

P.E.R.C. NO. 87-110

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MAYWOOD BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-86-248-169

MAYWOOD EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the Maywood Board of Education violated the New Jersey Employer-Employee Relations Act when it unilaterally substituted structured grade level meetings for unstructured preparation periods for its fourth and fifth grade teachers, who are represented by the Maywood Education Association, during the 1985-1986 school year and thus increased their workload.

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Docket No. CO-86-248-169

MAYWOOD EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Gladstone & Hart, Esqs.
(Marvin H. Gladstone, of counsel)

For the Charging Party, Zazzali, Zazzali & Kroll, Esqs.
(Robert A. Fagella, of counsel)

DECISION AND ORDER

On March 10, 1986, the Maywood Education Association ("Association") filed an unfair practice charge against the Maywood 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. ("Act"), specifically subsections 5.4(a)(1) and (5),^{1/} when it unilaterally increased the workload of fourth and

^{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."

fifth grade teachers by reducing preparation time by two periods a month.

On April 20, 1986, a Complaint and Notice of Hearing issued. On June 4, 1986, the Board filed its Answer. It denied that it reduced preparation time and, as affirmative defenses stated: (1) the Complaint should be dismissed under State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984) because it involves a mere breach of contract; (2) it had a managerial prerogative and (3) the alleged change was de minimis.

On June 18, 1986, Hearing Examiner Alan R. Howe conducted a hearing. The parties examined witnesses and introduced exhibits. They waived oral argument but filed post-hearing briefs.

On August 5, 1986, the Hearing Examiner issued his report and recommended decision. H.E. No. 87-10, 12 NJPER 648 (¶17245 1986) (copy attached). He found that the Board violated subsections 5.4(a)(1) and (a)(5) when it unilaterally substituted structured "grade level meetings" for unstructured preparation periods for its fourth and fifth grade teachers during the 1985-86 school year and thus increased their workload. He rejected the Board's defenses. He recommended an order requiring the Board to restore the status quo and post a notice of the violation.

On August 19, 1986, the Board filed exceptions.^{2/} It excepts to these findings of fact: (1) teachers are contractually

^{2/} It also requested oral argument. We deny that request.

entitled to 18 preparation periods per month; (2) all teachers are entitled to the same number of preparation periods; (3) "preparation period" means "unstructured, unsupervised preparation period," and (4) this definition applies to each preparation period. The Board excepts to these conclusions: (1) the case involves more than a contractual dispute; (2) the change in preparation periods is not de minimis, and (3) the required attendance at the staff meetings is an unfair practice. The Board further contends that its interest in having staff meetings outweighs the teachers' interest in any workload increase and that a posting remedy would be inappropriate.

On August 27, 1986, the Association responded urging adoption of the Hearing Examiner's recommendations, but adding that the remedy should be modified to include compensation or extra preparation periods in lieu of the lost preparation periods.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 3-7) are accurate.^{3/}

Workload and preparation time are mandatory subjects of negotiation and unilateral increases in workload and decreases in

3/ We clarify finding no. 5: the contract does not provide for fourth and fifth grade teachers to receive a specified number of preparation periods per month; rather these teachers receive preparation time when specialists teach their classes. Thus, for the 1985-1986 school year, teachers received 18 preparation periods. We add to finding no. 8 that ten grade level meetings were held during the 1985-1986 school year.

preparation time violate subsections 5.4(a)(1) and (5). These have been governing principles since our Act's inception. Burlington Cty. College Faculty Ass'n v. Board of Trustees, 64 N.J. 10 (1973); In re Maywood Bd. of Ed., 168 N.J. Super. 45, 59 (App. Div. 1979); In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12 (App. Div. 1977); Red Bank Bd. of Ed. v. Warrington, 138 N.J. Super. 564 (App. Div. 1976); Kingwood Tp. Bd. of Ed., P.E.R.C. No. 86-85, 12 NJPER 102 (¶17039 1985); Ramsey Bd. of Ed., P.E.R.C. No. 85-119, 11 NJPER 372 (¶16133 1985), aff'd App. Div. Dkt. No. A-4836-84T1 (2/6/86); Newark Bd. of Ed., P.E.R.C. No. 79-38, 5 NJPER 41 (¶10026 1975), aff'd App. Div. Dkt. No. A-2060-78 (2/26/80).

These principles are applicable here. The preparation periods were used to permit teachers to prepare for their classroom teaching: Teachers planned lessons, marked papers, spoke to parents and students, planned the bulletin board and prepared for classes and tests. The "grade-level meetings" that replaced the preparation periods did not permit such preparation, and instead covered such topics as child study team procedures, district reorganization, implementation of new curriculum and reading/math grouping. Therefore, we reject, under these facts, the contention that the Board merely substituted one form of preparation time for another and hold that the Board violated subsections 5.4(a)(1) and (5). Compare Andover Reg. Bd. of Ed., P.E.R.C. No. 87-4, 12 NJPER ____

(¶ _____ 1986) (substitution of conventional instructional period for mini-course does not violate the Act).^{4/}

The Board's reliance on Human Services is meritless. We have not applied this doctrine when the public employer raises a managerial prerogative defense. We also reject the Board's assertion that the change was de minimis. See Lincoln Park Bd. of Ed., P.E.R.C. No. 85-54, 10 NJPER 646 (¶15312 1984). The unilateral change in this case involves a permanent and uncompensated loss of preparation time and is contrary to the Act's requirement that such changes be negotiated before implementation.

We now consider the appropriate remedy. We reject the contention that posting a notice would be "offensive" and "degrading." The notice is factual and will inform employees of the order's substantive obligations. It is consistent with our mandate to order "such reasonable affirmative action as will effectuate the policies" of the Act. N.J.S.A. 34:13A-5.4(c); Galloway Tp. Bd. of Ed. v. Galloway Tp. Ass'n of Ed. Sec., 78 N.J. 1, 15 (1978); See Morris, The Developing Labor Law (2d. ed 1983) at 1655. We also reject the Association's exception that the remedy should include compensation or a corresponding increase in preparation time. See

^{4/} The Board has a contractual right to call three staff meetings a month and 23 meetings a year and may hold additional emergency meetings. We hold only that the Board may not unilaterally increase workload by decreasing the amount of contractually-agreed preparation time and replacing that time with required attendance at staff meetings.

In re Galloway Tp. Bd. of Ed., 157 N.J. Super. 74, 83-84 (App. Div. 1978); Mount Holly Tp. Bd. of Ed., P.E.R.C. No. 84-27, 9 NJPER 596 (¶14242 1983); Wharton Bd. of Ed., P.E.R.C. No. 83-35, 8 NJPER 570 (¶13263 1982). The remedy, however, should be modified to order the parties to negotiate compensation for the preparation time the affected teachers lost. Mount Holly; Wharton. We also eliminate the 60 day allowance in restoring the status quo. The violation should be remedied immediately, especially since there is no claim that it would be impractical to do so.

ORDER

The Maywood Board of Education is ordered to:

A. Cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly, by unilaterally substituting grade level meetings for preparation periods without negotiating with the Association before implementation.

2. Refusing to negotiate in good faith with the Association concerning terms and conditions of employment, particularly, by unilaterally substituting grade level meetings for preparation periods without negotiating with the Association before implementation.

B. Take the following affirmative action:

1. Immediately restore the preparation periods which existed prior to the grade level meetings which began in September

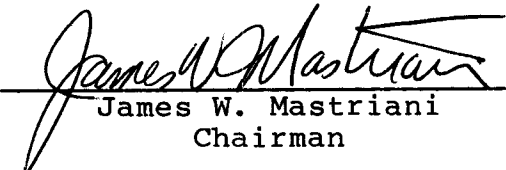
1985; and thereafter, negotiate in good faith over any proposed changes in preparation periods with the Association before implementation.

2. Negotiate with the Maywood Education Association concerning compensation for those teachers who lost preparation periods.

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

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

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

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

DATED: Trenton, New Jersey
March 23, 1987
ISSUED: March 24, 1987

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining or coercing our employees in the exercise of the rights guaranteed to them by the Act, particularly, by unilaterally substituting grade level meetings for preparation periods without negotiating with the Association before implementation.

WE WILL cease and desist from refusing to negotiate in good faith with the Association concerning terms and conditions of employment, particularly, by unilaterally substituting grade level meetings for preparation periods without negotiating with the Association before implementation.

WE WILL immediately restore the preparation periods which existed prior to the grade level meetings which began in September 1985; and thereafter, negotiate in good faith over any proposed changes in preparation periods with the Association before implementation.

WE WILL negotiate with the Maywood Education Association concerning compensation for those teachers who lost preparation periods.

Docket No. CO-86-248-169

MAYWOOD BOARD OF EDUCATION

(Public Employer)

Dated _____

By _____

(Title)

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

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

H.E. NO. 87-10

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

In the Matter of

MAYWOOD BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-86-248-169

MAYWOOD EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent Board violated §§5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act when it unilaterally and without negotiations with the Association implemented a change in the preparation periods for its fourth and fifth grade classroom teachers as of September 24, 1985. The effect of the change was to eliminate two unstructured preparation periods per month and substitute therefor two structured "grade level meetings" per month during the 1985-86 school year. By way of remedy, the restoration of the status quo ante was ordered.

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.

H.E. NO. 87-10

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

In the Matter of

MAYWOOD BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-86-248-169

MAYWOOD EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent
Gladstone & Hart, Esqs.
(Marvin H. Gladstone, Esq.)

For the Charging Party
Zazzali, Zazzali & Kroll, Esqs.
(Robert A. Fagella, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on March 10, 1986, by the Maywood Education Association (hereinafter the "Charging Party" or the "Association") alleging that the Maywood Board of Education (hereinafter the "Respondent" or the "Board") has engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et

seq. (hereinafter the "Act"), in that the Respondent on September 24, 1985, unilaterally and without negotiations, reduced the preparation time of its K-5 teachers from 18 preparation periods per month to 16 preparation periods per month; all of which is alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1) and (5) of the Act.^{1/}

It appearing that the allegations of the Unfair Practice Charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on April 30, 1986. Pursuant to the Complaint and Notice of Hearing, a hearing was held on June 18, 1986, 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 July 25, 1986.

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.

^{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."

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

FINDINGS OF FACT

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

2. The Maywood Education Association is a public employee representative within the meaning of the act, as amended, and is subject to its provisions.

3. The applicable collective negotiations agreement was effective during the term July 1, 1983 through June 30, 1986 (J-1). Article 12, "Teaching Hours and Teaching Load," provides in Section B(5), "Preparation Time" in pertinent part as follows:

- a. During the 1983/84 school year, classroom teachers (K-5) shall receive preparation time when Music, Art and Physical Education teachers are assigned to teach their full classes.
- b. During the 1984/85 and 1985/86 school years, classroom teachers (K-5) shall receive preparation time when Music, Art, Physical Education teachers and School Librarians are assigned to teach their full classes.

4. For about two years prior to September 1983, there were discussions regarding the reorganization of the school district to adjust for a reduction in pupil population from about 1,000 to 665 students. Prior to the implementation of the reorganization, infra, there had been three schools in two buildings, the Memorial School and the Maywood Avenue School. Two of the schools housed

grades K-5 and one school housed grades 6 through 8. As of the date of the hearing in June 1986, the Memorial School housed grades K-2 and the Maywood Avenue School housed grades 3 through 8. As of September 1986, the Memorial School will house grades K-3 and the Maywood Avenue School will house grades 4 through 8. The instant dispute regarding preparation time, infra, involves the fourth and fifth grade teachers during the 1985-86 school year.

5. Under Article 12, §B(5)(b) of the collective negotiations agreement (J-1, supra) the fourth and fifth grade classroom teachers received 18 preparation periods per month during the 1984-85 school year.^{2/} The witnesses for the Association testified uniformly that preparation periods have for many years included such teacher activities as lesson planning, marking papers, speaking to parents and students, planning the bulletin board, planning classes and tests, and related. The witnesses for the Board essentially agreed with the Association witnesses as to the activities of teachers during their preparation periods.

6. The witnesses for the Association, namely three classroom teachers, Phyllis Steuert, Matthew Bernarducci and Lee Williams, uniformly testified that during their preparation periods the administration never interfered with the teacher's

^{2/} Article 12 of the agreement clearly does not provide for a specific number of preparation periods but the record is clear that number of such periods averaged 18 per month during the 1984-85 school year.

activities.^{3/} However, Bruce deLyon, the Principal of the Maywood Avenue School for the past six years, testified that he has routinely met with teachers during their preparation periods and sometimes summoned a teacher to his office for a part or all of the preparation period and never received a complaint.

7. A notice was inserted into the Daily Bulletin for the week of September 16, 1985, advising fourth and fifth grade teachers that Principal deLyon would be meeting with them on Tuesday, September 24th (R-1). A time schedule was included for the two grades together with the place of meeting and a concluding statement that agendas would be distributed prior to the meeting. DeLyon acknowledged that this was the first time that there had ever been a structured agenda for teachers during their preparation time.

8. The September 24th meeting, and subsequent meetings, were referred to at the hearing as "grade level meetings," which were held about two times per month during the 1985-86 school year.^{4/} The net result of holding these "grade level meetings" over the course of the 1985-86 school year was to reduce the number

^{3/} Superintendent Francis E. Moran testified that he never directed teachers to undertake specific tasks during their preparation periods.]

^{4/} Superintendent Moran had instructed deLyon to conduct a maximum of two "grade level meetings" per month on an "as needed" basis.

of individual teacher preparation periods from 18 per month to 16 per month.^{5/}

9. In preparation for the first "grade level meeting" for fourth and fifth grade teachers on September 24, 1985, deLyon sent each teacher an agenda for the meeting, which covered such topics as child study team procedures, social studies implementation of new curriculum, reading/math grouping status, child abuse/neglect report and the like (R-4). Superintendent Moran testified that at least five agendas similar to R-4 were distributed over the course of the 1985-86 school year and that these meetings were helpful to the teachers involved.^{6/}

10. DeLyon testified that he found the "grade level meetings" an educational advantage since he could spend more time with his fourth and fifth grade teachers. He indicated that this was a plus when compared to merely dropping in on teachers during their individual preparation periods. Bernarducci, a fifth grade

^{5/} What are referred to as "team meetings" have traditionally been held among grades 6-8 teachers during the school day but not during preparation periods and involve teachers only (Tr 53, 54, 56, 57).

^{6/} The Board introduced in evidence a questionnaire addressed to its teaching staff regarding their reactions to the reorganization of the school district, supra (R-2 & R-3). The Hearing Examiner does not find this survey and its results probative as to issue at hand, namely, whether or not the Board may unilaterally reduce the number of individual teacher preparation periods from 18 per month to 16 per month. The "grade level meetings" were not concerned with the reorganization or its results as indicated by the single agenda offered in evidence, namely, R-4, supra.

teacher, testified without contradiction that he attended ten "grade level meetings" during the 1985-86 school year and that he found that by having to attend the mandatory "grade level meetings" he was unable to prepare adequately during his remaining preparation periods.

11. There is no dispute but that the Board did not negotiate with the Association over its unilateral decision to substitute "grade level meetings" for two preparation periods per month.

12. On October 5, 1982, JoAnn McKay sent a letter on behalf of the Association to John Buffington, the Principal of the Memorial School, grieving the fact that the scheduling of Individual Education Plans was infringing on the preparation time of certain classroom teachers. This grievance was ultimately processed by the American Arbitration Association but before resolution by an arbitrator it was withdrawn by the Association on January 23, 1983. Also, shortly after the withdrawal of the foregoing matter from arbitration, the Association submitted contract proposals for negotiations with the Board, which failed to contain any reference to the subject matter of the grievance.^{7/}

^{7/} The Board attributes some significance to this event which the Hearing Examiner fails to perceive but, nevertheless, the fact is as found.

DISCUSSION AND ANALYSIS

The Respondent Board Violated The Act When It Unilaterally And Without Negotiations With The Association Substituted For Two Preparation Periods Per Month "Grade Level Meetings" For Its Fourth And Fifth Grade Teachers.

The cases are ancient and many, which hold that preparation periods are mandatorily negotiable: see, e.g., Red Bank Bd. of Ed. v. Warrington, 138 N.J. Super. 564, 574 (App. Div. 1976); Newark Bd. of Ed., P.E.R.C. No 79-38, 5 NJPER 41 (¶10026 1979), aff'd. App. Div. Docket No. A-2060-78 (1980); Mt. Holly Twp. Bd. of Ed., P.E.R.C. No. 84-27, 9 NJPER 596 (¶14252 1983); Kingwood Twp. Bd. of Ed., P.E.R.C. No. 85-94, 11 NJPER 219 (¶16084 1985)[Kingwood I]; Kingwood Twp. Bd. of Ed., P.E.R.C. No. 86-85, 12 NJPER 102 (¶17039 1985)[Kingwood II]; and Lincoln Park Bd. of Ed., P.E.R.C. No. 86-101, 12 NJPER 220 (¶17089 1986). Admittedly, these decisions in the main involve the substitution of teaching duties for preparation periods, as to which there was arguably an increased workload. However, the Hearing Examiner is persuaded that, based particularly upon Kingwood I, supra, compelling the fourth and fifth grade teachers in the Maywood School District to attend structured "grade level meetings" for two periods per month during the 1985-86 school year constituted a unilateral change in their terms and conditions of employment by depriving them of two negotiated unstructured preparation periods per month.

In Kingwood I the Board unilaterally reduced the preparation time of certain special area teachers by 20 to 50 minutes per week and increased instructional time pro tanto without

additional compensation or negotiations. This was deemed by the Commission to be an alleged uncompensated workload increase, which could be submitted to binding arbitration.^{8/} Bernarducci testified without contradiction that attending 10 "grade level meetings" during 1985-86 impinged upon his ability to prepare adequately.

It cannot be gainsaid that prior to September 24, 1985, the fourth and fifth grade teachers in the district were granted 18 preparation periods per month and that on and after September 24th the number of such preparation periods was unilaterally reduced to 16 periods per month. Although the specific number of preparation periods per month is not defined in the contract as such the record is clear that 18 preparation periods per month resulted from the application of the language of Article 12, ¶B5(b) of J-1, which provides that classroom teachers (K-5) "...shall receive preparation time when Music, Art, Physical Education teachers and School Librarians are assigned to teach their full classes..." (J-1, p. 21).

When the Board decided to eliminate two of the preparation periods, which involved essentially unsupervised teacher activities as lesson planning, marking papers, etc.^{9/} and substituted

^{8/} The fact that a grievance was filed by the Association herein on behalf of the fourth and fifth grade teachers, which did not proceed to arbitration due to untimeliness, is irrelevant: see New Jersey Dept. of Human Services, P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984), discussed infra.

^{9/} See Findings of Fact Nos. 5 & 6, supra.

therefor two structured periods per month, involving the Principal and the fourth and fifth grade teachers, the Board clearly eliminated two preparation periods without collective negotiations with the Association. While the Hearing Examiner does not question the Board's good faith in contending that the two structured periods per month involved the furtherance of an educational purpose or objective, and which were merely preparation periods in another form, the simple fact of the matter is that two traditional unstructured preparation periods were unilaterally eliminated.

The parties had for many years contractually recognized and provided for unstructured preparation periods, during which teachers engaged in such activities as lesson planning, marking papers, etc.. Thus, a clear past practice has existed. However, the Board unilaterally intruded on this longstanding past practice without negotiations and at the same time acted in derogation of Article 12, §B5(b) of the collective negotiations agreement: New Jersey Dept. of Human Services, supra. The Hearing Examiner notes here that the grades 6-8 "team meetings" do not occur during preparation periods and are not supervised by the administration (see Finding of Fact No. 8, supra).

In concluding that the Board has violated §§5.4(a)(1) and (5) of the Act by its conduct herein, the Hearing Examiner has considered fully the argument of the Board that the issue involved is nothing more than a dispute over contract interpretation and, thus, the complaint should be dismissed under New Jersey Dept. of

Human Services, supra. The instant case would clearly appear to fall within an exception contained in that decision, namely, the fact that the Board herein has repudiated an established term and condition of employment, which raises an inference of bad faith (10 NJPER at 422, 423).

Additionally, the Hearing Examiner has considered the contention that this case does not involve either increased pupil contact time or a lengthening of the workday. However, the Hearing Examiner is persuaded, as indicated above, that mandatory attendance at a structured "preparation period" constitutes a basic and essential change in the nature of the preparation periods as defined by the parties' longstanding past practice. The question is not as the Board contends, whether "preparation time" is "free time," but whether a longstanding practice of the parties, embodied in the collective negotiations agreement, may be unilaterally altered without collective negotiations. Without unduly belaboring the issue, the practice of the parties under their agreements has been to provide preparation periods for teachers and afford them an unstructured setting in which such teacher activities as lesson planning, marking papers, etc.. may take place.

Further, the Board's contention that the "grade level meetings" implicate the exercise of a non-delegable managerial prerogative has been alluded to earlier. The Board clearly has a managerial prerogative to create structured meetings of teachers and their principals with an educational agenda, the ultimate question

being can the Board do this without collective negotiations with the Association where a longstanding practice and a contract provision exist regarding unstructured preparation periods? The Hearing Examiner answers this question in the negative.

Also, the Hearing Examiner does not concur in the Board's contention that mandatory, structured "grade level meetings" do not intimately and directly affect the work and welfare of public employees under Ridgefield Park Ed. Assn. v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 156 (1978) as well as such other Supreme Court decisions as Englewood Bd. of Ed v. Englewood Teachers Assn., 64 N.J. 1, 7 (1973) and IFPTE Local 195 v. State of New Jersey, 88 N.J. 393 (1982). Mandatory attendance at structured "grade level meetings" would clearly appear to be a substantive change in the workday of the affected teachers. Recall here Bernarducci's testimony regarding the effect on his ability to prepare.

One final point and that is the citation by the Board of Freehold Borough Bd. of Ed., P.E.R.C. No. 82-38, 7 NJPER 604 (¶12269 1981) for the proposition that the Association herein failed to carry its burden of proof regarding the actual occurrence of an increase in workload. Freehold involved a stipulated record, which caused the Commission to conclude that it was unable to decide whether a mandatorily negotiable increase in workload had actually occurred. In the instant case we have the uncontradicted testimony of Bernarducci, supra. It would appear logical to conclude that this experience of Bernarducci would apply with equal force to other fourth and fifth grade teachers during the 1985-86 school year.

Accordingly, for all the foregoing reasons, the Hearing Examiner finds and concludes that the Board violated §§5.4(a)(1) and (5) of the Act when on and after September 24, 1985 it unilaterally required fourth and fifth grade teachers to meet with the Principal in structured "grade level meetings" two times per month during the 1985-86 school year.

* * * *

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

CONCLUSION OF LAW

The Respondent Board violated N.J.S.A . 34:13A-5.4(a)(1) and (5) when it unilaterally and without negotiations with the Association substituted two structured "grade level meetings" per month for two unstructured preparation periods for its fourth and fifth grade teachers during the 1985-86 school year.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER:

A. That the Respondent Board cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly, by unilaterally substituting two structured "grade level meetings" per month for two unstructured preparation periods for its fourth and fifth grade teachers during the 1985-86 school year without negotiating the change with the Association prior to implementation.

2. Refusing to negotiate in good faith with the Association concerning terms and conditions of employment of its fourth and fifth grade teachers, particularly, by unilaterally substituting two structured "grade level meetings" per month for two unstructured preparation periods for its fourth and fifth grade teachers during the 1985-86 school year without negotiating the change with the Association prior to implementation.

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

1. Within sixty (60) days hereof, restore the status quo ante as of September 24, 1985, with respect to the preparation periods of the fourth and fifth grade classroom teachers, i.e., restore the two preparation periods per month, which existed prior to the creation of the structured "grade level meetings" in September 1985; and thereafter, upon demand, negotiate in good faith any proposed changes in preparation periods with the Association prior to implementation.

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

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



Alan R. Howe
Hearing Examiner

Dated: August 5, 1986
Trenton, New Jersey

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL NOT interfere with, restrain or coerce our employees in the exercise of the rights guaranteed to them by the Act, particularly, by unilaterally substituting two structured "grade level meetings" per month for two unstructured preparation periods for its fourth and fifth grade teachers during the 1985-86 school year without negotiating the change with the Association prior to implementation.

WE WILL NOT refuse to negotiate in good faith with the Association concerning terms and conditions of employment of its fourth and fifth grade teachers, particularly, by unilaterally substituting two structured "grade level meetings" per month for two unstructured preparation periods for its fourth and fifth grade teachers during the 1985-86 school year without negotiating the change with the Association prior to implementation.

WE WILL within sixty (60) days hereof, restore the status quo ante as of September 24, 1985, with respect to the preparation periods of the fourth and fifth grade classroom teachers, i.e., restore the two preparation periods per month, which existed prior to the creation of the structured "grade level meetings" in September 1985; and thereafter, upon demand, negotiate in good faith any proposed changes in preparation periods with the Association prior to implementation.

MAYWOOD 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, CN 429 495 W. State Street, Trenton, New Jersey 08625. Telephone (609) 292-9830