

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TENAFLY BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-83-301-10

TENAFLY CUSTODIAL AND MAINTENANCE ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge the Tenafly Custodial and Maintenance Association filed against the Tenafly Board of Education. The charge had alleged that the Board violated subsections 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it unilaterally altered the shift hours of two head custodians from 7:00 a.m. - 3:30 p.m. to 2:00 p.m. - 10:30 p.m. The Commission finds that the Board showed that the change resulted from a departmental reorganization resulting in the termination of the assistant head custodians who had supervised the second shift and requiring that the hours of head custodians overlap the first and second shifts so that both groups of employees would have some supervision. The Commission also holds that the Board did not refuse to negotiate over compensation for a head custodian transferred from one school to another.

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Charging Party.

Appearances:

For the Respondent, Aron, Till & Salsberg, Esqs.
(Stephen R. Fogarty, of Counsel)

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

DECISION AND ORDER

On June 7, 1982, the Tenafly Custodial and Maintenance Association ("Association") filed an unfair practice charge against the Tenafly Board of Education ("Board") with the Public Employment Relations Commission. The charge alleged that the Board violated the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically subsections 5.4(a)(1) and (5),^{1/} when, on May 20, 1982, it unilaterally altered the shift hours of two head custodians from 7:00 a.m. - 3:30 p.m. to 2:00 p.m. - 10:30 p.m., effective July 1, 1982.

^{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."

On June 21, 1982, the Board filed a response. It admitted that it made the changes in question, but asserted that the changes resulted from a non-negotiable managerial policy determination to restructure its custodial and maintenance department.

On July 26, 1982, the Director of Unfair Practices issued a Complaint and Notice of Hearing pursuant to N.J.A.C. 19:14-2.1. The Board then filed an Answer reasserting its previous position.

On November 12, 1982, Hearing Examiner Alan R. Howe conducted a hearing at which the parties examined witnesses and presented evidence. They waived oral argument, but filed post-hearing briefs by January 7, 1983.^{2/}

On January 10, 1983, the Hearing Examiner issued his report and recommendations, H.E. No. 83-22, 9 NJPER ____ (¶ ____ 1983) (copy attached). Finding that the shift changes were the result of a departmental reorganization and were made to ensure that head custodians could better supervise employees on both the day and night shifts, he concluded that they were non-negotiable. He cited In re Cherry Hill Township Board of Education, P.E.R.C. No. 81-90, 7 NJPER 98 (¶12040 1981); In re Point Pleasant Board of Education, P.E.R.C. No. 80-145, 6 NJPER 299 (¶11142 1980); In re East Orange Board of Education, P.E.R.C. No. 79-62, 5

^{2/} At this hearing the Association also alleged that the Board violated the Act when, after transferring George Boissonneault from his head custodian position at the Middle School to head custodian at Maugham Elementary School, it paid Mr. Boissonneault at the negotiated rate for the latter position rather than the rate he would have received had he continued in his former position.

NJPER 122 (¶10071 1979), mot. for recon. den. P.E.R.C. No. 79-76, 5 NJPER 190 (¶10197 1979), aff'd, App. Div. Docket No. A-3336-78 (4/28/20); and In re Delaware Valley Regional High School Board of Education, P.E.R.C. No. 79-69, 5 NJPER 183 (¶10100 1979). He further concluded that under Plainfield Association of School Administrators v. Board of Education of the City of Plainfield, 189 N.J. Super 11, (App. Div. 1982) ("Plainfield"), the Board did not have to negotiate the salary of the head custodian transferred from the Middle School to Maugham Elementary School since the salary for the position into which Boissonneault was transferred had already been established by the parties' collective agreement.

On January 21, 1983, the Association filed Exceptions. Specifically, the Association maintains that the reorganization the Hearing Examiner found was only a sham since there were no changes in the number of head custodians or their responsibilities. It relies upon In re Cape May County, P.E.R.C. No. 83-98, 9 NJPER ____ (¶____ 1983) ("Cape May County"). It further maintains that Plainfield does not control Boissonneault's right to negotiate a new salary for his new position since the parties' collective agreement expired the day before the transfer occurred. The Association alleges that the parties were negotiating a successor agreement at the time of the transfer and that its claim to negotiate that particular employee's salary was merely a part of the negotiations for the new agreement.

On February 7, 1983, the Board filed a response. The Board argues that it changed the head custodians' hours in order to permit them to supervise both employees on the 7:00 a.m. - 3:30

p.m. shift and employees on the 3:00 p.m. - 10:30 p.m. shift. The Board argues further that the Association did not seek to negotiate Boissonneault's salary after his transfer in the context of successor contract negotiations, but instead asserted a claimed right under the previous contract to the salary Boissonneault would have received in his former position, an assertion which Plainfield bars. The Board also claims that there is no evidence that it was unwilling to negotiate additional compensation in the context of successor contract negotiations.

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.

During the 1981-1982 school year, there were 42 employees in the Board's custodial and maintenance department. There were six school buildings within the district - four elementary schools, one middle school, and one high school. Each school had its own head custodian and the High School and Middle School had one assistant head custodian each.

All schools had at least two shifts, one from 7:00 a.m. - 3:30 p.m. and another from 3:00 p.m. - 11:30 p.m. The High School also had a night shift from 11:00 p.m. - 7:30 a.m. The head custodians worked from 7:00 a.m. - 3:30 p.m. and the two assistant head custodians worked from 3:00 p.m. - 11:30 p.m.

On October 26, 1981, the Board voted to employ Stanton Leggett and Associates, Inc., to study the staffing of its custodial and maintenance department. Dr. Daniel Knueppel, Assistant Superintendent for Administrative Services, testified that

the reason for the study was economic since the school system had been struggling under very low budget CAPS for the last six years.

In February of 1982, Stanton Leggett completed its study. It recommended the elimination of the assistant head custodian position, a second shift position, and the splitting of the head custodian's hours between the first and second shift in order that the head custodian would be able to supervise personally the greatest number of employees.^{3/}

On March 17, 1982, Dr. Knueppel and the school superintendent, Henry Jaroslaw, met with Anthony Saraceno, president of the Association, and Zenon Ushak, president of the Tenafly Education Association, to inform the Association of the Board's reorganization plans and to obtain its reaction. At this meeting, the Board indicated to the Association that it might have to negotiate the changes as well as compensation. Dr. Knueppel also testified that since the parties were in negotiations at the time, he assumed the matter would be raised there.

On March 22, 1982, the Board received a letter from the Tenafly Education Association on behalf of the custodians, requesting that the superintendent withdraw the proposed changes

^{3/} Dr. Knueppel testified that although the head custodians on the 7:00 - 3:30 p.m. shift were able to see second shift workers for one half hour before the first shift ended, it is more efficient to have the head custodians supervise for a longer period of time on the second shift than on the first shift since the majority of the people work on the second shift when the most cleaning and maintenance are done. Thus, in the High School, there are now one custodian and one matron on the 7:00 a.m. - 3:30 p.m. shift, eight custodians on the 3:00 p.m. - 11:30 p.m. shift, and two custodians on the 11:00 p.m. - 7:30 a.m. shift.

from the Board's consideration at its meeting on March 29. Nevertheless, the superintendent recommended eliminating the following positions: 1) outside groundskeeper, 2) regular custodian at the high school, 3) assistant head custodian high school, and 4) assistant head custodian middle school. He also recommended that the position known as head custodian and maintenance mechanic at the High School be replaced with the position of head custodian High School. The Board accepted these recommendations.

At the next public Board meeting, on April 26, 1982, formal notice was given to those employees whose positions were being eliminated. It was not until May 20, 1982, however, that the remaining employees were informed of the impact of the reorganization. On July 1, 1982, the changes took effect.

Anthony Saraceno, head custodian at the High School, had his hours changed from 7:00 a.m. - 3:30 p.m. to 2:00 p.m. - 10:30 p.m. so that he could take over, in part, the supervisory responsibilities which the High School's assistant head custodian had performed on the 3:00 p.m. - 11:30 p.m. shift.

The head custodian of the Middle School, Boissonneault, was transferred to head custodian at the Maugham Elementary School, to replace the head custodian at the elementary school. His hours were the same as they had been at the Middle School: 7:00 a.m. - 3:30 p.m.

With Boissonneault's transfer, an opening for the position of Middle School head custodian was created. This vacancy was posted and several people were interviewed. The

position was filled by Alvin Spencer, the former assistant head custodian at the Middle School. The hours changed in this position as well, from 7:00 a.m. - 3:30 p.m. to 2:00 p.m. - 10:30 p.m., so that the head custodian could better supervise employees on both the first and second shifts.

Under all the circumstances of this case, we hold that the Association has failed to prove by a preponderance of the evidence that the Board had a duty to negotiate the changes in the hours of the head custodians. We adopt the Hearing Examiner's recommendation to dismiss this part of the Complaint.

The hours an employee works are a fundamental term and condition of employment and are mandatorily negotiable.^{4/} We have, however, recognized a limited exception to this rule when, as a result of a departmental reorganization, a **change of hours** is necessary in order to effectuate a managerial prerogative. See In re Freehold Regional High School Board of Education, P.E.R.C. No. 78-29, 4 NJPER 19 (¶4010 1977) and the cases cited by the Hearing Examiner.

In this case, the facts show that the Board revised the hours of the head custodians because they were needed to supervise those employees previously under the supervision of the assistant head custodian. Unless the changes were made, the

^{4/} See In re East Brunswick Board of Education, P.E.R.C. No. 82-111, 8 NJPER 320 (¶13145 1982); In re City of Newark, P.E.R.C. No. 81-124, 7 NJPER 245 (¶12110 1981); In re Town of Kearny, P.E.R.C. No. 81-70, 7 NJPER 14 (¶12006 1981); In re City of Newark, P.E.R.C. No. 82-39, 7 NJPER 606 (¶12270 1981); In re Town of Kearny, P.E.R.C. No. 82-12, 7 NJPER 456 (¶12202 1981). Galloway Township Board of Education v. Galloway Township Association of Educational Secretaries, 78 N.J. 1 (1978).

employees on the second shift would receive only 1/2 hour (from 3:00 p.m. to 3:30 p.m.) of supervision per day. The change in hours was necessary, under all the circumstances, to insure that the head custodians, the only remaining supervisory personnel, would be in a position to oversee the greatest number of employees and to exercise their supervisory responsibilities at a time (the afternoon and evening) when the greatest amount of work is done. See Irvington P.B.A. v. Town of Irvington, 170 N.J. Super. 539 (App. Div. 1979). Thus, we find that the changes in hours were directly related to the exercise of the Board's managerial prerogatives and reject the Association's argument that the reorganization was a sham to avoid the statutory obligation to negotiate concerning terms and conditions of employment.^{5/}

The Association also claims that the Board violated the Act in not negotiating compensation for Boissonneault when he was transferred from head custodian at the Middle School to head custodian at Maugham Elementary School. The Association claims that because Boissonneault was transferred, his salary was frozen and he became unable to enjoy the same pay raises he would have enjoyed had he remained at the Middle School. It does not contest the transfer in itself, a non-negotiable subject. See In re Neptune Township Board of Education, P.E.R.C. No. 80-109, 6 NJPER 110, (¶11058 1980); In re City of Newark, P.E.R.C. No. 82-39, 7

^{5/} Cape May County is distinguishable. There, we held that the County did not have a managerial prerogative to change the hours of all maintenance workers from 6:00 a.m. - 2:00 p.m. to 3:00 p.m. - 11:00 p.m. merely because it believed cleaning operations might be more efficiently performed at night. There, unlike here, the hours of all employees were changed and no departmental reorganization resulted in the elimination of supervisory positions and the absence of meaningful supervision on a later shift.

NJPER 606 (¶12270 1981).

Under the terms of the expired agreement, the head custodian in the Middle School is to receive \$2,400.00 above the appropriate step on the pay scale. While in that position, Boissonneault received this pay differential. In fact, he continued to receive it after he was transferred. The Association speculates that Boissonneault will in the future lose this differential and thus his salary will be frozen until the difference has been made up on the salary scale itself.

In Plainfield, the Appellate Division of the Superior Court held that an employee who is transferred into a new position with a contractually specified salary may not insist that he continue to receive the contractually specified salary for his old position. The Association argues that since the contract expired on June 30, 1982, it is free to negotiate additional compensation for Boissonneault after that date in the context of negotiations over a successor agreement. We agree: however, the record does not support its contention that the Board refused to negotiate.

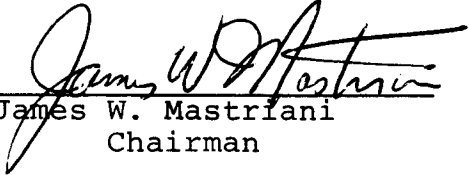
Saraceno testified that during the negotiations he requested that Boissonneault receive his normal increment and that he not be frozen at his present salary until the guide caught up to that figure. When asked if the Board's attorney refused to negotiate with him on that issue, Saraceno replied, "No, he did not." Dr. Knueppel confirmed the Board's willingness to negotiate on compensation. Saraceno further testified that Boissonneault's salary was not reduced when he was transferred, even

though the contract would suggest that he not receive the \$2,400 differential as a head custodian in an elementary school. When asked if he knew that Boissonneault's salary would be frozen, he answered, "I don't know it was frozen. I am saying my feelings are, and the Association feels the same way, that it would be frozen at that level until the guide catches up to him." At best then, the Association thinks that Boissonneault's salary may be frozen; such conjecture is not evidence of a refusal to negotiate in good faith. We therefore dismiss this claim as well as the rest of the Complaint.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Graves, Hartnett and Suskin voted in favor of this decision. None opposed. Commissioners Hipp and Newbaker abstained. Commissioner Butch was not present.

DATED: Trenton, New Jersey
March 16, 1983
ISSUED: March 17, 1983

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Docket No. CO-82-301-10

TENAFLY CUSTODIAL & MAINTENANCE
ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent Board did not violate Subsections 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act when it unilaterally changed the shifts of two Head Custodians without negotiations with the Charging Party. The Hearing Examiner found that the change in shift hours came about as a result of a departmental reorganization of the Board's custodial and maintenance employees and was, therefore, non-negotiable under Commission precedent. The Hearing Examiner also found that the Board had not violated the Act when it refused to negotiate compensation of a Head Custodian who was transferred from the Middle School to an elementary school, citing a recent Appellate Division decision involving the City of Plainfield Board of Education (Docket No. A-5672-80T3).

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 Tenafly Board of Education
Aron, Till & Salsberg, Esqs.
(Stephen R. Fogarty, 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 June 7, 1982 by the Tenafly Custodial & Maintenance Association (hereinafter the "Charging Party" or the "Association") alleging that the Tenafly Board of Education (hereinafter the "Respondent" or the "Board") had engaged in unfair practices within the meaning the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (hereinafter the "Act"), in that in May 1982 the Board unilaterally without notice to the Association and without negotiations altered the shift hours of certain members of the collective negotiations unit, effective July 1, 1982. On May 26, 1982 the Association demanded negotiations and the Respondent replied that shift changes were non-negotiable, all of which was

alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1) and (5).^{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 July 26, 1982. Pursuant to the Complaint and Notice of Hearing, a hearing was held on November 12, 1982 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 filed post-hearing briefs by January 6, 1983.

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 post-hearing briefs of the parties, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

Upon the entire record, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. The Tenafly Board of Education is a public employer within the meaning of the Act, as amended, and is subject to its provisions.
2. The Tenafly Custodial & Maintenance Association is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.
3. The last collective negotiations agreement between the parties was effective during the term July 1, 1980 to June 30, 1982 (CP-1). Negotiations for a successor agreement commenced in February 1982 and are still in progress.

1/ These Subsections prohibit public employers, their representative 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."

4. During the 1981-82 school year there were 42 custodial and maintenance employees assigned to the Board's four elementary schools, one Middle School and one High School. There was one Head Custodian at each school and at the Middle School and at the High School there was an Assistant Head Custodian. The instant Unfair Practice Charge concerns only the hours of three Head Custodians: Anthony J. Saraceno, George J. Boissonneault and Alvin Spencer.

5. During the 1981-82 school year the Head Custodian at each school was scheduled to work from 7:00 a.m. to 3:30 p.m. and the two Assistant Head Custodians at the Middle School and High School were scheduled from 3:00 p.m. to 11:30 p.m.

6. On March 17, 1982 the Superintendent, Harry Jaroslaw, summoned Anthony J. Saraceno, who was also the President of the Association, and Zenon Ushak, the President of the Tenafly Education Association, to a meeting where Daniel Knueppel, an Assistant Superintendent, was also present. The purpose of the meeting was to inform Saraceno and Ushak of the results of a staffing study of the Board's custodial-maintenance operation, which was prepared by Stanton Leggett & Associates, Inc. (R-1). Part of the proposal of Stanton Leggett was to RIF some employees and change the shifts of others, including the Head Custodians. At one point in the proposal a certain "Recommendation No. 3" indicated that some changes "might require negotiations." (R-1, p. 100). The reaction of Saraceno and Ushak to the proposals was negative.

7. Under date of March 22, 1982 Ushak wrote to Jaroslaw requesting that he "cease and desist" from implementing the reorganizational plan for custodial and maintenance personnel and "bring this to the bargaining table..." (R-7).

8. Under date of March 24, 1982 Jaroslaw wrote to Ushak stating that implementation of the plan was necessary to provide more efficient custodial services for the District and that the implementation of the plan "...is a nonnegotiable (sic) managerial prerogative ..." (R-8).

9. At a meeting of the Board on March 29, 1982 four custodian and maintenance positions were abolished, including the Assistant Head Custodians at the Middle School and the High School. Additionally, new job descriptions were adopted for the Head Custodians at the elementary schools, the Middle School and the High School. (R-4, p. 3).

10. At a meeting of the Board on April 26, 1982 three custodial and maintenance employees were RIF'd, effective June 30, 1982 (R-5).

11. Under date of May 20, 1982 Superintendent Jaroslaw wrote to Saraceno advising him that, as of July 1, 1982, he would be operating under a new job description entitled "Head Custodian-High School" and that his hours would be changed from his current schedule (7:00 a.m. to 3:30 p.m.) to 2:00 p.m. to 10:30 p.m., Monday through Friday (R-6).

12. Under date of May 20, 1982 Superintendent Jaroslaw wrote to Boissonneault advising him that, as of July 1, 1982, he was being transferred from his current position as Head Custodian at the Middle School to Head Custodian at the Maugham Elementary School with no reduction in salary (R-2). There was no mention made of an hours change inasmuch as the hours remained the same: 7:00 a.m. to 3:30 p.m.

13. Alvin Spencer was the Assistant Head Custodian at the Middle School, whose position was abolished by the action of the Board on March 29, 1982, supra. He was the successful bidder for the new position of Head Custodian-Middle School and succeeded to the vacancy created by Boissonneault's transfer to the Maugham Elementary School. Spencer's hours, effective July 1, 1982, were 2:00 p.m. to 10:30 p.m. and, thus, were identical to the shift hours of Saraceno.

14. The parties exchanged proposals for a successor agreement to (CP-1) in February 1982. At that time the Board made no mention of any proposed shift changes. Further, since the issuance of the Stanton Leggett report (R-1) the Board has consistently taken the position that only compensation is negotiable and that the decision to change shift hours is non-negotiable. This was confirmed by Assistant Superintendent Knueppel on cross-examination.

THE ISSUES

1. Did the Respondent Board violate Subsections(a)(1) and (5) of the Act when it unilaterally changed the shift hours of two Head Custodians and thereafter refused to negotiate the shift change with the Charging Party upon demand?

2. Did the Respondent Board violate Subsections(a)(1) and (5) of the Act when it unilaterally decided to transfer George J. Boissonneault from his position as Head Custodian at the Middle School to Head Custodian at the Maugham Elementary School with no reduction in salary, i.e., his salary was frozen?

DISCUSSION AND ANALYSIS

The Respondent Board Did Not Violate Subsections(a)(1) And (5) Of The Act When It Unilaterally Changed The Shift Hours Of Two Head Custodians And Thereafter Refused To Negotiate With The Charging Party

The instant case would appear initially to be governed by the Commission's decision in Clifton Board of Education, P.E.R.C. No. 80-104, 6 NJPER 103 (1980) where a violation of Subsection(a)(5) of the Act was found under the circumstances of a unilateral change in the shift hours of custodial employees. However, upon closer examination there is involved a unilateral change in the shifts of two Head Custodians as a result of the departmental reorganization of the Board's custodial and maintenance employees. But for this fact the Hearing Examiner would have no problem in rejecting outright the contention of the Respondent that the change in shift hours of the two Head Custodians occurred as a result of a reduction in force (RIF) among certain custodial and maintenance employees. This is plainly not a "Maywood"^{2/} situation where changes in working conditions resulted from a RIF.

The Hearing Examiner is convinced that on this record there is no causal connection between the RIF of four custodial and maintenance employees and the change

2/ Maywood Board of Education, 168 N.J. Super. 45, 59, 60 (App. Div. 1979). See also, Wayne Board of Education, P.E.R.C. No. 80-83, 6 NJPER 30 (1980); Kingwood Board of Education, P.E.R.C. No. 82-31, 7 NJPER 584 (1981) and Pompton Lakes Board of Education, P.E.R.C. No. 82-85, 8 NJPER 221 (1982).

in shift hours for the two Head Custodians, one at the Middle School and one at the High School. The changes in the hours of these two Head Custodians resulted from an overall departmental reorganization which, in the opinion of the Hearing Examiner, is totally unrelated to the RIF of any custodial or maintenance employees.

Thus, if it were not for the reorganizational aspect of the instant case, the Charging Party would plainly prevail on the basis of Clifton, supra, and the cases cited therein.^{3/}

The record establishes that in adopting and implementing the recommendations of Stanton Leggett the Board, in changing the shift hours of the two Head Custodians at the Middle School and at the High School, is seeking to realize more effective supervision of its custodial and maintenance employees. The supervision formerly provided by the two Assistant Head Custodians at the Middle School and at the High School is no longer available due to the abolition of the Assistant Head Custodian positions (TR. 60, 61). When viewed in the context of a departmental reorganization with the objective of more effective and efficient supervision by the Head Custodians at the Middle School and High School, it is apparent that the shift change must be deemed a non-negotiable educational policy matter. See Cherry Hill Township Board of Education, P.E.R.C. No. 81-90, 7 NJPER 98 (1981); Point Pleasant Borough Board of Education, P.E.R.C. No. 81-145, 6 NJPER 299 (1980); East Orange Board of Education, P.E.R.C. No. 79-62, 5 NJPER 190 (1979) and Delaware Valley Regional H.S. District Board of Education, P.E.R.C. No. 79-65, 5 NJPER 183 (1979). See also, Dunellen Board of Education v. Dunellen Education Association, 64 N.J. 17 (1973).

Having concluded that the unilateral shift changes for the two Head Custodians at the Middle School and the High School resulted from a departmental reorganization, which is a non-negotiable subject, the Hearing Examiner has no alternative but to

^{3/} Board of Education of Englewood v. Englewood Teachers Ass'n., 64 N.J. 1 (1973); Hillside Board of Education, P.E.R.C. No. 76-11, 1 NJPER 55 (1975); 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 149 N.J. Super. 346, 351, as modif. 78 N.J. 1, 8 (1978).

recommend dismissal of the Complaint with respect to the shift change allegations.

The Respondent Board Did Not Violate
Subsections(a)(1) And (5) Of The Act
When It Unilaterally Transferred Boissonneault
From His Position As Head Custodian At The
Middle School To Head Custodian At The
Maugham Elementary School While At The Same
Time Freezing His Salary Following The Transfer

The Respondent first argues that the Hearing Examiner should not consider the issue of compensation for Boissonneault following his transfer from the Middle School to the Maugham Elementary School since the Charging Party did not make any allegations of an unfair practice regarding Boissonneault in its Unfair Practice Charge. It is true that there are no such allegations. However, the issue was fully litigated without objection by the Respondent Board (TR. 45, 46). The Commission has held recently that where an issue in dispute has been fairly and fully litigated, albeit not specifically pleaded, an unfair practice may be adjudicated: Commercial Township Board of Education, P.E.R.C. No. 83-25, 8 NJPER 550, 553 (1982). Accordingly, the Hearing Examiner will proceed to the merits.

On the merits, the Respondent contends that any question regarding compensation following a transfer is a non-negotiable, illegal subject, citing a recent Appellate Division decision: Plainfield Association of School Administrators v. Board of Ed. of the City of Plainfield, Docket No. A-5672-80T3 (June 21, 1982). The Hearing Examiner agrees that, under this decision, the law of the State of New Jersey is that compensation following a transfer is not negotiable. In the Plainfield case a high school principal had been transferred to the principalship of an elementary school where the rate of compensation was lower. The Court, in rejecting the decision of an arbitrator to the contrary, held that:

"...The arbitration significantly interfered with a determination of governmental policy by requiring defendant to pay Williams an amount in excess of that established by the collective bargaining agreement for her position..." (Slip Opin., pp. 9, 10).

The Charging Party's demand that the Respondent Board negotiate over the

compensation to be received by Boissonneault as a result of his transfer would likewise significantly interfere with a determination of governmental policy by requiring the Board to pay Boissonneault an amount in excess of that established by the collective negotiations agreement for his new position as Head Custodian at the Maugham Elementary School. Under the present state of the law in New Jersey the Charging Party cannot succeed in its contention.

Accordingly, the Hearing Examiner will recommend dismissal of the Complaint as it concerns the proofs proffered on behalf of Boissonneault.

* * * *

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

CONCLUSION OF LAW

The Respondent Board did not violate N.J.S.A. 34:13A-5.4(a)(1) and (5) when it refused to negotiate with respect to the unilateral change in shift hours of the Head Custodians at the Middle School and at the High School and, further, when it refused to negotiate the question of compensation for George J. Boissonneault after his transfer from the Middle School to the Maugham Elementary School.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER that the Complaint be dismissed in its entirety.



Alan R. Howe
Hearing Examiner

Dated: January 10, 1983
Trenton, New Jersey