P.E.R.C. No. 86-76

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WILLINGBORO BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-84-93-53

EMPLOYEES ASSOCIATION OF THE
WILLINGBORO PUBLIC SCHOOLS,

Charging Party.

SYHOPSIS

The Public Employment Relations Commission holds that the Willingboro Board of Education violated the New Jersey Employer-Employee Relations Act when it unilaterally reduced the work hours of all elementary school lead food servers from six to four hours each day.

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EMPLOYEES ASSOCIATION OF THE
WILLINGBORO PUBLIC SCHOOLS,

Charging Party.

Appearances:
For the Respondent, Pachman & Glickman, Esqs. (Martin R. Pachman, of Counsel)

For the Charging Party, Katzenbach, Gildea & Rudner, Esqs. (Douglas B. Lang, of Counsel)

DECISION AND ORDER

On October 4, 1983, the Employees Association of the Willingboro Public Schools ("Association") filed an unfair practice charge against the Willingboro 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) and (5),[1/] when, without prior

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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; and (5) Refusing to negotiate in good faith with a majority representative of employees in an

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negotiations, it reduced the work hours of all elementary school lead food servers from six hours to four hours each day.2/

On December 6, 1983, a Complaint and Notice of Hearing issued. The Board then filed an Answer. It admits the reduction in hours, but denies an obligation to negotiate over this change. It asserts instead that a decline in student enrollment and cafeteria income necessitated the change and that it had a managerial prerogative and contractual right to reduce hours. It further asserts that the Association waived its right to contest this change by not submitting a grievance to binding arbitration.

On March 21 and 22, 1985, Hearing Examiner Arnold H. Zudick conducted a hearing.3/ At the outset, he denied the Board's motion to dismiss. The parties examined witnesses and introduced exhibits. They waived oral argument, but submitted post-hearing briefs by June 5.

On August 21, the Hearing Examiner issued his report and recommended decision. H.E. No. 86-8, 11 NJPER ___ (¶_____ 1985)

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appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

2/ The charge does not allege that this violated the parties' collective negotiations agreement or past practice.

3/ In his report (pp. 2-4 and 27-28, n.3), the Hearing Examiner accurately and extensively recounts the procedural history between the Board's Answer and the hearing. We incorporate that discussion.

(copy attached). He concluded that the Board had unilaterally reduced work hours without either a managerial prerogative or contractual right to do so and had therefore violated subsections 5.4(a)(1) and (5). He recommended an order requiring the Board to restore the employees' work hours and compensation, pay them lost compensation, negotiate in good faith before changing work hours and compensation, and notify employees of its violation and remedial action.

On September 9, after an extension, the Board filed 20 exceptions. The Board asserts, essentially, that the Commission lacks jurisdiction over this case under State of New Jersey, Department of Human Services, P.E.R.C. No. 84-148, 10 NJPER 419)¶15191 1984) ("Human Services") and that it had a contractual right to reduce work hours.

On September 17, the Association filed a response supporting the recommended decision.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 4-14) are thorough and accurate. We incorporate them here with one modification[4/]

4/ We agree with the Board that the "new hires" language in Article 12, Section I of the parties' contract (p. 11) could be applicable to elementary school lead food servers. While lead food server positions in the past have not been filled by new hires, the Board is not necessarily precluded from placing new hires in these positions in the future. We reject, however, the Board's exception to the finding (p. 13) that a previous

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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.

In addition, N.J.S.A. 34:13A-5.4(a)(5) makes it an unfair practice for a public employer to refuse to negotiate in good faith with the majority representative concerning employees' terms and conditions of employment. A public employer may violate these obligations in two separate fashions: (1) implementing a new rule or changing an old rule concerning a term and condition of employment without first negotiating in good faith to impasse or having a managerial prerogative or contractual defense authorizing the change, and (2) repudiating a term and condition of employment it had agreed would remain in effect throughout a contract's life. Ramapo State College, P.E.R.C. No. _____, 11 NJPER ___ (¶_____ 1985); Elmwood Park Bd. of Ed., P.E.R.C. No. 85-115, 11 NJPER ___ (¶_____1985).

This Complaint alleges that the Board changed a term and condition of employment -- working hours -- without first negotiating with the Association. In its Answer, the Board claims that it had a managerial prerogative and contractual right to change hours. This case, accordingly, involves the first type of alleged violation. It also involves the second type of alleged

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arbitration award involved a transfer to a different position, rather than a reduction in the hours of the same position.

violation since the Association has claimed, in response to the Board's motion to dismiss and contractual defense, that the Board repudiated a contractual obligation to maintain working hours of elementary school lead food servers.

Given the Association's allegations, the Board's reliance on Human Services is misplaced. The Complaint in Human Services simply did not allege either a unilateral change in a previously operative term and condition of employment or a bad faith repudiation of a negotiated commitment. Instead, that case involved merely a good faith dispute over ambiguous contractual terms allegedly affording employees a right the employer had not previously recognized or afforded. As the Hearing Examiner found (pp. 14-16), far more is at stake here. The Board has cut by one-third the work hours and compensation of an entire category of employees and has claimed a managerial prerogative and contractual right to do so without meeting section 5.3's requirement of prior negotiations. Unlike Human Services, therefore, this case goes to the heart of an employer's negotiation obligations. Maywood Bd. of Ed., P.E.R.C. No. 85-47, 10 NJPER 636 (¶15305 1984); Board of Managers of Preakness Hospital, P.E.R.C. No. 85-87, 11 NJPER 136 (¶16060 1985).[5/] Accordingly, we will review the Complaint's merits.

5/ While Human Services favors recourse to negotiated grievance procedures, recourse would not have resolved this dispute.
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In order for us to find that the Board violated an obligation to negotiate, 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.

It is undisputed that the Board reduced the work hours of all elementary school lead food servers without first negotiating over that change with the Association. While the Answer claims a managerial prerogative, the Hearing Examiner rejected that defense (pp. 16-17, 22-24) and the Board has not excepted to this conclusion. We adopt his discussion and stress that the reduction was purely an economic decision unrelated to educational policy considerations.

We now focus on whether the Board had a contractual right to reduce work hours without negotiations. Because the policy of

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First, the Board raised a managerial prerogative defense; Human Services recognizes that dismissal of a Complaint is not appropriate if such a defense has been raised, thus implying that the employer will not be bound by the outcome of the grievance procedures. Maywood Bd. of Ed., P.E.R.C. No. 85-36, 10 NJPER 571 (¶15266 1984). Second, the Association has alleged a statutory claim -- a unilateral reduction in working hours -- which may be meritorious and vindicated independent of any contractual claim to guaranteed work hours. If the Association does not have a contractual right to insist upon maintaining work hours and if the Board does not have a contractual right to insist upon changing them, then section 5.3 would require negotiations absent a managerial prerogative.

our Act favors negotiations before any change in terms and conditions of employment, a contractual waiver of a majority representative's right to negotiate will not be found unless a unilateral change is clearly, unequivocally and specifically authorized. Red Bank Reg. Ed. Ass'n v. Red Bank Reg. H.S. Bd. of Ed., 78 N.J. 122, 140 (1978); Ramapo State College, supra, State of New Jersey, P.E.R.C. No. 77-40, 3 NJPER 78 (1977); Deptford Bd. of Ed., P.E.R.C. No. 81-78, 7 NJPER 35 (¶12015 1980). This change was not.

The parties' 1982-1985 collective negotiations agreement contains a salary guide for each position; one position is entitled "Lead Elementary - 6 Hours." Article XII is entitled Hours of Work and Overtime; the first section provides:

> 1. There shall be four (4) work day classifications within the bargaining unit, namely:
>
> (a) three (3) hours
> (b) four (4) hours
> (c) six (6) hours; or
> (d) eight (8) hours
>
> New Hires may be employed in three (3) hour positions to replace openings in four (4) hour or more positions. Present employees grand-fathered in position held as of July 1, 1982.

The Board asserts that this section, together with the parties' past practice, granted it the right to reduce working hours of all elementary lead food servers without negotiations. We disagree. Despite the Board's attempt during negotiations to expand its power to change working hours, this provision empowers the Board

to reduce working hours in only one situation: when a new hire is employed to fill an opening. That did not happen; all the lead food servers continued to hold their positions yet had their hours cut. Nor does the parties' past practice clearly, unequivocally and specifically empower the Board to change work hours unilaterally.[6/] Only twice were the working hours of the same position changed. The first time (Paterson) the Association had attempted to negotiate that change to bring it into conformance with the contract and the work hours of other employees; the second time (Galvin) the Association did not object because the employee, who was not a lead server, had sought the change in order to retain her Social Security benefits. Two changes in the working hours of individual employees do not establish a right to change the working hours of all employees in the position of lead food server without first negotiating over that proposed change. Ramapo State College, supra.[7/] Accordingly, we hold that the Board violated subsection 5.4(a)(1) and (5) by unilaterally changing a term and condition of employment without having a managerial prerogative or contractual right to do so.

6/ We would not accord such weight to the parties' past practice anyway. There is no past practice clause in the parties' contract and the contract clause in dispute has changed markedly.

7/ The Board cites other reductions in employees' working hours, but these reductions stemmed from the Board's non-negotiable right to reduce its work force and transfer and assign employees to new positions. In particular, the Flowers arbitration award involved a sequence of RIFS, transfers and assignments to new positions, implicating corresponding contractual provisions, not a straight cut in work hours in the same position.

In response to the Board's motion to dismiss and asserted contractual defense, the Association also alleged that the Board had repudiated a contractual obligation to "grandfather" present employees in positions held as of July 1, 1982. The Association argued that the Board was contractually obligated to maintain the six hour day of all lead food servers worked since they were hired before July 1, 1982; the Board contended that this provision only guaranteed present employees that their hours would not be cut to three hours per week. The Hearing Examiner, based on the contract's clear wording and his credibility determinations, agreed with the Association and so do we. Nevertheless, we do not base our finding of an unfair practice on this assessment. Regardless of whether the Association had an affirmative contractual right to have these employees' working hours maintained, the Board at least had an obligation to negotiate any proposed changes in the absence of a contractual defense. Accordingly, even if we disagreed with finding a work hour guarantee, we would still find that the Board violated its negotiations obligation under subsections 5.4(a)(1) and (5).[8/]

Finally, the Board has not excepted to the Hearing Examiner's recommended remedy. We adopt it.

8/ We specifically do not decide whether the Board repudiated a contractual obligation to maintain working hours. The parties' 1982-85 contract has expired and any question over work hours under the parties' present agreement can be settled through the applicable grievance procedures.

ORDER

The Willingboro Board of Education is ORDERED to:

I. Cease and desist from reducing the work hours and compensation of lead elementary employees without first negotiating with the Association.

II. Take the following affirmative action:

A. Restore the status quo ante by returning lead elementary employees to a six-hour workday unless the parties have negotiated a different workday during successor contract negotiations or they have negotiated until impasse on that issue.

B. Pay lead elementary employees the monetary differences, together with interest at 12% per annum, between the amounts they would have received had their work hours and compensation not been unilaterally reduced, and the amounts they were in fact paid since these reductions in force took effect and up until such time, if any, as the parties may have negotiated a different workday during successor contract negotiations or they may have negotiated to impasse on that issue.

C. Negotiate in good faith before changing the work hours and compensation of lead elementary employees.

D. 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.

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

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Graves, Johnson, Suskin and Wenzler voted in favor of this decision. However, Commissioner Suskin objected to setting the interest rate at 12%. None opposed. Commissioner Hipp abstained.

DATED: Trenton, New Jersey
November 18, 1985
ISSUED: November 19, 1985

H. E. No. 86-8

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

In the Matter of

WILLINGBORO BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-84-93-53

EMPLOYEES ASSOCIATION OF THE
WILLINGBORO PUBLIC SCHOOLS,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends that the Commission find that the Willingboro Board of Education violated §5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act when it failed and refused to negotiate with the Association regarding its decision to reduce the hours and salaries for certain cafeteria employees. The Hearing Examiner recommended that the hours and salaries be returned to the status quo ante, and that a back pay award be issued.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

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Appearances:

For the Respondent
Pachman & Glickman, Esqs.
(Martin R. Pachman, of Counsel)

For the Charging Party
Katzenbach, Gildea & Rudner, Esqs.
(Douglas B. Lang, of Counsel)

HEARING EXAMINER'S
RECOMMENDED REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on October 4, 1983, by the Employees Association of the Willingboro Public Schools ("Association") alleging that the Willingboro Board of Education ("Board") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). The Association alleged that on May 24, 1983 the Board unilaterally reduced the workhours of certain food service

workers (lead elementary employees) from six hours to four hours daily per week and thereby unlawfully failed and refused to negotiate over the reduction in hours, all of which is alleged to be in violation of N.J.S.A. 34:13A-5.4(a)(1) and (5) of the Act.[1/]

The Association also alleged that the Board violated certain provisions of the parties' collective agreement, and past practice, by unilaterally reducing the workhours of the affected employees.

It appearing that the allegations of the Unfair Practice Charge, if true, may constitute an unfair practice within the meaning of the Act, a Complaint and Notice of Hearing was issued on December 6, 1983 setting a hearing for January 24 and 25, 1984. On December 13, 1983 the Board filed its Answer to the Complaint and denied committing any violation and asserted several affirmative defenses. The Board alleged that the Association waived its right to negotiate over the reduction in hours because the parties' collective agreement permitted the Board to make such a change. The Board also asserted a managerial right to reduce the workhours as a partial reduction in force ("RIF").

On January 9, 1984, the Commission received a Motion for Summary Judgment from the Association with a supporting brief seeking a decision directing the Board to reinstate the affected employees to six hours per day plus all back pay. Pursuant to N.J.A.C. 19:14-4.8(a), the Chairman of the Commission on January 20, 1984, referred the Motion to me for determination. On January 23,

1984, the Board filed a Cross-Motion for Summary Judgment with a supporting brief, and brief in opposition to the Association's Motion, and alleged that the parties' collective agreement permitted the instant change, and that any contract interpretations were more appropriate for the parties' grievance procedure. On January 25, 1984, the Association submitted a reply brief and asserted that the contract did not permit a reduction in hours. On February 3, 1984 I issued a decision In re Willingboro Bd.Ed., H.E. No. 84-41, 10 NJPER 162 (¶15079 1984), denying the Motion and Cross-Motion for Summary Judgment. I found that material factual issues existed which required a full hearing, and I scheduled a hearing for March 20 and 21, 1984.

On February 17, 1984 the Board's attorney requested that the hearing be rescheduled, and I issued an Order Rescheduling Hearing on February 22, 1984 scheduling a hearing for April 12 and 13, 1984.[2/] However, as a result of several procedural issues, and the illness of certain witnesses, the hearing was delayed several times until it was finally held on March 21 and 22, 1985 in Trenton, New Jersey, at which time the parties had the opportunity to examine and cross-examine witnesses, present relevant evidence and argue orally.[3/] Both parties submitted post-hearing briefs, and the Association submitted a reply brief which was received on June 5, 1985.

Prior to the hearing the Board filed a Motion to Dismiss the instant Complaint. On the first day of hearing, March 21, 1985,

I indicated on the record (Transcript "T" 1 pp. 9-12) that although it was my intention to deny the Motion, I would officially explain my reasoning in detail in my final decision on the case in order to avoid any interlocutory appeal.

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

Upon the entire record I make the following:

Findings of Fact

1. The Willingboro Board of Education is a public employer within the meaning of the Act, is subject to its provisions, and is the employer of the employees involved herein.

2. The Employee Association of the Willingboro Public Schools is a public employee representative within the meaning of the Act, is subject to its provisions, and is the majority representative of the employees involved herein.

3. The record shows that the title of "lead elementary" has existed in the district for approximately 20 years and has been a six-hour position until May 1983 ("T" 1 p. 18; T 2, p. 22). Both parties acknowledged that on May 24, 1983 the Board reduced the hours of the ten lead elementary employees from six to four hours per day which became effective at the start of the 1983-84 school year, and which continues to date (Exhibits CP-1 and CP-2)(T 1

p. 118). The Board did not provide the Association with any prior notice of the change in hours (T 1 pp. 26-27, 74), nor did it offer to negotiate the change in hours or the change in the employees' salaries (T 1 pp. 29, 76). Although the Association did not demand negotiations over the instant change, it did, however, timely file the instant unfair practice charge.

The record shows that between 1973 and 1985 the overall school district enrollment in Willingboro dramatically declined (Exhibit R-6). In addition, the Board's Director of Food Services, Marya Hewins, testified that in approximately 1982 the Board suffered a loss of $85,000 of Federal money for the school lunch program which resulted in a 25¢ increase in student lunches which precipitated a 25% loss in student participation in that program (T 1 pp. 151-152). Hewins indicated that prior to the budget cuts the Board was serving 35 meals per man hour, but after the cuts, it fluctuated between 15 and 27 meals per man hour (T 1 p. 153). Hewing admitted that as a result of the decline in student enrollment and the budget cuts, she recommended that the hours of the lead elementary employees be reduced from six to four hours daily (T 1 p. 157).[4/] Hewins also admitted that the lead elementary employees were not "RIF"ed, only that their hours were cut (T 1 p. 154).

Angelo Coppola, the Board's Personnel Manager also admitted that the lead elementary employees were not RIF'ed, that their hours were cut to keep the cafeteria operation financially sound, and that the change in hours was not negotiated (T 2 pp. 35, 37-38, 42).

4. The Board and Association are parties to a collective agreement (Exhibit J-1) effective from July 1, 1982-June 30, 1985. Article 12 Section 1 of that agreement provides for hours of work as:

> 1. There shall be four (4) work day classifications within the bargaining unit, namely:
> (a) three (3) hours
> (b) four (4) hours
> (c) six (6) hours; or
> (d) eight (8) hours
>
> New Hires may be employed in three (3) hour positions to replace openings in four (4) hour or more positions. Present employees grandfathered in position held as of July 1, 1982.

In addition, Schedule "A" of J-1 lists salary schedules and includes four salary schedules for lead elementary employees which says at the top of the page: "Lead Elementary - 6 hours." The four salary schedules are for 1981-82, 1982-83, 1983-84, and 1984-85. Schedule "A" also contains salary schedules for other six-hour positions, as well as salary schedules for eight-hour and four-hour positions, and one three-hour position. The salary schedules for the other six-hour positions are different from each other and different from the lead elementary schedules. In addition, the salary schedules for the four-hour positions are different from each other. The four-hour "servers" schedules, for example, are different from the four-hour "A-La-Carte" schedules even though employees holding both positions work in the cafeteria. Finally, there are no salary schedules listed for a four-hour lead elementary position. The record shows that the Association specifically negotiated the different working hours and the salaries for the positions listed in Schedule A of J-1 (T 1, pp. 18, 70-72).

5. The record shows that prior to J-1, the hours of work article, Article 12 Sec. 1 of the 1980-82 Agreement (Exhibit R-7) consisted of the following language:

> 1. There shall be four (4) work day classifications within the bargaining unit, namely:
>
> a. three (3) hours for elementary school aides;
>
> b. four (4) hours;
>
> c. six (6) hours; or
>
> d. eight (8) hours.

During contract negotiations for a successor to R-7 the Association proposed in Exhibit R-1 that the language in Art. 12 Sec. 1 remain the same, except that the phrase "elementary school aides" should be eliminated. The Board submitted its proposals for a new agreement, Exhibit R-8, and proposed the following new language for Art. 12 Sec. 1:

> It is a recognized managerial right to establish, alter or terminate work day classifications for the unit. To start, all employees will be employed at an hourly rate for the hours in each day which they are needed by the district. The number of hours may be set or modified for each employee as the employee's immediate supervisor determines appropriate.

John Barbour, the Board's chief negotiator, testified that one of the Board's primary objectives during those negotiations was to reduce the fringe benefit cost to the Board of Blue Cross, Blue Shield, and major medical insurance expenses for employees who worked less than 17 hours per week (T 2, pp. 59-60). In an effort to accomplish that objective the Board proposed the above new language for Art. 12 Sec. 1. However, Barbour admitted that:

> ...the Association was very unhappy with the Board's proposal to allow changes on a daily basis by the supervisors and they expressed that displeasure. (T 2, p. 58).

He further testified that:

> In the '82 to '85 position, the Association made it quite clear that they weren't going to agree to the initial proposal by the Board and after some bargaining...we [the Board] agreed to come back to the language that existed except for removing the elementary aide language from the three-hour category. (T 2, pp. 58-59)

Thus, the Association rejected, and the Board dropped the proposal in R-8, and the Board accepted the Association's proposal in R-1. However, the Board continued to press for an agreement that would result in a decrease of its medical insurance premiums, and the parties finally reached a Memorandum of Agreement (Exhibit R-2) on September 3, 1982 which provided in item No. 18 that:

> New hires may be employed in 3 hour positions to replace openings in 4 hour or more positions. (Present employees grandfathered).

By letter dated September 30, 1982 Barbour sent the Association a draft of the new contract (Exhibit R-3) which provided the following language for Art. 12 Sec. 1:

> Article XII - Hours of Work and Overtime, change Paragraph One (1) to read:
>
> "1. There shall be four (4) work day classifications within the bargaining unit, namely:
>
> a. For positions filled as of July 1, 1982:
>
> (1) three (3) hours for elementary school aides;
> (2) four (4) hours;

(3) six (6) hours; or

(4) eight (8) hours

b. For positions filled subsequent to July 1, 1982:
(1) three (3) hours;

(2) four (4) hours;

(3) six (6) hours; or

(4) eight (8) hours

However, the Association rejected that language and eventually proposed the language that finally appeared--and was agreed to--in Art. 12 Sec. 1 of J-1.

The record shows that the Association was willing to agree to the sentence regarding "new hires" in Art. 12, Sec. 1 of J-1 in exchange for the grandfather clause that appears therein. Both parties agreed that the intent of the "new hires" language was to allow the Board to reduce its medical insurance premiums by putting newly hired employees into any title for a three-hour position per day because the parties agreed that employees working 17 hours or less per week would not be entitled to such coverage (T 1 pp. 54-55, 99; T 2 pp. 59-61). However, the parties disagreed as to the intent of the grandfather clause.

Charles Booth, the Association's former President, testified that the Association was concerned that the Board would attempt to move existing employees into three-hour positions to avoid giving them fringe benefits (T 1 p. 59). When asked on redirect examination if the Association had any other concerns regarding the "new hires" and "grandfather" language Booth said:

> Yes. As I stated earlier, the Board's side was a three-hour job and the union's side was to protect everyone who was currently employed in whatever position it was in the specified amount of hours that they were working, thereby the reasoning was present employees are grandfathered in positions held as of July 1, 1982. (T 1 p. 61).

When pressed on recross-examintion as to whether the Association was just afraid that the Board was going to move people into three-hour positions to avoid paying benefits, Booth responded emphatically and credibly:

> No. No....the union [Association] was concerned in getting everyone in their current position and their current workhours and their benefits grandfathered ....(T 1 p. 63)

Booth was pressed again that the Association was only concerned with preserving employees' benefits and he responded:

> We were not only concerned about the benefits; we were concerned whether anyone could be reduced from eight to six to four to three hours. We wanted everyone to remain status quo. Thus present employees were grandfathered in position held as of July 1, 1982. (T 1 p. 64).[5/]

Patricia Hummell, the Association grievance chairperson and negotiations committee member, and George Suleta, a New Jersey Education Association field representative, corroborated Booth's testimony. Hummell testified that the grandfather clause was intended to protect the employees' hours and their pay (T 1 p. 75), and Suleta testified that "grandfathered in position" meant that the employees' hours and their position would remain the same (T 1 p. 100).

Barbour disagreed with their testimony. He testified that there was no demand for a guarantee that everyone be frozen in their

position regardless of hours (T 2 p. 62). He further testified that he only agreed to grandfather current employees to keep them out of the three hour-no benefit positions if it would not affect the Board's ability to move people among the eight, six and four-hour positions (T 1 pp. 62-63). Barbour also testified that the Board had established the right to move people among eight, six or four-hour positions in a prior arbitration award (Exhibit R-5), and that he did not have the authority to give that up (T 2 p. 63). Nevertheless, Barbour still admitted that the Association strenuously rejected the Board's contract proposal in R-8. He admitted that:

> The Association was very strenuous against giving us, the Board, the ability to switch hours on a daily basis....T 2 p. 84.[6]

6. The record shows that vacancies in lead elementary positions have never been filled by new hires, rather, any such vacancies have been filled with existing employees based upon seniority and ability (T 1 pp. 21, 78, 109, 116, 163). In fact, Article 13 Section 6(a) of J-1 provides that job vacancies will be filled by the highest qualified employee who applied for an existing vacancy. Since vacancies in lead elementary positions have always been filled from within, the "new hires" language in Art. 12 Sec. 1 of J-1 does not apply herein.

7. Barbour testified that the Board's right to move employees between eight-hour, six-hour, or four-hour positions was derived from the arbitrator's decision in Exhibit R-5, and from past

practice (T 2 p. 54). The facts surrounding R-5 show that a grievance was filed by the Association concerning Christine Flowers on May 1, 1978 under the parties' agreement which expired on June 30, 1980. The grievance concerned the amount of Flower's salary for a specific period of time. The hours of work provision, Art. 12, in the 1978-80 agreement contained the same language as contained in Art. 12 of R-1. Flowers was a hall aide, and at that time the Aides fell into eight, six, and three--hour classifications. In 1977 Flowers was a hall aide in an eight-hour position and the Board decided to reduce the hall aide position in the district. As a result of the need to reduce positions the grievant on November 1, 1977 was assigned as a special education aide for six hours per day. On March 15, 1978 Charging Party was involuntarily transferred to a classroom aide position. On April 11, 1978 Flowers was again transferred, this time for a lunchroom/playground aide for three hours per day. The grievance was pursued to arbitration and the Association argued that under the seniority clause of the 1978-80 agreement, the grievant should have received her eight-hour salary rate even after she was transferred. The Board argued that it had a unilateral right to reassign and transfer employees pursuant to that Article. The arbitrator held that pursuant to Art. 13 §§6 and 7 the Board had the right to temporarily involuntarily transfer employees due to some "urgency," but that the employee could suffer no loss of earnings until the temporary transfer ripened into a permanent transfer. The

arbitrator upheld the transfers, but awarded back pay because the Board failed to pay Flowers her contractual salary.

Article 13 Sections 6 and 7 of the 1978-80 agreement between the parties is essentially the same as Art. 13 Sections 7 and 8 of J-1.[7/] However, of critical importance to the instant case is that Art. 12 Sec. 1 of the 1978-80 agreement does not contain the grandfather clause which appears in Art. 12 Sec. 1 of J-1. Moreover, the facts of R-5 show that Flowers was indeed transferred to different position, whereas, in the instant case, there was no transfer of employees from the lead elementary position, nor was there any RIF of lead elementary positions. Rather, in the instant case the lead elementary employees simply had their hours and salaries unilaterally reduced. Consequently, R-5 has little probative value in the instant matter.

In addition to the Flowers' arbitration case the Board cited other examples of what it argued was a past practice of changes in hours. Madeline Peterson had been employed for many years as lead cashier for eight hours per day. In 1982 Hewins recommended that Peterson's hours be reduced to six hours per day because her school workload had decreased (T 1 pp. 148-149). Pursuant to that recommendation, Cappola recommended on April 27, 1982 that Peterson's position be reduced to six hours effective July 1, 1982 (Exhibit CP-4). The record shows that the other lead cashiers were employed for six hours per day (T 1 p. 159), and the Association therefore did not contest the change of Peterson's

hours. Patricia Hummel, Association grievance chairperson, testified that the Association did not contest Peterson's change because it approved of the change, and because it had attempted to negotiate such a change, and, because Peterson did not grieve the change. (T 1 pp. 87-89, 160). The change in Peterson's hours also occurred prior to the "grandfather" language in J-1.

Hewins further testified that employees Kathy Galvin and Barbara Sorrell (neither of whom held lead elementary positions) had their hours reduced from eight to six hours per day. However Hewins admitted that Galvin had requested that her hours be reduced due to Social Security restrictions (T 1 pp. 149, 161-162), and she admitted that Sorrell was RIF'ed (T 1 pp. 150, 162).

Coppola also testified that employees Dudley, Rosse, Wallace, Hammond and Franchaise had their hours reduced. However, Coppola admitted that all five employees had been RIF'ed from their positions (T 2 pp. 8, 26-28).

ANALYSIS

Having reviewed all of the facts, and the law, I find that the Board violated the Act by unilaterally reducing the hours and salary of lead elementary employees.

The Motion To Dismiss

In its Motion to Dismiss the Board argued that since the instant matter primarily concerned the interpretation of Art. 12 Sec. 1 of J-1, then pursuant to In re State of N.J., Dept. of Human Services, P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984)("Human

Services") it should have been submitted to arbitration rather than the unfair practice forum. I do not agree. In Human Services an issue arose as to whether an employee was entitled to an internal hearing based upon the language in the parties' collective agreement. There was no allegation of any changes in significant terms and conditions of employment such as hours and salaries. Rather, the issue involved a mere breach of contract, not a refusal to negotiate. Those facts are clearly distinguishable from the instant facts. In this case the Association has alleged a unilateral change in hours and salary and a refusal to negotiate. That allegation is far more than a mere breach of contract, rather, it goes to the very heart of the rights protected by the Act, the right to negotiate over hours and salaries. Although an interpretation of the contract is necessary because the Board has asserted a contractual defense, that does not diminish the significance of the Charge.

In Human Services the Commission drew a distinction between a mere breach of contract, and the duty to negotiate in good faith. It held:

> Thus, if the contract claim is sufficiently related to specific allegations that an employer has violated its obligation to negotiate in good faith, we would certainly have the authority to remedy that violation under subsection (a)(5).
>
> To determine whether a charge is predominantly related to subsection 5.4(a)(5)'s obligation to negotiate in good faith or is an unrelated breach of contract claim which does not implicate any obligations and policies arising under our Act, it is necessary to look closely at the nature of the charge

> and all the attendant circumstances. See In re State of New Jersey, E.D. No. 79, 1 NJPER 39 (1975), aff'd 141 N.J. Super. 470 (App. Div. 1976). While there can be no precise demarcation between a mere breach of contract claim and a refusal to negotiate in good faith claim which is interrelated with an alleged contractual violation, we give the following examples of situations in which we would entertain unfair practice proceedings under section 5.4(a)(5). A specific claim that an employer has repudiated an established term and condition of employment may be litigated in an unfair practice proceeding pursuant to subsection 5.4(a)(5). 10 NJPER at 422.

It further held that:

> A claim of repudiation may also be supported, depending upon the circumstances of a particular case, by a contract clause that is so clear that an inference of bad faith arises from a refusal to honor it or by factual allegations indicating that the employer has changed the parties' past and consistent practice in administering a disputed clause. 10 NJPER at 423.

In the instant case the grandfather clause in Art. 12 Sec. 1 of J-1 is clearly related to a specific allegation that the Board violated its obligation to negotiate in good faith, and the Association alleged that the Board repudiated an established term and condition of employment. Consequently, the Commission would not defer this matter to arbitration. Accordingly, the Board's Motion to Dismiss is denied.[8/]

The Merits

It is well established in this State that working hours are mandatorily negotiable. Englewood Bd.Ed. v. Englewood Ed. Assn., 64 N.J. 1, 6-7 (1973); Galloway Twp. Bd.Ed. v. Galloway Twp. Assn. of Ed. Secs., 78 N.J. 1 (1978); Bd.Ed. Woodstown-Pilesgrove v. Woodstown-Pilesgrove Ed.Assn., 81 N.J. 582, 589 (1980); Local 195,

IFPTE v. State, 88 N.J. 393 (1982). It is also well established that public employers have the managerial prerogative to eliminate--RIF--(reduce) positions particularly due to economic or educational reasons. Maywood Ed.Assn. v. Maywood Bd.Ed., 168 N.J. Super. 45 (App. Div. 1979), pet. for certif. den. 81 N.J. 292 (1979). However, public employers do not have the right to unilaterally reduce hours of work or salary short of a RIF merely for economic reasons. Piscataway Twp. Bd.Ed. v. Piscataway Twp. Principals Assoc., 164 N.J. Super. 98 (App. Div. 1978); In re Sayreville Bd.Ed., P.E.R.C. No. 83-105, 9 NJPER 138 (¶14066 1983); In re East Brunswick Bd.Ed., P.E.R.C. No. 82-76, 8 NJPER 124 (¶13054 1982).

The Board argued that it had the right to reduce the hours of lead elementary employees due to the language and/or intent of Art. 12 Sec. 1 of J-1; due to the arbitrator's holding in R-5; and due to the parties' past practice. The Board also argued at different points in the processing of this matter that the reduction in lead elementary hours was a "partial-RIF"; that the Association waived any right it may have had to negotiate hours; that the Association did not demand to negotiate a guarantee to freeze employee hours; that the Board did not intend to guarantee workhours; and, that the Association did not demand to negotiate after the change was made. All of the Board's arguments lack merit. First, the grandfather clause in Art. 12 Sec. 1 of J-1 is clear on its face. Employees who were employed before July 1, 1982 (all of the lead elementary employees) were grandfathered into the

position they held--which included the hours they held--as of July 1, 1982. The Board did not RIF any of those employees, it merely reduced their hours and salaries for economic reasons. Second, R-5 is not relevant here because it did not involve the lead elementary position and it did not involve a consideration of the grandfather language in J-1. Third, the past practice presented by the Board is of little probative value in this case. The Association was in favor of the change in Peterson's hours, some employees had their hours changed based upon their own request, and several employees had their hours changed as a result of a RIF. Those facts do not establish that the Association agreed to or had knowledge of a practice that would permit the Board to unilaterally move employees from eight to six to four hours per day absent a legitimate transfer. The lead elementary employees were not transferred, they simply had their hours reduced. Similarly, the Board's argument that the parties did not negotiate a freeze in the employees' hours is not supported by the facts.

Finally, the Board's argument that the Association failed to demand negotiations after the change is of no weight. While a majority representative has an affirmative obligation to demand negotiations over a particular subject during contract negotiations, it does not have any obligation to demand negotiations after an employer implements a unilateral change of a term and condition of employment. Rather, the obligation is on the employer to negotiate over proposed changes to terms and conditions of employment prior to implementation. Once a unilateral change has been implemented, a

majority representative may demand negotiations, but by virtue of the unilateral change it is relieved of its duty to negotiate over the changed subject, and, therefore, it may simply choose to seek enforcement of its right to negotiate by filing unfair practice charges with this Commission. In re Hudson County, P.E.R.C. No. 78-48, 4 NJPER 87, 90 (¶4041 1978), aff'd App. Div. Docket No. A-2444-77 (April 9, 1979).

The Grandfather Clause

The primary issue in this case is whether Art. 12 Sec. 1 of J-1 permitted, or prevented, the change in lead elementary hours and salaries. I find that the plain meaning of the language in Art. 12 Sec. 1 of J-1, was to grandfather employees employed prior to July 1, 1982 into the positions they held--which included the hours of work they held--as of July 1, 1982. A unilateral change in hours and salaries of such employees must therefore be a violation of the Act since it is a repudiation of the collective agreement. In re Jackson, supra. Parol evidence cannot be relied upon to change the clear meaning of that clause. Casriel v. King, 2 N.J. 45 (1949); Atlantic Northern Airlines, Inc. v. Schwimmer, 12 N.J. 293 (1953); Cherry Hill Bd.Ed. v. Cherry Hill Assoc. School Administrators, App. Div. Docket No. A-26-82T2, December 23, 1983.

But even assuming that the language in Art. 12 Sec. 1 of J-1 was unclear so as to permit the admissibility of parol evidence, a consideration of all of the facts, logic, and the law must result in a finding that Art. 12 Sec. 1 of J-1 was intended to grandfather the hours of work for employees employed prior to July 1, 1982.

First, the Board's assertion that J-1 did not prevent the instant change in hours or that the Association waived its right regarding any changes in workhours lacks merit. The law on this subject is well established. Unless a collective agreement clearly and unequivocally authorizes an employer to make particular changes in terms and conditions of employment, a waiver would not exist in the agreement and an employer could not unilaterally make such changes. In re State of New Jersey, P.E.R.C. No. 77-40, 3 NJPER 78 (1977); In re Deptford Bd.Ed., P.E.R.C. No. 81-78, 7 NJPER 35 (¶12015 1980), aff'd App. Div. Docket No. A-1818-80T8 (May 24, 1982).

There is no clear and unequivocal waiver in J-1 that permits a change in hours. In fact, the Board attempted to place a clear waiver over a change in hours in the parties' agreement when it proposed the language in Art. 12 of R-8. However, the Association rejected, and the Board dropped, that language and accepted the Association's language. Therefore, the Board knew that Art. 12 Sec. 1 of J-1 was not intended to permit it to unilaterally change employee hours.

Second, Barbour's testimony that the Association did not demand a guarantee to freeze employee hours, and that the Board did not intend the language in Art. 12 Sec. 1 of J-1 to restrict its ability to move employees from eight hour to six hour to four-hour positions, cannot be credited. Barbour's testimony suggests a result which is unsupported by the facts and the plain meaning of Art. 12 Sec. 1 of J-1, and suggests an intent which is wholly

unexpressed in the agreement. The State Supreme Court in Casriel v. King, supra, held that parol evidence is not admissible:

> ...for the purpose of giving effect to an intent at variance with any meaning...to the words. 2 N.J. at 50.

That Court also held that:

> So far as the evidence tends to show not the meaning of the writing, but an intention wholly unexpressed in the writing, it is irrelevant. 2 N.J. at 51.[9/]

If the Board intended to have (or keep) the ability to change employees hours from eight to six to four hours per day, then it should have clearly expressed that in Art. 12 Sec. 1 of J-1. It actually attempted to do just that by proposing Art. 12 of R-8, but it dropped that demand when the Association rejected it. Thus, Barbour's assertion that by agreeing to the language in Art. 12 Sec. 1 of J-1 the Board did not intend to be prevented from changing employees' hours is not supported by the facts, and it attributes a meaning to the grandfather language in J-1 that is at variance with the plain meaning of the language.

Rather, I credit Booth, Hummell and Suleta that the grandfather language in Art. 12 Sec. 1 of J-1 was intended to protect employee workhours and salaries. Their testimony is more logical than Barbour's when viewed with the rejection of Art. 12 of R-8. Since the "grandfather" language in J-1 was agreed upon after the language in R-8 was rejected, it is illogical to believe that the Association would have subsequently agreed to a clause which would have permitted the Board to unilaterally alter workhours which was the very thing the Association rejected in R-8.

The Board obviously failed to obtain the language it preferred for Art. 12, and it cannot now alter the language that it agreed to in J-1. The N. J. Supreme Court in Washington Construction Co. Inc. v. Spinella, 8 N.J. 212, 217 (1951), held:

> ...the court will not make a different or a better contract than the parties themselves have seen fit to enter into.

Third, any argument by the Board that the instant reduction in hours was a "partial-RIF" or a transfer is unsupported by the facts. Hewins and Coppola freely admitted that the lead elementary employees were not RIF'ed, but that their hours were unilaterally reduced to save money.

The Appellate Division and the Commission have already held that absent a RIF, a public employer may not unilaterally reduce workhours and salaries. Piscataway, supra; Sayreville, supra; East Brunswick, supra. In Piscataway and Sayreville the respective boards of education unilaterally reduced certain positions from twelve to ten months of work. The Court and the Commission, respectively, found violations of the Act. The Court in Piscataway held:

> While cutting staff pursuant to N.J.S.A. 18A:28-9 would be permissible unilaterally without negotiation...there cannot be the slightest doubt that cutting the work year, with the consequence of reducing annual compensation of retained personnel...without prior negotiation with the employees affected is in violation of both the text and the spirit of the...Act. 164 N.J. Super. at 101.

In comparison to Piscataway, it is clear that all of the lead elementary employees were "retained personnel," thus no RIF

occurred and the Board should have negotiated over any change in their hours and salaries.

Moreover, any argument by the Board that it could have terminated the affected employees and then re-employed them, or that it eliminated the six-hour lead elementary position and created a new four-hour lead elementary position, cannot excuse its negotiations obligation herein. The Commission in Sayreville held:

> We similarly reject the Board's argument that it could have abolished the position...; it did not do so and thus that contention is irrelevant. 9 NJPER at 140.

In addition, in In re Hackettown Bd.Ed., P.E.R.C. No. 80-139, 6 NJPER 263 (¶11124 1980), the Commission considered the board's argument that it abolished certain twelve and eleven-month positions and then re-employed the employees in ten-month positions, and found that it was a distinction without a difference and that the work year was still negotiable. Similarly, any assertion by the Board here that it eliminated the six-hour lead elementary position and created a four-hour lead elementary position would still be an unlawful circumvention of its negotiations obligation.

In this case the Board was really only attempting to save money. In that regard the Commission in Sayreville held that:

> ...[T]o the extent the Board is merely trying to save money otherwise expended on employee compensation, it must, short of the abolition of a position, negotiate reductions in compensation and work year. 9 NJPER at 141.

Finally, the facts in the instant case are remarkably similar to the facts in In re Cherry Hill Bd.Ed., P.E.R.C. No.

85-68, 11 NJPER 44 (¶16024 1984). In Cherry Hill the Board unilaterally reduced the hours and salaries of cafeteria workers for economic reasons. The collective agreement in that case clearly provided for six hours of work per day, but the Board unilaterally reduced it to 5 1/2 hours per day. The Commision found a violation of the Act and held that the contract was clear on its face and provided for six hours of work per day. The Commission further held that the Board never negotiated a salary for a 5 1/2 hour workday. The Commission remedied that violation by ordering the Board to restore the status quo ante, and by issuing a back pay award plus interest.

The result in this case is the same. Art. 12 Sec. 1 of J-1 is clear on its face and guarantees the workhours for the instant employees. Even if that clause is unclear, the overwhelming weight of the evidence demonstrates that the parties agreed to such a guarantee. The Board thus violated §5.4(a)(5) of the Act by unilaterally changing the lead elementary hours and salaries for economic reasons. Cherry Hill, supra.

Remedy

The remedy here must be the same as in Cherry Hill. Since the Board failed to negotiate over a reduction in hours and compensation a return to the status quo ante is warranted. Galloway Twp. Bd.Ed., v. Galloway Twp. Assn. of Ed. Sec., supra. In re Maywood Bd.Ed., P.E.R.C. No. 85-47, 10 NJPER 636 (¶15305 1984). In re Cherry Hill, supra. Therefore, the Board must return the lead elementary employees to six hours of work per day (unless different

hours have been negotiated in a successor to J-1) and pay the employees the salary they would normally receive for six hours of work per day.

Furthermore, the affected employees are entitled to a back pay award plus interest for the time they were unlawfully reduced and unlawfully paid, to return them to where they would have been if the Board had not violated J-1 and the Act. Galloway Twp. Bd.Ed., supra; Pisctaway Twp. Bd.Ed, supra; Cherry Hill, supra.

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

Conclusions of Law

The Willingboro Board of Education violated N.J.S.A. 34:13A-5.4(a)(5) and derivatively 5.4(a)(1), by unilaterally changing the hours of work and the salary of lead elementary employees.

Recommended Order

I recommend that the Commission ORDER:

A. That the Board cease and desist from unilaterally reducing the workhours and compensation of lead elementary employees and from failing to negotiate with the Association.

B. That the Board take the following affirmative action:

1. Restore the status quo ante by returning the affected lead elementary employees to a six-hour workday unless the parties have negotiated a different workday during successor contract negotiations or they have negotiated until impasse on that issue.10/

2. Pay the affected lead elementary employees the monetary differences, together with interest at 12% per annum, between the amounts they would have received had their negotiated workhours and compensation not been unilaterally reduced, and the amounts they were in fact paid since these reductions in force took effect and up until such time, if any, as the parties may have negotiated a different workday during successor contract negotiations or they may have negotiated to impasse on that issue.

3. Negotiate in good faith before changing the workhours and compensation of lead elementary employees.

4. 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 proided by the Commision, shall be posted immediately upon receipt thereof, and, after being signed by the Respondent's authorized representative, shall be maintained for a period of at least sixty (60) consecutive days. Reasonable steps shall be taken by the Respondent to ensure that such notices are not altered, defaced or covered by other material.

5. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply with this order.

Arnold H. Zudick
Hearing Examiner

Dated: August 21, 1985
Trenton, New Jersey

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 approrpriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

2/ The Board was originally represented in this matter by Barbour and Costa, Esqs. (John T. Barbour, of counsel). Mr. Pachman was substituted as the attorney of record on November 15, 1984).

3/ On March 28, 1984 the Association's attorney, Douglas Lang, suggested that the Board's attorney, John Barbour, had a conflict of interest in this case because he (Barbour) might be called as a witness in this matter. Barbour responded on April 5, 1984 and asked that the hearing be adjourned to allow him time to raise the conflict of interest issue to the Ethics Committee of the New Jersey Bar. Barbour filed documents with the Ethics Committee on April 6 and June 21, 1984. In the interim, however, the Association on May 30, 1984 filed a Motion for Reconsideration of my Summary Judgment decision. Mr. Barbour filed a response to that Motion on June 27, 1984, and I issued a letter decision denying that Motion on July 9, 1984. On October 16, 1984 Lang inquired about the status of the Ethics issue and requested that the hearing be rescheduled. Then on October 25, 1984, Lang requested that I advise Barbour that he would be required to testify herein, and that I order him to withdraw from representing the Board. On October 29, 1984 I advised Barbour that he had seven days to contest Lang's request to call him as a witness, and on November 7, 1984 I advised him by telephone and letter that a subpoena was issuing requiring his testimony at the hearing scheduled for December 13, 1984. Coincidentally, on November 5, 1984 Barbour filed a Motion to Dismiss the Complaint which was received on November 7, 1984. Lang filed a response to that Motion on November 8, 1984. By letter dated November 15, 1984 Pachman entered his appearance in this matter and officially advised me that he had been substitued as the Board's attorney of record and he requested a postponement of the December 13 hearing. Barbour had voluntarily withdrawn which eliminated any ethics issue. On December 26, 1984 Pachman filed his own brief in support of the Motion to Dismiss. On January 2, 1985 I reserved decision on that Motion and scheduled the hearing for January 23 and 24, 1985. However, that hearing was rescheduled by mutual request

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for February 14 and 15, 1985. On February 13, 1985 Lang requested an adjournment of the February hearings due to the illness of two witnesses. The parties then agreed to reschedule the hearings for March 21 and 22, 1985.

4/ Although Hewins testified that the lead elementary workload had decreased (T 1 p. 154), she admitted that as of March 21, 1985, the first day of hearing, the meals per man hour had risen to 32, almost back to where it was prior to 1982 (T 1 p. 154). She further admitted that if the lead elementary employees retained six hours per day there was "one million and one things to do to fill [their] hours" in the cafeteria." (T 1 p. 155).

5/ I credit Booth's explanation of the intent of the grandfather clause. Booth was subjected to a very probing and vigorous cross-examination, yet he clearly, and emphatically articulated his consistent position that the grandfather clause was intended to keep existing employees in the hours they held as of July 1, 1982.

6/ The last sentence of the Board's proposed language for Art. 12 Sec. 1 in R-8 would have given the Board--through its supervisors--the right to change the employees' hours, including the right to move employees between eight-hour, six-hour, and four-hour classifications. Barbour admitted that the Association vigorously rejected that proposal. Therefore, Barbour had to know that the Association did not--and would not--agree to any scenario which would have given the Board the ability to unilaterally change employee hours. It follows then that Barbour knew that the Association intended the grandfather clause in Art. 12 Sec. 1 of J-1 to grandfather the employee hours held as of July 1, 1982. I therefore cannot credit his testimony that the grandfather clause was only intended to protect existing employees from being moved into three-hour positions.

7/ The pertinent sections of Art. 13 Sections 7 and 8 of J-1 are as follows:

7. Right to Assignment and Transfers:

(a) The Board will have the right of job assignment on a particular shift within a labor grade, in a specific unit.

(b) A temporary transfer is defined as a transfer of an employee to any job other than that employee's regularly assigned job and shall not exceed a

(Footnote continued on next page)

8/ In Human Services the Commission distinguished its decision to issue a complaint in In re Twp. of Jackson, P.E.R.C. No. 82-79, 8 NJPER 129 (¶13057 1983) from its decision not to issue a complaint in Human Services. At note 10 of Human Services the Commission held:

> Jackson holds only that we are not precluded from exercising our unfair practice jurisdiction simply because it may require the interpretation of a collective negotiations agreement. [T]he employer [in Jackson] in effect created a new term and condition of employment, and repudiated a contract clause to the contrary, when it unilaterally adopted an ordinance giving it an option to deny contractually required sick leave. [W]e affirm Jackson's holding that we will not be deprived of our unfair practice jurisdiction simply because the case may require the interpretation of a contract. 10 NJPER at 425 note 10.

The holding with regard to Jackson applies herein. The Board allegedly repudiated the grandfather language in J-1, and the Commission will not refuse to exercise its jurisdiction simply because it is required to interpret Art. 12 Sec. 1 of J-1.

9/ In Atlantic Northern Airlines, Inc. v. Schwimmer, supra, the Court discussed the use of the parol evidence rule in contract interpretations, and citing from Corbin on Contracts held:

> The "parol evidence rule" purports to exclude testimony "only when it is offered for the purpose of 'varying or contradicting,' the terms of an 'integrated' contract...." 12 N.J. at 302.

10/ Since J-1 expired on June 30, 1985 the parties may have negotiated a new workhours clause and/or salary that would affect lead elementary and other employees. However, if there has been no change in Art. 12 Sec. 1 of J-1, then this remedy requires that lead elementary employees be employed for six hours of work per day.

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period of four weeks except that employees may be transferred within a labor grade within a unit for a period not exceeding sixty (60) days.

(c) If a transfer has been made for the period defined above, the condition shall no longer be considered as temporary condition and thereafter the Board will make a permanent adjustment. However, the duration of a temporary transfer may be extended beyond the above limitation by agreement between the employee, the steward and the Director of Plant Facilities. All parties are expected to apply a reasonable application to these limitation taking into consideration the operating problems of the Board.

8. Urgency:

(a) If temporary transfers are required due to reasons other than work not being scheduled or available, the Board may transfer employees without regard to seniority.

(b) Payment for Temporary Transfers:

Employees involved in temporary transfers shall be paid their assigned personal rate or the rate of the job to which they are transferred, whichever is higher.

(c) Voluntary permanent transfers shall be made in accordance with the following:

(1) The request shall be made in writing.
(2) When an employee has voluntarily transferred to another unit, that employee shall not be permitted to transfer again to another until said employee has accumulated eighteen months seniority in their present unit.

(3) When an employee makes a voluntary permanent transfer to another unit, they shall waive all of their seniority rights to return to the labor grade and unit from which they transferred unless they are laid off from the unit to which they transferred.

(4) This section shall not limit the Board from assignment an employee to duties within their job description.

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 unilaterally reducing the workhours and compensation of lead elementary cafeteria employees.

WE WILL negotiate in good faith before changing the workhours and compensation of lead elementary cafeteria employees.

WE WILL restore the status quo ante by returning lead elementary employees to a six-hour workday unless the parties have negotiated a different workday during scccessor contract negotiations or they have negotiated until impasse on that issue.

WE WILL pay the affected lead elementary cafeteria employees the monetary differences, together with interest at 12% per annum, between the amounts they would have received had their negotiated workhours and compensation not been unilaterally reduced and the amounts they were in fact paid since these reductions in hours and compensation took effect and up until such time, if any, as the parties may have negotiated a different workday during successor contract negotiations or they may have negotiated to impasse on that issue.

WILLINGBORO 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 W. State Street, Trenton, New Jersey 08618 Telephone: (609) 292-9830