWOOD PARK CUSTODIANS AND MAINTENANCE ASSOCIATION,

Charging Party.

Appearances:

For the Respondent
Matthew P. DeMaria, Esq.
(William J. Ross, Esq.)

For the Charging Party
Bucceri & Pincus, Esqs.
(Sheldon H. Pincus, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on January 18, 1985 by the Elmwood Park Custodians and Maintenance Association (hereinafter the "Charging Party" or the "Association") alleging that the Elmwood Park Board of Education (hereinafter the "Respondent" or the "Board) had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (hereinafter the "Act"), in that the Respondent on January 2, 1985 unilaterally and without negotiations with the Association established and implemented a new shift schedule for its maintenance employees, establishing a night shift and eliminating previously scheduled overtime on weekends, and, further, requiring two employees, Dominick Primerano and Harry Brown, to sign individual employment contracts incorporating the foresaid unilateral changes, all of which is alleged to be a violation

of N.J.S.A. 34:13A-5.4(a)(1), (2), (3) and (5) of the Act.[1/]

It appearing that the allegations of the Unfair Practice Charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on January 29, 1985. Pursuant to the Complaint and Notice of hearing, a hearing was held on February 26, 1985 in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Oral argument was waived and the parties submitted on briefs previously filed in a prior interim relief proceeding involving the same subject matter. The filing of further briefs was waived.

An Unfair Practice Charge having been filed with the Commission, a question concerning alleged violations of the Act, as amended, exists and, after hearing, and after consideration of the previously filed briefs of the parties, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

Upon the entire record, which consists of a stipulation of facts by the parties, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. The Elmwood Park Board of Education is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. The Elmwood Park Custodians and Maintenance Association is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

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.
"(2) Dominating or interfering with the formation, existence or administration of any employee organization.
"(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.
"(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."

3. The most recent collective negotiations agreement between the parties is effective during the term July 1, 1982 through June 30, 1984 (J-1). In Article II, Recognition, the Board recognizes the Association as the exclusive representative for its Custodians, Maintenance employees, Groundskeeper and Matron (J-1, p. 4). Article X, Section C provides that the custodial/groundskeeper staff shall have their hours set at 40 per week and Article X, Section L(3) provides that the Matron's work week shall also be 40 hours with the hours to be the same as the day shift of the janitors and, further, that the Matron's hours may be reduced to not less than 35 hours per week (J-1, pp. 26, 29). There is no other provision in the agreement, which pertain to hours and shifts.

4. The job descriptions for the Maintenance/Groundskeeper and Custodian, which are annexed to J-1, were received in evidence as Exhibit J-2.

5. The total number of employees in the unit is 23, all of said employees being "12-month" except for the Matron. Of these 23 unit employees eight constitute the maintenance staff and they have one supervisor, Edward Palmer. The dispute in the instant proceeding involves the Maintenance employees only.

6. For approximately 13 years the "weekend boiler watch" had been staffed by the Maintenance employees, including the Supervisor. The Custodians have been eligible for the "boiler watch" but have never worked it. The "weekend boiler watch" involves one Maintenance employee per weekend, who works five to six hours on Saturday and Sunday for a total of 10 to 12 hours per weekend. The five to six hours are staggered over morning, afternoon and evening in order to cover four schools where the principal duty is to check the boilers. Because the hours worked on the "weekend boiler watch" are in excess of 40 hours worked between the previous Monday and Friday, the employee has been paid the overtime rate of time and one-half.

7. The past practice on shifts among employees in the unit has been as follows:

a. There has always been a 3:00 p.m. to 11:00 p.m. shift, Monday to Friday, which included two painters from the maintenance staff, who were paid a five

(5%) percent shift differential.

b. The regular shift for Maintenance employees has been 7:00 a.m. to 4:00 p.m., Monday to Friday.

c. The Custodian (15 employees) have worked either 7:30 a.m. to 4:00 p.m. or 3:30 p.m. to 11:00 p.m., Monday to Friday with one hour for lunch, or 12:00 midnight to 8:00 a.m., Sunday through Thursday.

8. Prior to January 2, 1985, Dominick Primerano had been a full-time Maintenance employee since August 1, 1984, having previously been employed as a part-time Custodian. As a Maintenance employee, Primerano had worked the 7:00 a.m. to 4:00 p.m. shift, Monday through Friday with one hour for lunch. Also, prior to January 2, 1984, Harry Brown had been a full-time Maintenance employee since August 1, 1984, who worked the same shift as Primerano and who had previously been a full-time Custodian before voluntarily transferring to Maintenance.

9. Both Primerano and Brown executed an individual employment contract on July 30, 1984, each contract providing that their service as a Maintenance employee would commence August 1, 1984 and containing a proviso, "Night and/or shift possibilities encompassing Saturdays and/or Sundays" (see J-3 and J-4).[2/] The Board, at a regular meeting on July 24, 1984, had resolved that the employment contracts of Primerano and Brown were to contain this "proviso" (J-9).

10. The Board, at a regular meeting on August 31, 1982, had earlier resolved that, as to Smith, his hiring was approved with the condition that his work week may include Saturday and Sunday (J-8).

11. On December 19, 1984 the Board Secretary sent a memorandum to Edward Palmer, the Maintenance supervisor, advising him that at a regular meeting on December 18, 1984, the Board directed that effective January 1, 1985 a seven-day work schedule, encompassing the boiler watch, was to be established and implemented for the

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2/ A third Maintenance employee, Daniel Smith, also signed an individual employment contract on July 31, 1984, which contained the same "proviso" as in J-3 and J-4, supra.

maintenance staff (J-5).

12. On December 26, 1984, Palmer sent a memo to Primerano and Brown, advising them that on January 2, 1985 their work week was to be changed as follows: (a) 3:00 p.m. to 12:00 midnight, Wednesday through Sunday with one hour for lunch; (2) Saturdays and Sundays to include the "boiler watch" with Primerano to cover the high school from 3:00 p.m. to 6:00 p.m. and Brown to cover the remaining three schools from 3:00 p.m. to 6:00 p.m. on each day of the weekend (J-6). Attached to this memo was a check list for the boiler rooms and buildings (J-6, p. 2).

13. On January 2, 1985, Donald Rector, the President of the Association, sent a letter to the Board Secretary, requesting that the Board immediately cease the introduction of a seven-day work week in the Maintenance Department (J-7).

14. None of the changes in shifts or hours were incident to a reduction-in-force.

15. As noted previously, the instant Unfair Practice Charge was filed on January 18, 1985 (C-1).

DISCUSSION AND ANALYSIS

The Respondent Board Violated Subsections(a)(1) And (5) Of The Act When It Unilaterally Implemented A Change In Hours For Certain Maintenance Employees Without First Negotiating With The Association 3/

Plainly, working hours (shifts, starting times, etc.) are a term and condition of employment: Board of Education of Englewood v. Englewood Teachers Association, 64 N.J. 1, 6, 7 (1973) and Hillside Board of Education, P.E.R.C. No. 76-11, 1 NJPER 55 (1975).

3/ No evidence was adduced which would establish a violation by the Board of Subsections(a)(2) and (3) of the Act and, accordingly, the Hearing Examiner will recommend dismissal of these allegations.

The Supreme Court in Englewood, supra said: "Surely working hours and compensation are terms and conditions of employment within the comtemplation of the... Act..." The Commission in Hillside considered a dispute concerning a change in working hours without an increase in total working time. Stating that the issue was controlled by Englewood, the Commission added that it "...cannot be disputed that, as the new schedule alters the hours of their employment... it is a term and condition of employment." (1 NJPER at 57).

Of significant importance is the decision of the Appellate Courts in Galloway Township Board of Education v. Galloway Township Association of Educational Secretaries, P.E.R.C. No. 76-31, 2 NJPER 182 (1976), aff'd. in part and rev'd. in part 149 N.J. Super. 346 (App. Div. 1977), further aff'd. in part and rev'd. in part 78 N.J. 1 (1978). In Galloway the Commission had found that a unilateral alteration of shift hours related to terms and conditions of employment and, upon finding a violation of Subsection(a)(5) of the Act, the Commission ordered restoration of the status quo. The Appellate Division affirmed the Commission in this respect, stating that the alteration of the working day effected changes in terms and conditions of employment, and that the implementation had a chilling effect on collectively negotiated rights, amounting to a refusal to negotiate in good faith. (149 N.J. Super. at 351). Although there was no appeal to the Supreme Court from this aspect of the decision of the Appellate Division, the Supreme Court nevertheless noted its agreement with the resolution of this issue below: 78 N.J. at 8.[4/]

In Clifton Board of Education, P.E.R.C. No. 80-104, 6 NJPER 103 (1980) the Commission affirmed the instant Hearing Examiner (H.E. No. 80-24, 6 NJPER 16), who had found a violation of Subsections(a)(1) and (5) of the Act when the employer in that case unilaterally changed the hours of its custodians, in part, as follows: a custodian who had been scheduled from 2:00 p.m. to 11:00 p.m. or 3:00 p.m. to 12:00 midnight was rescheduled to 9:00 a.m. to 6:00 p.m., and another custodian was

4/ See also, North Brunswick Township Board of Education, P.E.R.C. No. 79-14, 4 NJPER 451 (1978), aff'd. App. Div. Docket No. A-698-78 (1979).

rescheduled to 2:00 p.m. to 11:00 p.m. instead of 11:00 p.m. to 7:00 a.m. or 12:00 midnight to 8:00 a.m. (6 NJPER at 17). The Commission agreed with the Hearing Examiner's distinguishing of Irvington PBA Local No. 29 v. Town of Irvington, 170 N.J. Super. 539 (1979) on the ground that Irvington involved a change in the shift hours in a Police Department while Clifton involved a change in the working hours of custodians employed by a Board of Education. Such a distinction had been suggested by the Appellate Division in Irvington (see 170 N.J. Super. at 546). Again, the Board of Education in Clifton was ordered to restore the status quo ante as the Commission had ordered in Galloway, supra.

In Cape May County, P.E.R.C. No. 83-98, 9 NJPER 97 (1983) the Commission, in a scope of negotiations decision, found arbitrable a union grievance, which protested the unilateral conversion of maintenance employee hours from a day-time shift to a night-time shift. Prior to the unilateral change, the maintenance employees had worked from 6:00 a.m. to 2:00 p.m., five days per week with one hour for lunch. After the change, the working hours became 3:00 p.m. to 11:00 p.m. The County there asserted that the change had been made because its superintendent had observed that the ability to clean the facilities was greatly frustrated in the day-time by the presence of office personnel.

After making the threefold analysis dictated by the Supreme Court in Local 195, IFPTE v. State, 88 N.J. 393, 404, 405 (1982), the Commission in Cape May concluded that the arbitrability-negotiability of a change in hours, such as was therein involved, would not significantly interfere with the determination of governmental policy since the dominant issue involved was the concern of the maintenance employees in preserving their existing hours of employment (9 NJPER at 98). The Commission cited in support of its decision, inter alia, Englewood and Galloway, supra.

Finally, the Hearing Examiner notes that there are no emergent circumstances involved in the facts of this case, which would operate to prevent the finding of

a violation of the Act. Compare: Borough of Pitman P.E.R.C. No. 82-50, 7 NJPER 678 (1981). Also, there is not here involved a reduction-in-force such as was the situation in City of Northfield, P.E.R.C. No. 82-95, 8 NJPER 277 (1982).

* * * *

Upon the foregoing, and upon the stipulated record in this case, the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

1. The Respondent Board violated N.J.S.A. 34:13A-5.4(a)(1) and (5) when it unilaterally, and without prior negotiations with the Association, changed the shift hours of certain Maintenance employees effective January 2, 1985.

2. The Respondent Board did not violate N.J.S.A. 34:13A-5.4(a)(2) and (3) by its conduct herein.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER:

A. That the Respondent Board cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly, by refusing to negotiate in good faith with the Association with respect to changes in the shift hours of Maintenance employees.

2. Refusing to negotiate in good faith with the Association concerning terms and conditions of employment, including the unilateral implementation of changes in the shift hours of Maintenance employees in the negotiations unit represented by the Association.

B. That the Respondent Board take the following affirmative action:

1. Within sixty (60) days hereof restore the status quo ante as of January 2, 1985 with respect to the shift hours of those Maintenance employees whose hours were changed and thereafter, upon demand, negotiate in good faith any proposed changes in the shift hours of affected Maintenance employees with

the Association prior to implementation.

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

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

C. That the allegations that the Respondent violated N.J.S.A. 34:13A-5.4(a)(2) and (3) be dismissed in their entirety.

Alan R. Howe
Hearing Examiner

Dated: March 12, 1985
Trenton, New Jersey

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 our employees that:

WE WILL NOT interfere with, restrain or coerce our employees in the exercise of the rights guaranteed to them by the Act, particularly, by refusing to negotiate in good faith with the Association with respect to changes in the shift hours of Maintenance employees.

WE WILL NOT refuse to negotiate in good faith with the Association concerning terms and conditions of employment, including the unilateral implementation of changes in the shift hours of Maintenance employees in the negotiations unit represented by the Association.

WE WILL within sixty (60) days hereof restore the status quo ante as of January 2, 1985 with respect to the shift hours of those Maintenance employees whose hours were changed and thereafter, upon demand, negotiate in good faith any proposed changes in the shift hours of affected Maintenance employees with the Association prior to implementation.

ELMWOOD PARK 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, 495 West State Street, Trenton, New Jersey, 08618.