

P.E.R.C. NO. 89-59

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CARLSTADT-EAST RUTHERFORD REGIONAL  
BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-88-166

BECTON EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the Carlstadt/East Rutherford Regional Board of Education violated the New Jersey Employer-Employee Relations Act by unilaterally revising its coaches' employment contracts. The Complaint was based on an unfair practice charge filed by the Becton Education Association.

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Appearances:

For the Respondent, Robert Glickman, Esq.

For the Charging Party, Zazzali, Zazzali, Fagella & Nowak,  
P.C. (Robert A. Fagella, of counsel)

DECISION AND ORDER

On December 23, 1987, the Becton Education Association ("Association") filed an unfair practice charge against the Carlstadt-East Rutherford Regional Board of Education ("Board"). 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),<sup>1/</sup> by unilaterally revising its coaches' employment contracts.

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<sup>1/</sup> 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

On February 1, 1988, a Complaint and Notice of Hearing issued. On February 9, the Board filed an Answer asserting that: (1) the Association is not the majority representative of coaches or persons performing extra-curricular activities, and (2) it did not change coaches' terms and conditions of employment.

On May 4, 1988, Hearing Examiner Susan Wood Osborn conducted a hearing. The parties examined witnesses and introduced exhibits. They waived oral argument and post-hearing briefs.

On August 22, 1988, the Hearing Examiner recommended the Complaint's dismissal. H.E. No. 89-5, 14 NJPER \_\_\_\_ (¶ \_\_\_\_ 1988). She found that the Association represents regular unit members who coach, but does not represent coaches not otherwise employed by the Board. She also found that the Board did not unilaterally change any terms and conditions of employment when it revised the language of the coaches' employment contracts.

On September 14, 1988, after an extension of time, the charging party filed exceptions. It contends that the Association represents all coaches, not just in-district coaches, and that the Board violated the Act by unilaterally changing coaches' terms and conditions of employment.

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1/ Footnote Continued From Previous Page

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."

On September 19, 1988, the Board filed a reply urging adoption of the Hearing Examiner's recommendation.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 2-7) are generally accurate. We incorporate them with these modifications.

We adopt the findings regarding the two prorated stipends but do not draw a general conclusion about the parties' practice. We add that the Association submitted a proposal to a fact finder regarding coaches' stipends which was used to negotiate a sizeable increase for coaches that year (T23). We add that exhibit A-2 was the first proposed modification to the coaching contract. It extended the contractual period through any tournaments, granted exclusive authority to the Athletic Director to set the length of time that coaches agree to devote, provided for an evaluation procedure, provided coaches a right to grieve, and granted the employer the rights to cancel the contract based on insufficient participation and to pay coaches pro rata. The parties agreed on certain changes, but not others. The Board then implemented a final revised coaching contract (A-3). The Association did not agree to the language extending the season to include tournaments. Although the record does not contain the parties' regular grievance procedure, the Association's president testified that the Association believed the grievance procedure for coaches was unnecessary in light of the regular procedure (T79).

N.J.S.A. 34:13A-5.3 requires, in part, that:

A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit.... 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.

The Association alleges that the Board violated this subsection by modifying coaches' terms and conditions of employment without prior negotiations.

The threshold question is whether the Association represents any or all coaches employed by the Board. The Association maintains that it represents all coaches. The Board now maintains that the Association represents only coaches otherwise employed by the Board.<sup>2/</sup>

In assessing whether the parties intended that the Association represent any or all coaches, we begin with the contract's recognition clause. During the 1976-1978 agreement, the Association represented "all certificated personnel...including: classroom teachers, guidance counselors, librarians, nurses." In 1978, a separate unit of secretaries and custodians merged with the teachers unit and those titles were added to the list of included

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<sup>2/</sup> Before the Hearing Examiner, the Board argued that the Association did not represent any coaches. In its reply to the Association's exceptions, it concedes that the Association represents in-district coaches.

titles. In 1980, the bookkeeper was removed and department chairpersons were added. Since 1980, the Association has represented "all certificated personnel and non-certificated personnel...including: Attendance Officer, clerk-typist, custodians, department chairpersons, guidance counselors, librarians, classroom teachers and nurse but excluding Council 7, Special Education Regional Employees...." Standing alone, the current recognition clause does not compel the coaches' inclusion or exclusion. We therefore look to the parties' practice.

At all times since 1976, the parties have negotiated a supplementary athletic guide setting stipends for coaches and the athletic director. At one point, the amount of the stipend was presented to a fact finder. As the Hearing Examiner stated, "there is a presumption that the stipends were negotiated to compensate someone." H.E. at 12. Thus, the weight of the evidence indicates the parties' intent that the Association represent coaches.

Contrast City of Clifton, P.E.R.C. No. 88-76, 14 NJPER 491 (¶19207 1988) (no history of negotiations for title); State of New Jersey (Kean College), P.E.R.C. No. 85-77, 11 NJPER 74 (¶16036 1985) (employees not included in unit under plain language of recognition clause); Manalapan-Englishtown Reg. Bd. of Ed., P.E.R.C. No. 78-24, 3 NJPER 380 (1977) (agreement did not contemplate representation of summer employees); State of New Jersey (Stockton State College), P.E.R.C. No. 77-31, 3 NJPER 62 (1977) (evidence showed that parties agreed union did not represent summer employees); Rutgers, The State

University, P.E.R.C. No. 76-3, 2 NJPER 13 (1976) (no claim by union that it represented all summer employees); City of Newark, D.R. No. 85-24, 11 NJPER 344 (¶16126 1985) (no evidence of past representation of grant-funded employees).

We also find that the Association's representation extends to all athletic coaches employed by Board.<sup>3/</sup> All coaches have similar duties, are paid under the same agreement, and sign the same employment contracts. There is no evidence indicating an intent to treat out-of-district coaches differently. That the Association does not collect dues or agency fees from out-of-district coaches does not change the result. The Association also does not collect any additional dues or fees from in-district coaches beyond their regular assessment as teachers. We note, also, that since coaching is unit work, out-of-district coaches become unit members when hired. Ocean Tp. Bd. of Ed., P.E.R.C. No. 82-9; see also Fairlawn Bd. of Ed., P.E.R.C. No. 79-45, 5 NJPER 50 (¶10033 1979).

We deal now with the unfair practice allegation. We find that the Board violated subsection 5.4(a)(1) and (5) when it unilaterally changed the coaches' employment contract. We need not decide the negotiability of every subject covered in the individual

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<sup>3/</sup> The Association represents the positions, not just the individual employees. Cf. Galloway Tp. Bd. of Ed. v. Galloway Tp. Ass'n of Ed. Sec., 78 N.J. 1, 20 (1978). Exclusion of employees not regularly employed can be litigated through a unit clarification petition. Wayne Bd. of Ed., P.E.R.C. No. 80-94, 6 NJPER 54 (¶11029 1980) (unit includes part-time employees assigned to a regular course of instruction during the regular school year; others are casual).

agreements. To find a violation, we must find changes in some mandatorily negotiable terms and conditions of employment. Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25, 48 (1978). The old contract required that coaches "supervise through the normal season schedule." The new contract adds a requirement that coaches "supervise...through any appropriate season tournaments at the discretion of the Athletic Director." This uncompensated increase in the work period is mandatorily negotiable. See Local 195, IFPTE v. State, 88 N.J. 393 (1982); Galloway, 78 N.J. at 8; Englewood Bd. of Ed. v. Englewood Teachers Ass'n, 64 N.J. 1, 6-7 (1973); Burlington Cty. College Faculty Ass'n v. Bd. of Trustees, 64 N.J. 10, 14 (1973). The new contract contains a grievance procedure for coaches and provides that the decision of the Superintendent or Athletic Director stands until the matter is finally decided. Grievance procedures are mandatorily negotiable. N.J.S.A. 34:13A-5.3. The parties already had a grievance procedure and the Association thought the new clause was unnecessary.<sup>4/</sup> These new clauses unilaterally changed terms and conditions of employment. Accordingly, we find that the Board violated subsections 5.4 (a)(1) and (5) and order it to rescind the new contracts and negotiate with the Association concerning any proposed changes in coaches' mandatorily negotiable terms and conditions of employment.<sup>5/</sup>

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<sup>4/</sup> The regular contractual grievance procedure is not in the record.

<sup>5/</sup> We dismiss the subsection 5.4(a)(3) allegation. No facts were asserted or proved to substantiate that claim.



ORDER

The Carlstadt-East Rutherford Regional 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 unilaterally changing coaches' employment contracts.

2. Refusing to negotiate in good faith with the Becton Education Association, particularly by unilaterally changing coaches' employment contracts.

B. Take the following affirmative action:


1. Rescind any unilaterally adopted coaches' employment contracts.

2. Negotiate in good faith concerning mandatorily negotiable terms and conditions of employment for coaches before changing those terms and conditions of employment.

3. 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.

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

BY ORDER OF THE COMMISSION

  
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James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Johnson, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Reid abstained.

DATED: Trenton, New Jersey  
November 22, 1988  
ISSUED: November 23, 1988

**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 employees in the exercise of the rights guaranteed to them by the Act, particularly by unilaterally changing coaches' employment contracts.

WE WILL cease and desist from refusing to negotiate in good faith with the Becton Education Association, particularly by unilaterally changing coaches' employment contracts.

WE WILL rescind any unilaterally adopted coaches' employment contracts.

WE WILL negotiate in good faith concerning mandatorily negotiable terms and conditions of employment for coaches before changing those terms and conditions of employment.

Docket No. CO-H-88-166

CARLSTADT-EAST RUTHERFORD  
REGIONAL 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.