

P.E.R.C. NO. 95-99

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

EWING TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-93-97

EWING TOWNSHIP ADMINISTRATORS
ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the Ewing Township Board of Education violated the New Jersey Employer-Employee Relations Act by refusing to negotiate in good faith with the Ewing Township Administrators Association concerning uncompensated increases in workload of supervisory subject matter coordinators. The Commission finds no evidence that either party contemplated that regular full-time supervisory coordinators would have teaching duties in addition to their regular duties. Accordingly, the Commission finds that the Board had an obligation to negotiate before increasing the workload of the three full-time coordinators by adding a regular teaching assignment to their regular duties.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Charging Party.

Appearances:

For the Respondent, Carroll & Weiss, attorneys
(Robert J. Merryman, of counsel)

For the Charging Party, Lake & Schwartz, attorneys
(Robert M. Schwartz, of counsel)

DECISION AND ORDER

On September 14, 1992, the Ewing Township Administrators Association filed an unfair practice charge against the Ewing Township Board of Education. The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (3) and (5), ^{1/} when it unilaterally increased the work time and workload

^{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. (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..."

of supervisory subject area coordinators by assigning them teaching duties.

On April 22, 1993, a Complaint and Notice of Hearing issued. On May 6, the Board filed its Answer. The Board asserts that: without challenge from the Association, it had previously assigned teaching duties to John Burd, the supervisory subject area coordinator of health and physical education; the assignment of teaching duties to other coordinators has not increased work time or workload; and the assignment of these duties was authorized by the parties' past practice.

On October 13, 1993, Hearing Examiner Stuart Reichman conducted a hearing. The parties examined witnesses and introduced exhibits. They waived oral argument but filed post-hearing briefs.

On January 14, 1994, the Hearing Examiner issued his report and recommendations. H.E. No. 94-13, 20 NJPER 103 (¶25052 1994). He found that the Board had unilaterally increased the workload of three coordinators. He rejected the Board's defense that the assignment of regular classroom duties was consistent with the parties' established practice. By way of remedy, he recommended that since the unfair practice charge did not seek rescission of the teaching assignments, the Board should be ordered to negotiate over compensation for the increased workload.

On January 27, 1994, the Association filed exceptions. It claims that the Hearing Examiner erred in not finding that an increase in John Burd's teaching assignment from five to ten classes

per week was an unlawful unilateral increase in his workload. It also claims that the "alternate and primary remedy which the Association would like to accomplish is to restore the duties of supervisory subject area coordinators" to their pre-increase levels.

On January 28, 1994, the Board filed exceptions. It claims that the Hearing Examiner's conclusion that there were separate past practices for Burd and the other coordinators is illogical and inconsistent with our prior decisions. It asserts that there is only one past practice: teaching duties are assigned to supervisory subject matter coordinators without negotiations.

On February 2, 1994, the Board responded to the Association's exceptions. It contends that there may be a limit to the number of teaching duties that can be assigned to the coordinators, but that the Hearing Examiner determined that the limit had not been reached. It further contends that even if the assignment of additional teaching duties to Burd exceeded the past practice, that fact would only create a duty to negotiate concerning Burd, not the other coordinators. As to remedy, the Board asserts that removal of teaching duties would be inconsistent with its prerogative to assign duties related to the duties of the supervisory subject matter coordinators and authorized by their job description.

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

We summarize the relevant facts. Howard Young became a supervisory coordinator in 1980. He supervises all 7th through 12th grade math and science teachers. He formally supervises 40 teachers -- performing observations, evaluations and post-observation conferences. He also supervises and evaluates a number of non-tenured elementary teachers and informally supervises approximately 50 tenured elementary teachers. Before the 1992-1993 school year, he was never assigned teaching duties in addition to his full load as a coordinator.

When Irene Solomon became a supervisory coordinator in 1987, she was told that she would have only supervisory responsibilities and no teaching assignments. These full-time supervisory assignments were consistent with the supervisory coordinator job description which at the time did not require coordinators to teach in addition to their regular full-time supervisory responsibilities. Solomon supervises language arts for all elementary teachers. She formally supervises, observes and evaluates all 7th through 12th grade language arts teachers and formally evaluates 5-7 non-tenured elementary teachers.

John Burd was treated differently. When he was offered his position in 1987, he was told that he would have to accept a teaching assignment if he wanted the job because he would have fewer supervisory responsibilities than the other three coordinators. During the 1987-88 school year, he taught four classes per week. During the 1988-89 school year, he taught five classes per week. During the 1992-93 school year, his teaching assignment doubled to

ten classes per week. Burd supervises five physical education teachers and two health specialists at the elementary level and twelve instructors at the junior and high school levels. He has no other formal or informal supervisory responsibilities.

In June 1992, the coordinator job description was revised to provide that the coordinator "[r]emains an active teacher practitioner by providing direct instructional services to students as assigned." Young, Solomon and a third full-time supervisory coordinator, Louise Saxton,^{2/} were then assigned regular teaching duties the following school year. None of their supervisory responsibilities were removed. Young must now travel daily to the high school to teach one period of biochemistry. He has no assigned preparation period and works two to three hours longer each day. Solomon has been assigned to teach an English class and works one to two hours longer each day preparing and grading papers.

A public employer violates its obligation to negotiate in good faith when it unilaterally sets or changes a mandatorily negotiable term and condition of employment. N.J.S.A. 34:13A-5.3; 5.4. Teacher workload is a mandatorily negotiable subject. Burlington Cty. College Faculty Ass'n v. Bd. of Trustees, 64 N.J. 10 (1973); see also cases cited by the Hearing Examiner, H.E. at 9. Workload increases have been measured by increases in the length of the work week or workday; or increases in the number of teaching

^{2/} The record does not detail Saxton's assignments.

periods or pupil contact time; or decreases in the amount of duty-free time or preparation periods. See, e.g., Woodstown-Pilesgrove Reg. H.S. Bd. of Ed. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582 (1980) (increase in workday); Hamilton Tp. Bd. of Ed., P.E.R.C. No. 90-80, 16 NJPER 176 (¶21075 1990), aff'd NJPER Supp.2d 258 (¶214 App. Div. 1991) (increase in pupil contact time); Newark Bd. of Ed., P.E.R.C. No. 79-38, 5 NJPER 41 (¶10026 1979), aff'd NJPER Supp.2d 72 (¶55 App. Div. 1980) (loss of preparation period); Fair Lawn Bd. of Ed., P.E.R.C. No. 79-44, 5 NJPER 48 (¶10032 1979), aff'd NJPER Supp.2d 68 (¶50 App. Div. 1979) (loss of duty-free time); Englewood Bd. of Ed. v. Englewood Teachers Ass'n, NJPER Supp.2d 28 (¶18 App. Div. 1974) (increase in number of teaching periods). Here, the addition of the teaching assignments to the full-time coordinators increased their pupil contact time and their workday. The addition of teaching assignments added teaching, preparation, and grading responsibilities not previously required of full-time coordinators.

The parties' collective negotiations agreement is silent on the issue of coordinator workload and it is undisputed that the parties did not otherwise negotiate over this issue. Thus, the Board was obligated to negotiate over increases in coordinator workload unless it had a managerial prerogative to increase the workload, or, as it asserts, the Association waived its right to negotiate over the assigned workload because it was within the established practice for coordinators.

On this record, we cannot conclude that the Board had a managerial prerogative to increase coordinator workload. We do not hold that coordinators could not be assigned teaching duties. To the contrary, we conclude that the Board's determination to assign teaching duties to subject matter coordinators was predominately a matter of educational policy. But that is not in dispute here. This case is limited to a dispute over the amount of work assigned to coordinators, not the type. There is no evidence that negotiations over the amount of work assigned to coordinators would have significantly interfered with any educational policy determination. Woodstown-Pilesgrove. We are left, then, to determine whether the Association waived its right to negotiate over the uncompensated workload increases.

The Board argues that the change in the duties of the three full-time coordinators did not trigger a negotiations obligation because a coordinator without full-time duties, John Burd, had been given teaching duties all along without Association objection. It relies on Bethlehem Tp. Bd. of Ed., P.E.R.C. No. 88-15, 13 NJPER 712 (¶18265 1987) and Shamong Tp. Bd. of Ed., P.E.R.C. No. 91-21, 16 NJPER 489 (¶21213 1990).

In Bethlehem, the assignment of a sixth teaching period to seventh and eighth grade teachers was consistent with the established practice of assigning six teaching periods to the large majority of teachers in the same negotiations unit and same school. Lower grade teachers had historically taught six periods and one

seventh and one eighth grade teacher had taught six periods without any objection. There was no evidence that the parties intended that seventh and eighth grade teachers were to be treated differently. Similarly, in Shamong, an increase in pupil contact time for kindergarten and reading teachers and aides was within the established range of pupil contact time for all other teachers.

Here, by contrast, regular full-time supervisory coordinators had never been assigned classroom teaching in addition to their regular duties. This practice was consistent with their job description which did not include teaching duties before it was changed in June 1992. One coordinator had teaching duties, but only because he did not have a full load as a coordinator; he was told from the beginning that he would have to have some teaching responsibilities to fill his day. He was the exception to the well-established practice. It was only after the job description for coordinators was changed to include teaching duties that such duties were added to the schedule of the regular full-time coordinators.

Before 1992, there was no practice of assigning full-time supervisory subject matter coordinators regular teaching duties in addition to their supervisory assignments. While there was one exception because that coordinator did not have a full coordinator workload, that exception does not mean that the other coordinators did not have their workload increased or that their union clearly and unequivocally waived its right to negotiate over workload

increases for them. See State of New Jersey, P.E.R.C. No. 77-40, 3 NJPER 78 (1977); Deptford Bd. Ed., P.E.R.C. No. 81-78, 7 NJPER 35 (¶12015 1980), aff'd NJPER Supp.2d 118 (¶98 App. Div. 1982). There is no evidence that before 1992, either party contemplated that regular full-time supervisory coordinators would have teaching duties in addition to their regular duties. Accordingly, we find that the Board had an obligation to negotiate before increasing the workload of the three full-time coordinators by adding a regular teaching assignment to their regular duties. See Hamilton Tp. Bd. of Ed., P.E.R.C. No. 87-18, 12 NJPER 737 (¶17276 1986), aff'd NJPER Supp.2d 185 (¶163 App. Div. 1987), certif. den. 111 N.J. 600 (1988) (board violated negotiations obligation by assigning teaching duties to administrator without negotiating over compensation).

We dismiss the subsection 5.4(a)(3) allegation since we find no facts to support an allegation of anti-union animus. We need not consider whether increasing Burd's teaching load from one to two classes per day triggered a negotiations obligation. The unfair practice charge does not raise that allegation.

ORDER

The Ewing Township Board of Education is ordered to:

A. Cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by refusing to negotiate in good faith with the Ewing Township Administrators Association concerning uncompensated increases in workload of supervisory subject matter coordinators Howard Young, Irene Solomon and Louise Saxton.

2. Refusing to negotiate in good faith with the Ewing Township Administrators Association concerning uncompensated increases in workload of supervisory subject matter coordinators Young, Solomon and Saxton.

B. Take this action:


1. Immediately enter into negotiations with the Association concerning the uncompensated increases in workload of supervisory subject matter coordinators Young, Solomon and Saxton.

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 shall, after being signed by the Respondent's authorized representative, be posted immediately and maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure 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 with this order.

The remaining allegations in the Complaint are dismissed.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Buchanan, Finn, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration. Commissioner Klagholz was not present.

DATED: May 23, 1995
Trenton, New Jersey
ISSUED: May 24, 1995



NOTICE TO 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 employees in the exercise of the rights guaranteed to them by the Act, particularly by refusing to negotiate in good faith with the Ewing Township Administrators Association concerning uncompensated increases in workload of supervisory subject matter coordinators Howard Young, Irene Solomon and Louise Saxton.

WE WILL cease and desist from refusing to negotiate in good faith with the Ewing Township Administrators Association concerning uncompensated increases in workload of supervisory subject matter coordinators Young, Solomon and Saxton.

WE WILL immediately enter into negotiations with the Association concerning the uncompensated increases in workload of supervisory subject matter coordinators Young, Solomon and Saxton.

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EWING TOWNSHIP BOARD OF EDUCATION
(Public Employer)

Date: _____

By: _____

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, 495 West State Street, CN 429, Trenton, NJ 08625-0429 (609) 984-7372

APPENDIX "A"

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

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Respondent,

-and-

Docket No. CO-H-93-97

EWING TOWNSHIP ADMINISTRATORS
ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission finds that the Ewing Township Board of Education violated section 5.4(a)(5) and, derivatively (1) of the New Jersey Employer-Employee Relations Act when it unilaterally increased the workload of certain employees serving in the title of supervisory subject area coordinator. The Hearing Examiner rejected the Board's argument that its assignment of regular classroom teaching responsibilities to the coordinators was consistent with the established practice.

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.

STATE OF NEW JERSEY
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Appearances:

For the Respondent, Carroll & Weiss, attorneys
(Robert J. Merryman, of counsel)

For the Charging Party, Lake & Schwartz, attorneys
(Robert M. Schwartz, of counsel)

**HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION**

On September 14, 1992, the Ewing Township Administrators Association ("Association") filed an Unfair Practice Charge (C-2)^{1/} with the Public Employment Relations Commission ("Commission") against the Ewing Township Board of Education ("Board"). The Association alleges that the Board violated the New

^{1/} Exhibits received in evidence marked as "C" refer to Commission Exhibits, those marked "J" refer to joint exhibits, and those marked "CP" refer to the charging party's exhibits. The transcript citation "T1" refers to the transcript developed on October 13, 1993, at page 1.

Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically subsections 5.4(a)(1), (3) and (5)^{2/} by unilaterally assigning teaching responsibilities to the position of supervisory subject area coordinator ("coordinator") and thereby increasing worktime and workload without prior negotiations.

On April 22, 1993, the Director of Unfair Practices issued a Complaint and Notice of Hearing (C-1). On May 6, 1993, the Board filed its Answer (C-3) denying that the teaching duties assigned to the coordinators resulted in any increase in worktime or workload, and denying that its actions violated the Act. A hearing was conducted on October 13, 1993, at the Commission's Offices in Trenton, New Jersey. The parties were afforded the opportunity to examine and cross-examine witnesses, present relevant evidence and argue orally. At the conclusion of the hearing, the parties waived oral argument and established a briefing schedule. Briefs were filed by December 23, 1993.

Upon the entire record, I make the following:

^{2/} 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. (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."

FINDINGS OF FACT

1. The parties stipulated that the Board is a public employer and the Association is a public employee representative within the meaning of the Act (T8). The parties also stipulated that employees serving in the title supervisory subject area coordinator are employees within the meaning of the Act (T8).

2. The collective agreement between the Board and the Association covering the period July 1, 1990 through June 30, 1993, includes in Article I, Recognition, the title of supervisory subject matter coordinator (J-1; T75).^{3/} All coordinators are paid in accordance with salary guides set forth in Appendix A of the collective agreement. Salaries set forth in Appendix A are exclusive of stipends (T76). The collective agreement does not include a work hour provision for coordinators (T77).

3. Howard Young began teaching science and math in Ewing in 1968 (T14). In 1976, Young became coordinator of science (T12-T13). The coordinator of science position involved only teaching responsibilities and contained no supervisory duties (T12-T13). In 1980, Young's position was changed to supervisory coordinator of science. Accompanying the title change, all of

^{3/} While the Recognition Article in the collective agreement shows the title as supervisory subject matter coordinators, the job descriptions (J-2 and J-3) show the title as supervisory subject area coordinator. Apparently, these titles refer to the same job.

Young's teaching duties were removed, and he was assigned only supervisory responsibilities (T13-T14). When his title was changed in 1980, Young was provided with J-3, the job description for the supervisory subject area coordinator position (T13). From 1980, when Young first became a coordinator, through June, 1992, Young had no regular teaching assignment. On occasion, Young would teach a demonstration lesson in the classroom when the regular teacher was uncomfortable with the material or the means to present it (T15).

4. On June 22, 1992, the supervisory subject area coordinator job description was revised (J-2). Among other, more minor changes made in the new job description (J-2), paragraph 7.c. was revised to provide that the coordinator "[r]emains an active teacher practitioner by providing direct instructional services to students as assigned" (T17). In accordance with J-2, beginning with school year 1992-1993, Coordinators Young, Solomon and Saxton were assigned regular classroom teaching responsibilities (T17; T30; T56). For example, Young was assigned to teach one daily period of biochemistry at the high school, and Solomon was assigned to teach one daily period of English at Fischer Junior High (T17; T56). Although the three coordinators were given these additional regular teaching assignments, none of their supervisory responsibilities were removed (T21; T23-T24; T57).

5. As a coordinator, Young is assigned to supervise all 7th grade through 12th grade math and science teachers. Additionally, Young is assigned the responsibility of supervising

and evaluating a number of non-tenured elementary teachers (T17). Young is also assigned to informally supervise approximately 50 tenured elementary teachers in regard to the math and science elements of the curriculum (T18). Young's informal supervisory responsibilities include observations of the teachers but no write-ups (T18). Young formally supervised 40 teachers in school year 1991-1992. Formal supervision includes class observations, written evaluations and post-observation conferences (T19).

6. Since school year 1992-1993, in addition to Young's supervisory responsibilities, he teaches a 46 minute daily class in biochemistry (T22; CP-2). While Young's office is located in the Antheil School, he travels daily to the high school for the biochemistry class (T22). Prior to his biochemistry teaching assignment, Young did not make daily trips to the high school (T22). Young has not been assigned a scheduled preparation period. He spends approximately 30-45 minutes per day preparing for the class and up to 30 minutes per day cleaning the classroom after class has ended (T23). As a result of the teaching assignment, Young must grade papers, complete other teaching related paperwork, and be present at the high school for department and guidance meetings and other meetings with the principal (T25). Young also has had to reschedule his supervisory duties because the junior high and elementary schools' day ends before his class at the high school. Consequently, Young now meets with the teachers he supervises only in the morning (T24-T25). Young estimates that his

work day has increased by 2 to 3 hours per day since he has been assigned classroom teaching responsibilities (T25).

7. Irene Solomon was hired as a coordinator in language arts in April, 1987. At the time of hire, she was given a copy of J-3 and told that she would have only supervisory responsibilities and no teaching assignments (T55-T56; T57).

8. Solomon's first regular classroom teaching responsibility was assigned for school year 1992-1993, just after J-2 was issued (T56). None of Solomon's supervisory responsibilities were removed when she was given the teaching assignment (T57).

9. Solomon is responsible for supervising the language arts curriculum for all elementary teachers (T58-T59). She formally supervises, observes and evaluates all language arts teachers in grades 7 through 12 (T59). Solomon is also assigned an additional 5 to 7 non-tenured elementary teachers to formally evaluate (T63-T64; T67). While not required, Solomon conducts a pre-observation conference with each teacher during the evaluation process. The pre-observation conference is normally done during the teachers conference or preparation period (T68-T69).

10. As the result of the teaching assignment, Solomon works an additional 1 to 2 hours per day, during the evening, grading students' papers (T60). While prior to the classroom teaching assignment made in school year 1992-1993, Solomon periodically brought work home in the evening, but such work was of

lesser volume and was unrelated to any classroom teaching assignment (T69; T71).

11. John Burd was hired by the Board on December 1, 1971 (T46). On May 18, 1987, Burd was appointed to the coordinator position for health and physical education (T46-T47). Burd was placed on the same salary scale as the other coordinators and was covered by the same job descriptions (T50; T53). In May, 1987, immediately after his appointment as coordinator, Burd's teaching responsibilities ceased for the balance of that school year (T54). Prior to his appointment as coordinator, Jane Van Alst told Burd that he would have to agree to accept a teaching assignment if he wanted the job (T51; T53-T54). In school year 1987-1988, Burd was assigned to teach four classes which were scheduled on one day per week (T48). In school year 1988-1989, Burd's teaching assignment increased to five classes scheduled on one day per week (T49). In school year 1992-1993, just after J-2 was issued, Burd was assigned to the junior high school and his teaching assignment doubled to ten classes per week, scheduled two classes per day, five days per week (T49).

12. Burd supervises five physical education teachers and two health specialists at the elementary level and twelve instructors at the junior high and high school levels (T47-T48). Burd has no other formal or informal supervisory responsibilities at the elementary level (T48; T50-T51).

13. Although at the time Burd was initially appointed to the coordinator position, neither the job description nor his employment contract made reference to teaching responsibilities. However, Burd always understood that his condition of employment included teaching assignments (T52-T53). Neither the Association nor Burd had ever grieved the teaching assignments (T53). The Association never raised Burd's teaching assignment during the course of negotiations, nor did it ever file an unfair practice regarding that issue.

14. The collective agreement (J-1) is silent with regard to the assignment of teaching duties to coordinators (T41). Young and Solomon knew that Burd had teaching responsibilities (T44; T70).

15. Coordinators' hours of work have never been specifically defined (T35; T69). The coordinators' office hours are 8:00 a.m. to 4:00 p.m. and those hours constituted the normal work day (T35-T36; T69). Prior to school year 1992-1993, coordinators occasionally worked after 4:00 p.m. or brought work home (T36; T69-T70). When the coordinators were given a specific classroom teaching assignment for school year 1992-1993, they were not told that they would have to work a longer work day as the result of such new assignment (T38; T70).

ANALYSIS

N.J.S.A. 34:13A-5.3 provides as follows:

Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established. In addition, the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances, disciplinary disputes, and other terms and conditions of employment.

Since the inception of the Act, one of the governing principles has been that teacher workload is a mandatory subject of negotiation and unilateral increases in teacher workload violate Sections 5.4(a)(5) and, derivatively, (1). Burlington County College Faculty Association v. Board of Trustees, 64 N.J. 10 (1973); In re Maywood Board of Education, 168 N.J. Super. 45, 59 (App. Div. 1979); In re Byram Township Board of Education, 152 N.J. Super. 12 (App. Div. 1977); Redbank Board of Education v. Warrington, 138 N.J. Super. 564 (App. Div. 1976); Kingwood Township Board of Education, P.E.R.C. No. 86-85, 12 NJPER 102 (¶17039 1985); Ramsey Board of Education, P.E.R.C. No. 85-119, 11 NJPER 372 (¶16133 1985), aff'd App. Div. Dkt. No. A-4836-84T1 (2/6/86); Board of Education of City of Newark v. Newark Teachers Union, P.E.R.C. No. 79-38, 5 NJPER 41 (¶10026 1975), aff'd App. Div. Dkt. No. A-2060-78 (2/26/80).

In the instant matter, the workload of the four coordinators was increased. Prior to school year 1992-1993, neither Young, Solomon nor Saxton had any regular classroom teaching

assignment. None of the coordinators' supervisory responsibilities were reduced.^{4/}

The Board contends that the assignment of teaching duties to the coordinators is consistent with the established practice between the parties. The Board notes that a majority representative may waive its right to negotiate changes in workload through a collective negotiations agreement or past practice. Bethlehem Township Board of Education, P.E.R.C. No. 88-15, 13 NJPER 712 (¶18265 1987). The Board relies on Burd's teaching schedule as the basis for establishing that the extant practice includes regular classroom teaching assignments. The Board asserts that since Burd has had regular teaching assignments practically from the time of his appointment as coordinator, and since Burd's job description is the same as the other coordinators', the Board, in accordance with the past practice, could unilaterally make regular teaching assignments to any or all of the other coordinators without changing extant conditions of employment.

A past practice is a term and condition of employment which is not enunciated in the parties' agreement, but arises from their conduct. Caldwell-West Caldwell Board of Education, P.E.R.C. No. 80-65, 5 NJPER 536 (¶10276 1979), aff'd in pt., rev'd in pt., 180 N.J. Super. 440 (App. Div. 1981). A past practice is unequivocal,

^{4/} I do not suggest that had the Board lightened the coordinators' supervisory responsibilities a negotiations obligation would not still arise. See Sayreville Board of Education, P.E.R.C. No. 84-74, 10 NJPER 37 (¶15021 1983).

clearly enunciated and acted upon; readily ascertainable over a reasonable period of time as a fixed and established practice accepted by both parties, and as enforceable as any written term. Elkouri & Elkouri, How Arbitration Works at 439 (Fourth Ed. 1985), cited with approval, Passaic County Regional High School District No. 1, P.E.R.C. No. 91-11, 16 NJPER 446 (¶21192 1990). I disagree with what the Board contends is the established practice for all of the coordinators. I find that the established practice provides for no regular classroom teaching assignments to be made to Young, Solomon or Saxton. Thus, the unilateral assignment of regular classroom teaching responsibilities for Young, Solomon and Saxton represents a change in their conditions of employment without negotiations. However, in Burd's case, the established practice, i.e., that which is readily ascertainable over a reasonable period of time and accepted by both parties, provided the Board with greater flexibility with respect to teaching assignments. In school year 1987-1988, Burd was assigned to teach four classes per week. Beginning in school year 1988-1989, the Board unilaterally increased Burd's teaching load to five classes per week. The Association never filed a grievance or unfair practice regarding the Board's initial assignment of classroom teaching responsibilities nor the subsequent increased teaching load. Consequently, in accordance with the established practice, the Board maintained the unilateral right to change Burd's teaching assignments. See Monmouth County Sheriff, H.E. No. 92-9, 17 NJPER 509 (¶22251 1991) aff'd P.E.R.C. No. 93-16, 18 NJPER 447 (¶23201 1992).

The Board cites Bethlehem Township Board of Education, and Shamong Township Board of Education, P.E.R.C. No. 91-21, 16 NJPER 489 (¶21213 1990) in support of its contention that the assignment of regular classroom teaching responsibilities to coordinators Young, Solomon and Saxton was consistent with the established practice between the parties and could be implemented unilaterally without negotiations. In Bethlehem Township Board of Education, the Association alleged, inter alia, that the Bethlehem Township Board of Education violated the Act by unilaterally assigning a sixth teaching period to certain 7th and 8th grade teachers without negotiations. The Commission found that the assignment of such sixth teaching period "...was consistent with the established practice of assigning six teaching periods to the large majority of teachers in the same unit and in the same school." Bethlehem Board of Education, 13 NJPER at 713.

In Shamong Township Board of Education, the Association alleged that the Board violated the Act by unilaterally increasing the pupil contact time of kindergarten and reading teachers and kindergarten aides. The Commission looked at the range of pupil contact time which the majority of teachers worked in order to determine the established practice concerning pupil contact time. The Commission found that the Board did not violate the Act because the controverted increase in pupil contact time for kindergarten teachers and aides and reading teachers was within the established range of pupil contact time for the majority of the other teachers.

Bethlehem and Shamong are distinguishable from the instant matter. In Bethlehem and Shamong the Commission identified the established practice by looking at the extant terms and conditions of employment applied to the majority of employees related to the dispute. Once the established practice was identified, the Commission determined whether the employers' actions conformed to the established practice. In the instant matter, the Board suggests that the established practice is represented by the minority of employees involved in the dispute, i.e. the terms and conditions of employment applied to Mr. Burd. I reject the Board's attempt to so identify Burd's circumstance as the established practice applicable to the coordinator position. I find the established practice pertaining to the coordinator positions currently filled by Young, Solomon and Saxton to provide for no regular classroom teaching assignments. I also find that the Board has retained its right to unilaterally make teaching assignments to the physical education coordinator's position. Accordingly, when the Board unilaterally assigned regular classroom teaching responsibilities to Young's, Solomon's and Saxton's positions, without prior negotiations, it increased their workloads in violation of Section 5.4(a)(5) of the Act.

I find no facts in support of the Association's contention that the Board discriminated 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.

REMEDY

The unfair practice charge does not seek as a remedy the rescission of the teaching assignments made to Young, Solomon and Saxton. The thrust of the Association's brief regarding remedy clearly urges that an order be issued directing negotiations with respect to compensation for the assigned teaching duties. Consequently, I recommend that the Commission order the parties to enter into immediate negotiations regarding compensation and other terms and conditions of employment related to the workload increase retroactive to school year 1992-1993.

Accordingly, based upon the entire record and above analysis, I make the following:

CONCLUSIONS OF LAW

1. The Board violated Section 5.4(a)(5) and, derivatively, (1) when it unilaterally assigned teaching responsibilities to the coordinator positions held by Young, Solomon and Saxton.
2. The Board did not violate Section 5.4(a)(3) of the Act.

RECOMMENDED ORDER

I recommend that the Commission **ORDER:**

A. That the Board cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act by unilaterally changing terms and conditions of employment by assigning regular classroom teaching duties to certain employees serving in the title supervisory subject area coordinators who prior to school year 1992-1993 had no regular classroom teaching assignments.

2. Refusing to negotiate in good faith with the Ewing Township Administrators Association concerning increases in workload, compensation and other changes in terms and conditions of employment affecting certain employees serving in the title supervisory subject area coordinator.

B. That the Board take the following affirmative action:


1. Immediately enter into collective negotiations with the Association concerning compensation and other terms and conditions of employment related to the workload increase for employees serving in the coordinator title.

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 upon receipt thereof and, after being signed by the respondent's authorized representative, shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure 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 complaint be dismissed regarding the Section 5.4(a)(3) allegation.


Stuart Reichman
Hearing Examiner

DATED: January 14, 1994
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 interfere with, restrain or coerce our employees in the exercise of the rights guaranteed to them by the Act by unilaterally changing terms and conditions of employment by assigning regular classroom teaching duties to certain employees serving in the title supervisory subject area coordinator, who prior to school year 1992-1993, had no regular classroom teaching assignments.

WE WILL NOT refuse to negotiate in good faith with the Ewing Township Administrators Association concerning increases in workload, compensation and other changes in terms and conditions of employment affecting certain employees serving in the title supervisory subject area coordinator.

WE WILL immediately enter into collective negotiations with the Ewing Township Administrators Association concerning compensation and other terms and conditions of employment for certain employees serving in the title supervisory subject area coordinator whose workload has increased as the result of being assigned regular classroom teaching responsibilities.

Docket No. CO-H-93-97

Ewing Township Board of Education
(Public Employer)

Dated _____

By _____
(Title)

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

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State St., CN 429, Trenton, NJ 08625 (609) 984-7372.