P.E.R.C. NO. 87-117

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MATAWAN-ABERDEEN REGIONAL SCHOOL
DISTRICT BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-85-182-107

MATAWAN REGIONAL TEACHERS
ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the Matawan-Aberdeen Regional School District Board of Education violated the New Jersey Employer-Employee Relations Act when it refused to execute contracts agreed to between it and the clerical, custodian and bus driver negotiations units represented by the Matawan Regional Teachers Association. The Commission also finds that the Board violated the Act when it did not pay certain clerical employees the contractual rate of pay. The Commission, however, dismisses the Complaint's other allegations.

P.E.R.C. NO. 87-117

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MATAWAN-ABERDEEN REGIONAL SCHOOL
DISTRICT BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-85-182-107

MATAWAN REGIONAL TEACHERS
ASSOCIATION,

Charging Party.

Appearances:
For the Respondent, DeMaio & DeMaio, Esqs. (Vincent C. DeMaio, of counsel)

For the Charging Party, Oxfeld, Cohen & Blunda, Esqs. (Mark J. Blunda, of counsel)

DECISION AND ORDER

On January 24 and May 22, 1985, the Matawan Regional Teachers Association ("Association") filed an unfair practice charge and amended charge, respectively, against the Matawan-Aberdeen Regional School District Board of Education ("Board"). The charge alleges 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), (2), (3), (4), (5), (6) and (7),[1/] when it: (1) refused

---

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; (2) Dominating or

Footnote Continued on Next Page

to execute contracts agreed to between it and the following negotiations units represented by the Association: (a) professional employees, (b) clerical employees, (c) custodians and (d) bus drivers, and (2) intimidated and coerced employees and circumvented the Association when it (a) unilaterally set the salary, hours and benefits of its Pupil Transportation Supervisor and Administrative Assistant for Personnel/Labor Relations, (b) did not permit the Association to copy tapes of its November 26, 1984 meeting, (c) asked the Association president not to testify against the proposed Master Teacher program before a State Committee, (d) filled vacant positions without posting vacancy notices or interviewing employees in the negotiations unit, (e) eliminated unit positions and created positions outside the unit; (f) employed clerks, but did not pay them pursuant to the collective negotiations agreement; (g) requested employees to volunteer for curriculum projects and

---

1/ Footnote Continued From Previous Page

interfering with the formation, existence or administration of any employee organization; (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act; (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act; (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative; (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement; (7) Violating any of the rules and regulations established by the commission."

criticized the Association for opposing such work and (h) blamed small class size on a 1977 strike.

On March 28, 1985, a Complaint and Notice of Hearing issued.

On April 3 and June 4, 1985, the Board filed its Answers. It admits that it negotiated contracts with the Association, but contends that the delay in signing them was attributable to the Association. It admits creating two positions unilaterally, but contends it did so pursuant to its managerial prerogative and that in any event the Personnel/Labor Relations position is confidential. It admits filling certain non-unit positions, but denies that it was obligated to post notices of the vacancies. It also admits reducing its force, but contends it did so because of declining enrollment. It admits discussing curriculum projects and other educational matters, but denies that it coerced or intimidated any employees.

On May 22 and 23, June 4, 5, 11 and 14, 1985, Hearing Examiner Judith E. Mollinger conducted hearings. The parties examined witnesses and introduced exhibits. They also filed post-hearing briefs. Hearing Examiner Mollinger subsequently resigned from the Commission and did not issue a decision. On March 12, 1986, Hearing Examiner Alan R. Howe was assigned to this case.

On March 27, 1986, the Hearing Examiner issued his report and recommended decision. H.E. No. 86-46, 12 NJPER 255 (¶17108 1986) (copy attached). He concluded that the Board violated subsections 5.4(a)(1), (5) and (6) when it refused to execute its agreements with the Association and violated subsections 5.4(a)(1)

and (5) when it employed clerical employees but did not pay them pursuant to the negotiations agreement. He further found that the Board did not violate the Act when it created the "Pupil Transportation Supervisor" and "Administrative Assistant for Personnel/Labor Relations" positions and promoted two employees to fill them. He finally found that the Board was not required to post vacant administrative positions and had the right to hold meetings and to issue letters informing the staff of its position concerning curriculum projects and other educational issues.

On April 11, 1986, the Board filed its exceptions. It contends that the Hearing Examiner erred in finding that: (1) the Board's refusal to sign the contract was not justified because its objection was "mechanical"; (2) the Board's attorney advised that the proposed new Administrative Assistant position was not confidential and (3) the Board acted in bad faith in not paying the alleged "substitute" clerical employees pursuant to the contract.

The Hearing Examiner's findings of fact (pp. 4-24) are accurate.[2/] We adopt and incorporate them here.

We first consider whether the Board violated the Act when it refused to sign the Association's proposed contracts concerning the four negotiations units. There is no dispute concerning the substantive terms of these contracts. The salary increases have

---

2/ We, however, modify finding no. 30 to delete reference to the Board attorney's opinion. That finding rested solely on irrelevant hearsay testimony.

been paid and no grievances have been filed concerning salary guide placement. The parties' dispute is much narrower and concerns only the teachers' specific contract language reflecting an agreement to compress the salary guide. The Board refused to sign a draft which contained the new salary guide, but did not contain language explaining that the salary guide had been compressed, eliminating the first four steps of the predecessor guide.

The Hearing Examiner rejected this defense as "mechanical" rather than substantive. We do not believe that this is the appropriate test in determining whether the Board violated subsection 5.4(a)(6) of the Act. That subsection prohibits the Board from "refusing to reduce a negotiated agreement to writing and to sign such an agreement." In determining whether this subsection was violated, it is irrelevant whether the disputed provision is "mechanical" or "substantive." It is not our province to decide the proposal's merits or whether a party should have agreed to the proposal. Our jurisdiction is limited to determining whether an agreement has been reached and whether a party refused to sign that agreement. See Jersey City Bd. of Ed., P.E.R.C. No. 84-64, 10 NJPER 19 (¶15011 1983).

To establish a violation, the Association must establish that the contract it prepared incorporated the parties' agreement. We begin our analysis by applying principles of contract interpretation. We start with the parties' intention, as expressed in writing. Jersey City.

> The parties' first memorandum of agreement provided:
>
> All unit members' salaries shall be increased by the following:
>
> (a) 1983-84 -- 8.5%
> (b) 1984-85 -- 8.5%
> (c) 1985-86 -- 8.5%
>
> Salary guides and/or application of salary increases for all unit members to be mutually determined. Above salary increases are inclusive of increment. The parties agree to drop the first four (4) steps of the salary guide for teachers at a cost not to exceed $4,000.00.
>
> * * *
>
> The terms of this memorandum are in outline form and are not intended to be precise contract language.

As is evident from the memo's plain language, negotiations still had to take place to resolve the salary guides. The following weekend, the parties agreed on these teacher salary guides:

Old Step*	New Step	B	C	D	et seq.
5	1	15,200	16,000	17,100	
6	2	15,800	16,600	17,700	
7	3	16,400	17,200	18,300	
8	4	17,000	17,800	18,900	
9	5	17,700	18,500	19,600	
et seq.					

*information -- for reference only

These two memos, which are the only documents the parties signed, do not support the Association's position. Rather, they evidence an intent that there would be an explanation concerning how the question would be implemented. In this regard, we believe it significant that the salary guide agreement contains reference to the predecessor guide for informational reasons. We also do not

believe that the parties' conduct after signing these documents supports the Association's position. The Board's representatives had orally advised the Association, on several occasions and well before the Association submitted its draft, of the need to clarify the salary guide.

Accordingly, we do not believe that the Board violated the Act when it refused to sign the Association's proposed draft. The record demonstrates that the parties had not agreed on what language, if any, would be used to refer to the compression of the predecessor guide. In this regard, we do not hold that the Board's proposed language correctly reflects the parties' agreement. Rather, we believe that the parties had simply not reached agreement on appropriate language to reflect their earlier agreements contained in the memorandum and subsequent salary guide agreements. We further note that neither proposal is inconsistent with the terms of the memorandum and salary guide agreements nor is there any evidence of bad faith on the part of either party.

We view differently the Board's refusal to sign the three other contracts submitted by the Association. They accurately reflected the parties' agreements. The Board's justification for not signing the teachers' agreement is not a defense to allegations it refused to sign these agreements since they involve separate negotiations units and separate agreements. The Board thus violated subsections 5.4(a)(1) and (a)(6).

We next consider whether the Board violated the Act when it did not pay certain clerical employees the contractual rate. We hold that it did. These employees were covered by the recognition clause and should have been compensated according to the contract's terms. We also believe that this aspect of the Complaint should not be dismissed as a mere breach of contract under State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). The Board's actions effectively repudiate the recognition clause and all contractual benefits for these employees and thus implicate our Act's policies. The Board removed negotiations unit work by the subterfuge of hiring "substitutes" to do that work. The Association has a legitimate interest in preserving such work. See, e.g., Rutgers University, P.E.R.C. No. 82-20, 7 NJPER 505 (¶12224 1981), aff'd App. Div. Dkt. No. A-468-81T1 (5/18/83); Deptford Bd. of Ed., P.E.R.C. No. 81-78, 7 NJPER 35 (¶12015 1980); Rutgers University, P.E.R.C. No. 79-72, 5 NJPER 186 (¶10103 1979), recon. den. P.E.R.C. No. 79-92, 5 NJPER 230 (¶10127 1979), aff'd App. Div. Dkt. No. A-3651-78 (7/1/80); and Cty. of Middlesex and PBA Local 152, P.E.R.C. No. 79-80, 5 NJPER 194 (¶10111 1979), aff'd App. Div. Dkt. No. A-3564-78 (6/19/80). Therefore, we hold that the Board violated subsections 5.4(a)(1) and (a)(5) when it did not pay certain clerical employees contractual benefits.

We have reviewed, in the absence of exceptions, the remaining aspects of the Complaint. We agree with the Hearing Examiner that they should be dismissed.

ORDER

The Matawan-Aberdeen Regional Board of Education is ordered to:

A. Cease and desist from:

1. Refusing to sign the 1983-1986 agreements prepared by the Matawan Regional Teachers Association (J-9a, b and c) for the bus driver, custodial and maintenance, and secretarial-clerical negotiations units.

2. Refusing to negotiate in good faith by not compensating Sandra Richards, Ann Marino and Carol Dorr pursuant to the terms of the Secretarial-Clerical employees collective negotiations agreement between the Board and the Matawan Regional Teachers Association.

3. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly by refusing to sign the 1983-1986 agreements prepared by the Matawan Regional Teachers Association (J-9a, b and c) for the bus driver, custodial and maintenance, and secretarial-clerical negotiations units and by not compensating Sandra Richards, Ann Marino an Carol Dorr pursuant to the terms of the Secretarial-Clerical Employees collective negotiations agreement.

B. Take the following affirmative action:

1. Execute the 1983-1986 agreements prepared by the Matawan Regional Teachers Association (J-9a, b and c) for the bus driver, custodial and maintenance and secretarial-clerical negotiations units.

2. Make Sandra Richards, Ann Marino and Carol Dorr whole by compensating them, together with interest at the rate authorized by R.4:42-11, pursuant to the terms of the 1983-1986 Secretarial-Clerical employees collective negotiations agreement.

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.

C. The other allegations are dismissed.

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

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 refusing to sign the 1983-1986 agreements prepared by the Matawan Regional Teachers Association (J-9a, b and c) for the bus driver, custodial and maintenance, and secretarial-clerical negotiations units.

WE WILL cease and desist from refusing to negotiate in good faith by not compensating Sandra Richards, Ann Marino and Carol Dorr pursuant to the terms of the Secretarial-Clerical employees collective negotiations agreement between the Board and the Matawan Regional Teachers Association.

WE WILL cease and desist from interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly by refusing to sign the 1983-1986 agreements prepared by the Matawan Regional Teachers Association (J-9a, b and c) for the bus driver, custodial and maintenance, and secretarial-clerical negotiations units and by not compensating Sandra Richards, Ann Marino an Carol Dorr pursuant to the terms of the Secretarial-Clerical Employees collective negotiations agreement.

WE WILL execute the 1983-1986 agreements prepared by the Matawan Regional Teachers Association (J-9a, b and c) for the bus driver, custodial and maintenance and secretarial-clerical negotiations units.

WE WILL make Sandra Richards, Ann Marino and Carol Dorr whole by compensating them, together with interest at the rate authorized by R. 4:42-11, pursuant to the terms of the 1983-1986 Secretarial- Clerical employees collective negotiations agreement.

Docket No. CO-85-182-107

MATAWAN-ABERDEEN REGIONAL SCHOOL DISTRICT 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. 86-46

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

In the Matter of

MATAWAN-ABERDEEN REGIONAL
BOARD OF EDUCATION

Respondent,

-and-

Docket No. CO-85-182-107

MATAWAN REGIONAL TEACHERS
ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent Board violated §§5.4(a)(1), (5) and (6) of the New Jersey Employer-Employee Relations Act when, except for a procedural technicality which did not implicate terms and conditions of employment, it refused to execute four collective negotiations agreements, covering separate units represented by the Association for the years 1983-86. The refusal to execute occurred approximately 13 months after all of the terms and conditions set forth in the four agreements had been agreed to and implemented by the Board without any incident or problems. The Hearing Examiner also concluded that the Board violated §5.4(a)(1) and (5) of the Act when it hired certain clerical employees as "substitutes" and then failed to pay them the wages and benefits under the clerical agreement, notwithstanding that "per diem" clerical employees are covered by the clerical agreement.

However, the Hearing Examiner found that the Board did not violate the Act when it made non-discriminatory promotions of two clerical employees into newly created supervisory/confidential positions out of the clerical unit. Additionally, the Board was found not to have violated the Act when it failed to post notices of administrative vacancies, which were not in any unit represented by the Association, the Hearing Examiner having concluded that the Association lacked standing to challenge the Board's failure to post. Finally, the Hearing Examiner concluded the Board did not violate the Act by the distribution of letters to its teaching staff and the Superintendent's convening of a meeting of teachers on March 22, 1985, in his office since there were no threats of

reprisal or force or promises of benefit: see City of Camden, P.E.R.C. No. 82-103, 8 NJPER 309 (1982) and Spotswood Bd. of Ed., P.E.R.C. No. 86-34, 11 NJPER 591 (1985).

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. 86-46

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

In the Matter of

MATAWAN-ABERDEEN REGIONAL
BOARD OF EDUCATION

Respondent,

-and- Docket No. CO-85-182-107

MATAWAN REGIONAL TEACHERS
ASSOCIATION,

Charging Party.

Appearances:

For the Respondent
DeMaio & DeMaio, Esqs.
(Vincent C. DeMaio, Esq.)

For the Charging Party
Oxfeld, Cohen & Blunda, Esqs.
(Mark J. Blunda, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on January 24, 1985, and amended on May 22, 1985, by the Matawan Regional Teachers Association (hereinafter the "Charging Party" or the "Association") alleging that the Matawan-Aberdeen Regional 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"), namely, by the allegations hereinafter set forth, all of which allege that the Board has violated N.J.S.A. 34:13A-5.4(a)(1) through (7) of the Act.[1/]

The 61 paragraphs of the Unfair Practice Charge, as amended, may be grouped and described as follows:

> ¶'s 4-10: The Board has refused to execute the negotiated 1983-86 collective negotiations agreements for the four units represented by the Association (professional employees, clerical employees, custodians and bus drivers), which were agreed to at various stages between September 8, 1983 and October 20, 1984, the Board insisting for the first time in October 1984 that the Association must execute an addendum to the salary guide for the professional unit before the Board would execute any of the four agreements.
>
> ¶'s 14-31: The Board, in retaliation for the Association "going public" in the Spring of 1984 as to Mary Fankhauser, the Student Transportation Office Manager in

---

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; (2) Dominating or interfering with the formation, existence or administration of any employee organization; (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act; (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act; (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative; (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement; (7) Violating any of the rules and regulations established by the commission."

the clerical unit, who was also driving a bus in the early morning, created a new supervisory position of Pupil Transportation Supervisor on November 26, 1984, and promoted Fankhauser to this position, which deprived the Association of a unit clerical position without negotiations, the duties of the two positions being essentially the same.

¶'s 32-46: The Board, in retaliation for the testimony of Barbara Cholewa at a Commission hearing on October 12, 1984 (CO-84-316-42), and who was also active on behalf of the Association, caused Cholewa, an Information Services Specialist in the clerical unit, to be promoted out of the unit to the newly created position of Administrative Assistant for Personnel/Labor Relations, which promotion occurred on December 17, 1984.

¶'s 47-49: Notwithstanding a past practice of posting vacancies, the Board on December 10, 1984, failed to post five administrative positions and, on the same date, filled these vacancies without interviewing applicants from the Association's units.

¶'s 50-52: The Board in 1984 "riffed" 63 positions, including six clericals, and has since the 1984-85 school year employed certain clericals who perform the same duties as unit members, but who do not receive the benefits of the Association's clerical agreement.

¶'s 54-59: Without notice to the Association, the Superintendent on March 22, 1985, ordered a group of teachers to his office where he interrogated them regarding curriculum work and deprecated the Association and its leaders and thereafter requested in writing that each teacher volunteer to perform curriculum work to which the Association was opposed.

¶ 60: On March 29, 1985, the Superintendent criticized the Association by an open letter to all teaching staff.

It appearing that the allegations of the Unfair Practice Charge, as amended, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on March 28, 1985. Pursuant to the Complaint and Notice of Hearing, hearing were held on May 22 and May 23, June 4, 5, 11 and 14,

1985[2/] in Trenton, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Neither party argued orally, filing instead post-hearing briefs by October 7, 1985.

On March 12, 1986, this case was assigned to the undersigned Hearing Examiner due to Judith E. Mollinger's having resigned from the Commission.

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

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

FINDINGS OF FACT

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

2. The Matawan Regional Teachers Association is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

2/ References to the transcript hereinafter shall be designated "1 Tr; 2 Tr, etc. through 6 Tr," thereby corresponding to the six hearing dates of May 22 through June 14, 1985.

3. The Association is the collective negotiations representative of employees of the Board in four units: professional employees, clerical employees, custodial and maintenance employees and bus drivers (1 Tr 8, 27). Each of the four units is covered by a separate collective negotiations agreement, the last four executed agreements having been effective during the term July 1, 1980 through June 30, 1983 (J-20 through J-24).

Findings With Respect To The Board's Alleged Refusal To Execute The Four 1983-86 Agreements.

4. Between the Fall of 1982 and September 1983 the parties negotiated successor agreements for each of the four collective negotiations units, supra, which were to become effective July 1, 1983 through June 30, 1986 (1 Tr 28; 2 Tr 179). On the date of September 8, 1983, the parties executed a Memorandum of Agreement covering all four units (J-1), having been assisted by Commission Mediator Robert M. Glasson, who reduced the parties' agreement to writing by hand (2 Tr 6, 7). The Memorandum was executed on behalf of the Association by Marie Panos, President, John Shaw, Vice President, and Carl Kosmyna, Vice President, and on behalf of the Board by Robert W. Fenske, President, and Richard J. Brown, Chairman of the negotiating committee, with Mediator Glasson witnessing the document (J-1).[3/]

3/ Before the Memorandum was executed the parties had carefully reviewed it face-to-face with the Board's Chief Negotiator, James Moran, reading it aloud "word for word" (2 Tr 8).

5. The portion of the Memorandum of Agreement material to the instant proceedings is found in paragraph 2 of J-1 where, following the enumerated percentage increases per year, it provided, inter alia, that "Salary guides and/or application of salary increases for all unit members to be mutually determined...The parties agree to drop the first four (4) steps of the salary guide for teachers at a cost not to exceed $4,000.00." Elsewhere in paragraph 25 of the agreement it was provided that "The terms of this Memorandum are in outline form and are not intended to be precise contract language." Finally, the Memorandum provided that it was subject to ratification by the Association and the approval of the Board.

6. Over the weekend, beginning Friday, September 9th, the parties met to develop the necessary salary guides, the most difficult guide being that for the teachers, which required a compression or elimination of the first four steps from the prior guide (2 Tr 168). With the assistance of Deputy Superintendent Dario Valcarcel, Jr. all of the guides, including the teachers' guide, were completed by Sunday, September 11, 1983 (2 Tr 9-11). At that point Panos and Kosmyna, who had developed the guides with Valcarcel, presented the salary guides to Moran and Superintendent

Kenneth D. Hall, who reviewed the completed guides and found them satisfactory (1 Tr 30, 31, 70; 2 Tr 11, 169).[4/]

7. Kosmyna testified that during the meeting with Moran and Hall when the salary guides were reviewed, Moran raised a question as to how teachers would be placed on the new guide in view of the compression of steps from the prior guide (1 Tr 70). He further testified that he and Panos explained the procedure for compression to Moran and Hall to their apparent satisfaction and although they may have requested additional written clarification they were ultimately persuaded that "nothing else was required" (1 Tr 70-73).[5/]

8. Thereafter, approximately 500 copies of the typewritten Memorandum of Agreement (J-2) were photocopied and, together with the salary guides approved by the parties, were presented to the members of the Board of Education and to the

---

4/ The salary guides, which were reviewed by the parties, including Moran and Hall, were attached to a typewritten copy of the Memorandum of Agreement, which had been prepared immediately after the meeting of the parties on September 11, 1983 (J-2; 2 Tr 11).

5/ Moran did not contradict the testimony of Kosmyna as to what transpired on September 11th as the parties reviewed the salary guides. Moran did testify without contradiction that beginning in October 1983, he first raised with Panos the necessity that the guides be footnoted "...to reflect very clearly that people had been set back four years in service..." (2 Tr 170, 171, 173, 174). Also, in October 1983, Moran suggested to Panos that the matter of applying the compression of the teachers' salary guide could be the subject of a "side bar agreement" (2 Tr 171).

Association members for ratification on Monday, September 12, 1983 (1 Tr 31, 32; 2 Tr 12, 13). The Association members ratified the Memorandum of Agreement in the morning of September 12th and the members of the Board ratified the agreement in the evening of September 12th (2 Tr 12, 13). The Board's ratification is set forth in its minutes (J-3), and occurred after discussion with questions satisfactorily answered by Superintendent Hall (2 Tr 13).

9. The Board immediately implemented the Memorandum of Agreement for all four units (1 Tr 33; 2 Tr 13-20; J-4 through J-7). The salary notices to the members of the teaching staff advised them of the new salary pursuant to the Memorandum of Agreement and the revised step on the salary guide (J-4 and J-7; e.g. 2 Tr 16). During the first year of the four agreements (July 1, 1983-June 30, 1984) no grievances were filed by any employee of the four units regarding salary guide placement (2 Tr 17, 18; 5 Tr 108, 109).

10. Drafts of the agreements were prepared by Moran and transmitted to the Association in or around October 1983 (2 Tr 21, 133, 189, 190). Moran's drafts reorganized and renumbered the prior agreements, notwithstanding that neither the Memorandum of Agreement, nor any separate agreement between the parties, had called for such reorganizing and renumbering (2 Tr 21, 191, 192). Neither Moran's drafts, nor his transmittal letter, contained any language regarding compression or implementation of the new teacher salary guides (2 Tr 21, 198-200). However, Moran testified without

contradiction that when he delivered the drafts to Panos in October 1983, he verbally advised her of the necessity of a footnote or a side bar agreement in connection with the teachers' salary guides (2 Tr 198-200).

11. Because of Moran having reorganized and renumbered the draft agreements, the Association felt it necessary to prepare its own contract drafts (2 Tr 21). The completed drafts of the four agreements were ultimately transmitted by the Association to Superintendent Hall in June 1984, and on July 25, 1984 Panos wrote to Hall requesting that the four agreements be executed by the Board (2 Tr 23, 24; J-9a-d; J-10).[6/]

12. On August 20, 1984, the parties met to review the four contract drafts prepared by the Association, which were proofread word for word by Panos and Kosmyna on behalf of the Association and by Moran and Deputy Superintendent Michael K. Klavon (2 Tr 25, 26).

6/ Unlike the teachers' salary guides, which were appended to the typewritten Memorandum of Agreement on September 11, 1983, the Association's draft of the collective negotiations agreement for the teachers (J-9d) omitted from the salary guides therein any reference to the compression of the guides, i.e., the elimination of four steps (compare J-2, Schedule A-1 with J-9d, Schedule A-1). The typewritten Memorandum of Agreement (J-2) contained on Schedule A-1 a left-hand column entitled "Old Step*" and a second column to the immediate right entitled "New Step." A comparison of the step numbers in the two columns indicated clearly that four steps had been eliminated at each level in the guide. Panos testified that the purpose of the "Old Step*" and "New Step" columns was to avoid confusion when the Memorandum of Agreement was presented to the membership for ratification on September 12, 1983 (2 Tr115-118).

Certain errors in the draft were discovered and an errata sheet was prepared, setting forth the items that needed to be corrected, updated or amended in the four contract drafts (J-8; 2 Tr 26, 125, 172, 201; 5 Tr 26, 110, 111). Moran testified without contradiction that at this meeting he reiterated the need for an explanatory addendum to the teachers' salary guides but, however, he did not seek the addition of an addendum to the errata sheet nor did he offer any independent written proposal (2 Tr 172, 203; 5 Tr 113).[7/]

13. Thereafter the Association revised the four draft agreements pursuant to the errata sheet and returned them to Klavon for execution on August 27, 1984 (2 Tr 27, 28; 5 Tr 112, 113; J-11). The parties next jointly observed the xeroxing of the final drafts of all four collective negotiations agreements and Klavon, who was present for the Board, raised no question regarding any omitted language concerning clarification of the teachers' salary guides (2 Tr 29; 5 Tr 113, 114).[8/]

14. Several subsequent requests by the Association for the execution of the agreements went unanswered during the time that the parties were exchanging galley proofs of the agreements received

---

7/ Moran testified repeatedly that his request for an explanatory addendum or side bar to the teachers' salary guides was a mechanical device and was not proposed as a substantive term of the teachers' agreement (2 Tr 172, 174-176, 178, 195, 197, 199, 202, 203).

8/ Klavon testified that the need for an addendum to the teachers' salary guides came to his attention sometime in August 1984 (5 Tr 106, 107)

from the printer (2 Tr 28, 31, 32). On October 13th, the Association transmitted a letter to Superintendent Hall, again requesting the execution of the four agreements but no response was received (2 Tr 29, 30; J-12). However, when Hall later responded by telephone, he indicated that the agreements would be signed as soon as 700 copies were returned from the printer (2 Tr 30). This caused Panos to write to Hall on October 20, 1984, explaining that only the master agreements, not all 700 copies, needed to be signed (2 Tr 30; J-13). In the same letter, Panos requested that the agreements be signed at the Board meeting on October 22nd but, however, no response was received from the Superintendent (2 Tr 33).

15. The Association's representatives brought the four master agreements for execution to the October 22, 1984 Board meeting and Panos requested that the Board execute the agreements but this request was refused (2 Tr 33, 34). The then Board President, Richard J. Brown, advised Panos that the Board would not sign the agreements until an addendum was executed regarding the teachers' salary guides, adding he would talk to Panos after the meeting (2 Tr 34). After the meeting Brown explained to Panos that he had received from Klavon earlier the same day an addendum (J-18) that had been prepared by Moran, and which was to be added to the teachers' agreement (2 Tr 34, 177).[9/]

9/ In speaking with Brown after the meeting, Panos, who also had just received a copy of the addendum earlier that day, stated that it was unnecessary and redundant since the compression of

Footnote Continued on Next Page

16. Klavon testified that October 22nd was the first time that the Association had been presented with anything in writing, which dealt with the teachers' salary guide (5 Tr 114). The addendum had never been negotiated with the Association (2 Tr 36). Although Moran acknowledged that the addendum was unrelated to the other three agreements, dealing only with the teachers' salary guides, the Board has refused to execute any of the four agreements for the four collective negotiations units (2 Tr 34-36, 208).

Findings With Respect To The Promotions Of
Fankhauser And Cholewa Out Of The Clerical Unit

Fankhauser:

17. The position of Student Transportation Office Manager was created during the term of the 1980-83 collective negotiations agreement in the clerical unit (1 Tr 39; 2 Tr 37, 38). The Board and the Association agreed to create a new salary column in the clerical agreement to cover the Office Manager position (2 Tr 39).

18. Fankhauser's primary function as Office Manager, indicated in the job description, was to assist the Superintendent and the Board Secretary in the general business and transportation functions of the school district (CP-1a). Her duties included the

---

9/ Footnote Continued From Previous Page

the guides had taken place very smoothly and there had been no problem with the individual employment contracts for the teachers (2 Tr 34, 35). In response, Brown suggested a side bar letter instead of the addendum to the teachers' agreement and suggested that Panos consult her attorney (2 Tr 130).

preparation of purchase orders, the keeping of central office accounts, the handling of transportation matters on a day-to-day basis, the making up of bus routes, the handling of complaints by parents regarding routes and other related matters (4 Tr 116-123). She played no role in the hiring of bus drivers except that she could make a recommendation (4 Tr 189, 201). Fankhauser did not evaluate employees, believing that her role was as Office Manager was really that of a secretary (4 Tr 213-215).

19. Sometime prior to May 1984, Panos first learned that Fankhauser, as Office Manager, was also driving a regular bus route on a daily basis in the morning before starting her duties as Office Manager (2 Tr 38-40). Fankhauser testified that she had been doing this bus driving since September 1981 (4 Tr 228). For performing this bus driving duty in the morning, Fankhauser received additional pay under the bus driver agreement, in addition to payment for the duties performed as Office Manager (2 Tr 38-40; 4 Tr 230).

20. In May 1984, Panos brought her discovery of Fankhauser's performing two jobs to the attention of the Board's Business Administrator, Bruce M. Quinn, who acknowledged that he had known about the situation, and so had Superintendent Hall, since 1982 (2 Tr 40-42; 4 Tr 88-91). Panos stated to Quinn that what Fankhauser was doing was "illegal" and that Quinn should bring the matter to the attention of Hall before it became a "major public issue and...embarrassment" (2 Tr 41; 4 Tr 89). Quinn replied that he already spoken to Hall and that Hall had told Quinn, "to just leave it alone" (2 Tr 41, 42).

21. The matter next surfaced at a meeting on November 20, 1984, between Panos, Kosmyna and Klavon (2 Tr 42, 43). Klavon acknowledged that he was aware of the situation and that it was "wrong," and then suggested that the Board promote Fankhauser out of the unit (1 Tr 41, 77, 78; 2 Tr 42, 43). The Association rejected this request, pointing out that Fankhauser's job duties had not changed (1 Tr 41, 43, 77-79). The meeting concluded with Klavon stating that he would take up the matter with Hall and get back to the Association but never did (1 Tr 41; 2 Tr 42-44).

22. Schools were closed between November 22, 1984 and November 26, 1984 for the Thanksgiving holiday. A meeting of the Board was held on November 26th. At approximately 11 p.m. during that meeting, the Board added an addendum to the agenda, creating a new position of Pupil Transportation Supervisor and Fankhauser was promoted to this position (1 Tr 42; 2 Tr 44; CP-2).[10/] Fankhauser assumed her new position the next day, November 27th.

23. After Fankhauser assumed the position of Pupil Transportation Supervisor in November 1984, she performed three additional functions, which she had not performed previously, namely, the evaluating, hiring and disciplining of bus drivers (4 Tr 103-105, 186, 211, 220).

10/ By way of explanation for the urgency in creating the Pupil Transportation Supervisor position on November 26, 1984, Klavon explained that after the November 1984 meeting with the Association: "We felt we had to take definitive action," adding that the Fankhauser situation had to be solved one way or the other (5 Tr 134). Quinn acknowledged that he decided "...to push the issue at that point in time" (4 Tr 124).

24. The position of Student Transportation Office Manager from which Fankhauser was promoted in November 1984 was posted on December 10, 1984 but, however, the vacancy was not filled as of May 22, 1985 (2 Tr 46).[11/]

Cholewa:

25. Barbara Cholewa was hired as a clerical employee in September 1972, and, after several interim promotions, she was promoted to the position of Information Services Specialist in 1981 and was assigned to work, first for Deputy Superintendent Valcarcel, and in September 1984, for Klavon (4 Tr 231-235). All of the positions held by Cholewa from her date of hire until she became Information Services Specialist were in the clerical unit represented by the Association (4 Tr 232, 233). In the capacity of Information Services Specialist, Cholewa's duties included computer input, Board agenda, seniority lists, letters to the staff and personnel matters done by word processor (2 Tr 72; 4 Tr 247).

26. When Valcarcel was Cholewa's supervisor, he also had a confidential secretary, Ann Vicari, but when Klavon succeeded Valcarcel in September 1984, he brought his own secretary, Jo Ann Masucci, with him as his confidential secretary and Vicari went to work in the business office (4 Tr 283-85; 5 Tr 48, 161).

11/ Quinn testified that the position had been reduced to part-time and, although vacant, it was scheduled to be filled at the June 17, 1985 Board meeting (4 Tr 105). Further, the position, when filled, will be supervised by Fankhauser and Lois Whiting (4 Tr 106).

27. On October 12, 1984, Cholewa was a witness for the Association in an unfair practice proceeding before the Commission (Docket No. CO-84-316-42; 2 Tr 53, 54). Additionally, on November 27, 1984, Panos and Kosmyna met with Cholewa to discuss computers. During the course of the conversation she was asked if she would be interested in serving as the Association's Corresponding Secretary and also as a member of the negotiating team (1 Tr 53, 54; 2 Tr 55; 4 Tr 241, 286). Cholewa expressed immediate interest in the offer but she had some reservation about a possible conflict between her work in the personnel office and holding office in the Association (4 Tr 242).

28. On either November 28th or November 29th Cholewa told Klavon "off the record" that the Association had offered her the various positions, supra, and Klavon, expressing surprise and concern, stated that the personnel committee would see a serious conflict of interest and that the Board might not view her as being "trustworthy" with respect to confidentiality (4 Tr 243-45, 288). At this same meeting, Klavon told Cholewa in the strictest confidence that the administration was thinking of taking her position as Information Services Specialist out of the unit because of the "aspect of confidentiality" (4 Tr 245, 288).

29. On November 30th Cholewa met with Panos and told her that while she was still "very interested" she had not made her mind up and, because of her concern over a possible conflict of interest,

she asked Panos to discuss the matter with Superintendent Hall (4 Tr 253, 287).12/

30. On December 4th Klavon informed Cholewa that the administration was going to take her position out of the unit and make it a confidential position. A day or two later Klavon informed her that the Board's attorney had advised that the position could not be confidential and, therefore, it would be administrative (2 Tr 61; 4 Tr 293, 294). In or around the same time frame Klavon discussed with Cholewa the seniority and tenure implications if she took the new position and later sought to return to her prior position of Information Services Specialist (4 Tr 294-296). In making her ultimate decision to accept the newly created position outside of the clerical unit, Cholewa received advice from Panos and NJEA UniServ Rep., John Molloy, and her former supervisor Valcarcel, all of whom recommended that she accept the new position (2 Tr 62, 63). A caveat to the Association's advice to her to accept the new position was that the Association was going to challenge the whole process and procedure (2 Tr 62).

12/ Panos testified that on November 30, 1984, Cholewa had told her that she had made up her mind and was looking forward to the Association positions offered to her (2 Tr 56). Panos also testified that at the same meeting with Cholewa on November 30th Cholewa expressed some concern about the reaction of the administration and asked Panos to speak to Superintendent Hall (2 Tr 57). This slight discrepancy in the testimony of Panos and Cholewa is not significant, especially in view of the ultimate decision on this issue, infra.

31. At a regular meeting of the Board on December 10, 1984, an addendum to the agenda proposed the creation of the position of Administrative Assistant for Personnel/Labor Relations, which was adopted (CP-5). However, a motion to appoint Cholewa to the position was withdrawn, after an objection was made by Panos, and also, pending the receipt of a statement from Cholewa (CP-5(b), (c); 1 Tr 58; 2 Tr 66).

32. On December 13th Cholewa advised Panos that she had decided to take the new position and that she did not "...want to carry this whole business on any further..." (4 Tr 270).

33. A special meeting of the Board was called for December 17, 1984, for the purpose of appointing Cholewa to the newly created position. After a letter from Cholewa was read to the Board, indicating that she was not coerced into accepting the position, the Board voted to appoint her as Administrative Assistant for Personnel/Labor Relations, effective December 18th (CP-6).[13/]

34. Since assuming her new position with an $1800 per year increase (4 Tr 282), Cholewa has commenced computerizing the grievance processing system (5 Tr 70, 71); she is involved in all clerical interviews, bringing back recommendations of the interview committee to Klavon (4 Tr 272); she has access to all of the

---

13/ Notwithstanding that Klavon told Cholewa that her former postion of Information Services Specialist was being removed from the unit, it was not, as indicated by the 1984-85 Staffing Survey (CP-12) and the testimony of Panos (2 Tr 77, 78).

grievance files (4 Tr 278, 279); she has been asked by Klavon to sit in on collective negotiations, providing computer information, and to attend personnel committee meetings (4 Tr 256, 279); and she has attended a workshop at Rutgers, which involved the construction of salary guides, scattergrams for use in negotiations (4 Tr 279, 280).

Findings With Respect To The Failure Of the Board
To Post Five Administrative Positions in December 1984

35. Of the four collective negotiations unit represented by the Association, there is a provision for the posting of vacancies only in the agreements of the clerical employees and the custodial and maintenance employees (J-21 & J-22). Also, there is an additional collective negotiations unit, not represented in these proceedings, in which the Matawan Regional Administrators Association represents the administrative employees of the Board whose collective negotiations agreement does not provide for posting (5 Tr 78, 79).

36. Under date of October 5, 1970, John F. McKenna, who was then the Board's Superintendent, wrote a letter to Panos, which stated that all administrators were advised on September 30th to post vacancies in the future for "...professional staff, including supervisory, administrative, teaching, and extra-curricular activities..." on the faculty bulletin boards in their buildings (CP-13). Panos confirmed this fact, pointing out that if there was a failure to post an objection would be made at the Board meeting and the Board would pull the matter from the agenda and then post

the position (2 Tr 80, 81). Although Klavon testified that he was not familiar with the McKenna letter until the hearing in this matter, he acknowledged that, irrespective of the provisions in the several collective negotiations agreements, the practice had been to post all vacancies (5 Tr 78, 84).[14/]

37. In or around December 1984, the Board decided to appoint five individual to vacant administrative positions, none of which had been posted (5 Tr 81). Klavon met with the President of the Administrators Association, prior to the December 10, 1984 Board meeting where the appointments were to be made, and advised him that there would be no posting and Klavon elicited from him that he had no objection (5 Tr 81, 82). At the Board meeting on December 10th, Panos objected on the ground that Association's unit members should have a right to be considered for the positions (2 Tr 83-85; 5 Tr 82, 83, 85). Nevertheless, the Board made the five appointments to the five administrative positions on December 10th (2 Tr 83).

Findings With Respect To The Board's Failure To Have Paid Certain "Substitute" Clerical Employees Full Contractual Benefits During The 1984-85 School Year.

38. The recognition clause in the clerical agreement provides that the Association is the exclusive representative

---

14/ Notwithstanding that Klavon was not familiar with the McKenna letter, the Board had previously posted administrative positions in 1983 and 1984 as indicated by CP-31 and CP-32.

"...for all clerical personnel, whether under contract, on leave, on an hourly or per diem basis..." (J-22, J-9(c)).

39. At the end of the 1983-84 school year the Board, inter alia, eliminated six clerical positions and during the Summer of 1984, the Board hired eight new full-time clerical employees (2 Tr 86, 87). Sandra Richards, who was one of the employees "riffed" at the end of the 1983-84 school year, was neither notified nor hired when the Board hired the eight new full-time clerical employees during the Summer of 1984 (6 Tr 6, 7).

40. Commencing in September 1984, the Board hired Richards and Ann Marino as "substitute" clericals and in February 1985, the Board hired another "substitute," Carol Borr (2 Tr 88, 89). Between September 1984 and April 30, 1985, Richards worked in the Child Study Team Office for 124 out of a possible 146 school days and although she worked 85% of the time, she was not paid the contractual wage rate and received no contractual benefits (2 Tr 92-99; 6 Tr 25-30, 35; CP-15). The same result obtained for Marino, who worked in the Personnel Office for a total of 110 days out of a possible 146 days between September 1984 and April 30, 1985; and, notwithstanding the protest of Panos on November 20, 1984 to Klavon, Borr was employed as a "substitute" in the Guidance Department and worked a total of 43 days out of a possible 55 days (6 Tr 11, 23).[15/]

15/ Although Panos lodged a formal protest on November 20th, supra, no formal grievance was ever filed by the Association (6 Tr 30).

41. The Board does not acknowledge that the clerical agreement applies to per diem employees but, however, the Board's use of per diem clerical employees from a substitute list has in the past involved employees who are out ill and as extra help when needed during busy periods (5 Tr 73; 6 Tr 15-18).]

Findings With Respect To The Professional Relations Committee (PRC) And The Superintendent's Ordering A Group Of Teachers To A Meeting On March 22, 1985

42. The professional (teachers) agreement provides in Art. XV for a Professional Relations Committee (PRC) whereby the Association and the administration may discuss any subject of a professional nature and make recommendations to the Board for specific action (J-23, J-24).

43. During 1983, the Association ascertained that the teaching staff indicated a desire to do meaningful curriculum work and the PRC organized a curriculum project wherein the entire staff was involved on a voluntary basis (3 Tr 5, 8 94, 95, 98).

44. At a meeting of the Association on September 4, 1984, the leadership asked the teaching staff not to continue any PRC curriculum work until the administration has satisfactorily addressed certain outstanding issues (3 Tr 11, 12, 76, 123, 124). This decision was confirmed on September 18th when the Association issued its first "Action Line" (CP-16). Another "Action Line" of December 11, 1984, confirmed the dormant status of the PRC (CP-20). The following day the Superintendent issued an "Open Letter," accusing the Association of untruths, misleading statements, etc. (CP-23).

45. At a meeting on January 28, 1985, the Association advised the Board and its administration that it was not going to do voluntary curriculum work while the administration was disregarding members' rights (6 Tr 148-150). Another meeting was held on February 27, 1985, where Board President Brown asked if the Association would agree to allow the PRC to discuss the issue of District reorganization and the Association agreed to do so on a trial basis (6 Tr 121, 126, 127, 150).

46. Nothing further transpired until March 11, 1985, when an administrator, Lois Whiting, issued a memo to all principals, advising them that a list of 17 teachers had been selected to do curriculum work and that they would be attending workshops on March 19 and 20, 1985 (CP-17). Since none of the affected teachers had been notified previously, or volunteered, they contacted the Association and on March 18th the Association voted not to proceed with curriculum work and not to attend the workshops (3 Tr 24, 78; 6 Tr 124). Even though Whiting was aware of the foregoing Association action, Superintendent Hall and Klavon directed her to proceed with the curriculum and the workshops (4 Tr 55).

47. On March 22, 1985, between 12 and 15 teachers, who had been selected by the administration to do curriculum work, were summoned to the office of Superintendent Hall where they were questioned by him as to why they did not participate in the workshops and why Panos was blocking the PRC and the curriculum work

(3 Tr 29, 78-82; 5 Tr 10). One of the teachers summoned testified that he was "scared" and "frightened" (3 Tr 82).[16/]

48. On March 27th the Association issued another flyer to its membership, setting forth the administration's "abuses and usurpations" from April 1984 through March 1985 (CP-21). Shortly thereafter Hall issued a "Second Open Letter" to the teaching staff, in which he indicated, inter alia, that the Association was not fairly representing the clerical unit (CP-24, p. 1).

DISCUSSION AND ANALYSIS

The Board Violated §§5.4(a)(1), (5) And (6) Of The Act When It Refused To Execute The Four Agreements On And After October 22, 1984.

The Board's refusal to execute the four collective negotiations agreements, which were ripe for execution on and after October 22, 1984, basically implicates §5.4(a)(6) of the Act, which provides that it is unfair practice for a public employer to refuse to reduce a negotiated agreement to writing and to execute such agreement. It is clear that the four negotiated agreements have been reduced to writing and embody a complete agreement on the terms and conditions of employment agreed to on September 8, 1983. Thus, the Association's unfair practice charge at this point has to do

---

16/ Joan S. Maxwell, a fourth grade teacher, who attended the meeting on March 22nd testified without contradiction that there was a two-way dialogue between the teachers and Superintendent Hall and that Hall made no statement which could have been taken as an intimidation or a threat (5 Tr 4, 11, 12, 13).

with the last portion of §5.4(a)(6), namely, the refusal to sign the negotiated agreements.

In three early Commission decisions, involving §5.4(a)(6), a violation was found and the execution of an agreement was ordered: Bergenfield Bd. of Ed., P.E.R.C. No. 90, 1 NJPER 44 (1975); East Brunswick Bd. of Ed., P.E.R.C. No. 77-6, 2 NJPER 279 (1976); and Long Branch Bd. of Ed., P.E.R.C. No. 77-70, 3 NJPER 300 (1977). Since 1977 there have been a number of cases involving this subsection where no violation was found. See, for example, Passaic Valley Water Commission, P.E.R.C. No. 85-4, 10 NJPER 487 (1984); Mt. Olive Bd. of Ed., P.E.R.C. No. 84-73, 10 NJPER 34 (1983); and Borough of Wood-Ridge, P.E.R.C. No. 81-105, 7 NJPER 149 (1981). The primary reason that no violations of §5.4(a)(6) were found in these cases was either the absence of a "meeting of the minds" as to the terms being incorporated into an agreement or the absence of authority on the part of the negotiator(s) on either side to bind their respective principals.

In a recent decision of the NLRB, Timber Products Co., 277 NLRB No. 78, 121 LRRM 1039 (1985), the Board held that an employer violated §§8(a)(1) and (5) of the National Labor Relations Act when it refused to execute an agreement, following the unequivocal acceptance by the union of the employer's final offer.[17/] The Board held that "...an enforceable contract was formed and the

---

17/ The New Jersey Supreme Court early decided that the Federal Act may appropriately be used as a guide to the interpretation of the provisions of our Act: Lullo v. IAFF, Local 1066, 55 N.J. 409 (1970). See also, Bridgewater Twp. v. Bridgewater Public Works Assn., 95 N.J. 235 (1984).

Respondent was thereafter obliged to execute and abide by that contract..." (121 LRRM at 1042).

The Hearing Examiner also notes that while there have been no findings of §(a)(6) violations by the Commission, the Commission has found §5.4(b)(4) violations in two cases where a public employee representative refused to reduce a negotiated agreement to writing and sign it: Bergen Co. Prosecutor's Office, P.E.R.C. No. 83-90, 9 NJPER 75 (1982) and Spotswood Bd. of Ed., P.E.R.C. No. 86-34, 11 NJPER 591 (1985). Thus, there is ample Commission and Board precedent to support the Hearing Examiner's conclusion that the Board has violated not only §5.4(a)(6) of the Act but also §5.4(a)(5), the Board having manifested bad faith by its conduct herein. Additionally, there is a derivative violation of §5.4(a)(1) of the Act.[18/]

By way of defense, the Board asserts essentially that "there has been no meeting of the minds" regarding the compression of the teachers' salary guides and that, thus, the Board is excused from any legal obligation to execute the four agreements. The Board's case in this regard rests upon the testimony set forth in Findings of Fact Nos. 7, 10, 12, 13, supra, which may be summarized briefly at this point: (1) Kosmyna acknowledged that Moran on September 11, 1983, raised a question as to how the teachers would be placed on the guide in view of the compression of the guide and thereafter he received an explanation from the Association (1 Tr

---

18/ Galloway Twp. Bd. of Ed., P.E.R.C. No. 77-3, 2 NJPER 254, 255 (1976).

70-73); (2) Kosmyna's testimony was confirmed by Panos (2 Tr 114, 115); (3) Moran testified that as of September 11 and 12, 1983 the constructed guides were satisfactory "to get people paid in September" but not for inclusion in the agreement (2 Tr 169, 195); (4) In October 1983, Moran indicated to Panos that the teachers' guides would have to be footnoted to reflect clearly that there had been a compression or that a side bar agreement would have to be executed that was "simply mechanical" (2 Tr 170, 171, 174, 197-199); (5) Moran testified that in August 1984, he "continued to reiterate the need to create some type of a mechanical document..." (2 Tr 172--emphasis supplied); (6) Moran repeatedly characterized the need for an addendum or a side bar as "simply mechanical" or a "mechanical issue" (2 Tr 199, 203). He further testified that he did not consider the language involved "...to be a substantive issue" (2 Tr 202, 203).

Thus, when all of the foregoing testimony of Kosmyna, Panos and Moran is read together, it is abundantly clear that Moran's request for an addendum or a side bar was purely a "mechanical" device or issue rather than a "substantive" issue as to a term or condition of employment to be incorporated into the agreement. Had the dispute involved a substantive term and condition of employment then the Board might well have been excused from executing the teachers' agreement.

The weakness of the Board's position in refusing to execute the teachers' agreement, as well as the other three agreements, is

exposed by the fact that all four agreements were promptly implemented by the Board without any problems or grievances, beginning in September 1983. Thus, when the Board refused to execute the four agreements on October 22, 1984, each had been implemented and in effect without incident for some 13 months. What better proof that there was no problem in the compression of the teachers' salary guides than the fact that each and every teacher signed new contracts, which reflected their new placement on the compressed salary guides and that no complaints or grievances were filed.

Hence, when the Board on October 22, 1984, refused to execute the contracts without an addendum or a side bar as proposed by President Brown to Panos that evening, Panos was within her rights in refusing to do so and bringing about the filing of the instant Unfair Practice Charge.

Even if the Hearing Examiner were to assume arguendo that the Board had a legitimate defense to executing the teachers' agreement, it plainly had no excuse or justification in refusing to execute the three agreements covering the clerical, custodial and bus driver units. These agreements were never at issue and should have been executed many, many months ago.

The Board having failed to assert any legitimate excuse or reason for failing to execute the teachers' agreement and the other three agreements on October 22, 1984, the Hearing Examiner will hereinafter recommend that the Board has violated §§5.4(a)(1), (5) and (6) of the Act.

The Board Did Not Violate §§(a)(1), (3), (4) Or (5) Of The Act When It Unilaterally Promoted Fankhauser And Cholewa To Newly Created Positions Out Of The Clerical Unit.

The Hearing Examiner, having found no pertinent decisions of the Commission on the issue at hand,[19/] must again resort to NLRB precedent. On more than one occasion, the Board has held an employer does not violate §8(a)(5) of the NLRA when it promotes a unit employee to a newly created position out of the unit, provided that the removal of unit work does not have a significant impact on the "...job tenure, employment security or reasonably anticipated work opportunities for those in the bargaining unit...": Westinghouse Electric Corp., 150 NLRB 1574, 1576, 58 LRRM 1257 (1965); KONO-TV-Mission Telecasting Corp., 163 NLRB 1005, 65 LRRM 1082 (1967); and Wincharger Corp., 172 NLRB No. 17, 69 LRRM 1110 (1968).

In Lutheran Homes, Inc., 264 NLRB No. 74, 111 LRRM 1654 (1982) the Board found a violation of §8(a)(5) of the NLRA where the creation of a new supervisory position and the promotion of a unit employee resulted in the unit suffering a significant loss of work. In a footnote 2, the Board in Lutheran Homes stated that: "Where an

---

19/ Commission decisions on the replacement of unit employees with non-unit employees are not applicable to the facts herein: cf. Middlesex Co. College, P.E.R.C. No. 78-13, 4 NJPER 47 (1977) and Rutgers, The State University, P.E.R.C. No. 79-72, 5 NJPER 186 (1979), aff'd App. Div. Docket No. A-3651-78 (1980).

employer wishes to select a unit employee to be a supervisor, and the unit will not lose that employee's work, the Board does not find that the employer has a duty to bargain over the selection," citing KONO-TV, supra.

In KONO-TV the Board held that there was no obligation to bargain over a non-discriminatory choice of two unit employees who were promoted to supervision where the pay increases that they received were an integral and necessary concomitant to the promotions. Similarly, in Wincharger, supra, the Board found no violation where two unit employees were promoted to supervision, the action being non-discriminatory and arising solely from economic considerations with no significant detriment to unit employees.

Drawing upon the NLRB precedent above, it does not appear to the Hearing Examiner that, based on the instant record, the Board herein violated §§5.4(a)(1), (3), (4) and/or (5) of the Act by its creation of two new positions into which Fankhauser and Cholewa were promoted. When the Board, in its wisdom, created these positions, admittedly acting with apparent haste and over the objections of the Association, both Fankhauser and Cholewa, no doubt enticed by the salary increases involved, voluntarily accepted the promotions. There is no indication whatever of §5.4(a)(3) discrimination as to Fankhauser and, even in the case of Cholewa, it was she who had the reservation about a conflict of interest between her position as Information Services Specialist and accepting an office in the Association, ultimately deciding to reject the Association's offer

and accept the promotion.[20/] Clearly, the Board did not discriminate against Cholewa within the meaning of §5.4(a)(3) or (4) of the Act.[21/]

Fankhauser's new position of Pupil Transportation Supervisor, unlike her prior position of Student Transportation Office Manager, is supervisory within the meaning of the Act inasmuch as she is now involved in the evaluating, hiring and disciplining of bus drivers (see Finding of Fact No. 23, supra). Such duties would clearly fall within the definition of supervisor under §5.3 of the Act and the exercise of such responsibilities clearly distinguishes her new position from that of Student Transportation Office Manager prior to her promotion. As to Cholewa, the duties assumed by her as the newly created Administrative Assistant for Personnel/Labor Relations as of December 17, 1984, indicate to the Hearing Examiner that she is functioning as a confidential employee under the Act since, in performing her computer skills and capabilities, she is now involved in the

---

20/ The Hearing Examiner notes here that Cholewa received recommendations to accept the promotion from Panos, Malloy and Valcarcel (see Finding of Fact No. 30, supra).

21/ The Association failed to establish any nexus between Cholewa's testimony at a Commission hearing in October 1984 and the Board's action of promoting her in December 1984.

collective negotiations process within the meaning of §3(g) of the Act.22/

Additionally, it is significant that not only did Fankhauser and Cholewa receive promotions to newly created positions but their prior existing positions of Student Transportation Office Manager and Information Services Specialist were not abolished but remained in existence (see Findings of Fact Nos. 24 & 32, supra). In the case of Fankhauser, although her Office Manager position was reduced to part-time status, it was posted On December 10, 1984, and was to be filled by the Board in June 1985 (2 Tr 46; 4 Tr 105, 106). Similarly, in the case of Cholewa, her former position was either vacant or filled as of the date of the hearing (2 Tr 77, 78 v. CP-12).

The reason for noting especially the fact that the two positions formerly held by Fankhauser and Cholewa are still in existence is that the NLRB has found a violation in the case of a group of employees being unilaterally promoted to supervision where the effect was to convert bargaining unit work into non-bargaining unit work, using the same employees: Fry Foods, Inc., 241 NLRB No. 42, 100 LRRM 1513 (1979). In the case at bar the new duties are substantially different, Fankhauser's being supervisory and

---

22/ See State of New Jersey, P.E.R.C. No. 86-18, 11 NJPER 507, 515 (1985). The fact that the Board's attorney may have concluded that her new position would be administrative and not confidential is not binding on the Hearing Examiner (see 2 Tr 61; 4 Tr 256, 293).

Cholewa's being confidential; both positions, thus, being properly excluded from the Association's clerical unit.

Finally, and again relying on NLRB precedent, the Hearing Examiner finds that the Board did not violate the Act by engaging in individual discussions with Fankhauser and Cholewa over the newly created positions for them and their interest in promotions to these positions: Laclede Gas Co., 171 NLRB No. 180, 69 LRRM 1075 (1968).

For all of the foregoing reasons, the Board did not violate §§5.4(a)(1) and (5) of the Act when it created new positions outside of the clerical unit and promoted Fankhauser and Cholewa into these positions.

The Board Did Not Violate The Act When It Failed To Post Five Administrative Positions On December 10, 1984.

The record makes clear that there was a binding practice upon the Board to post vacancies since at least 1970 (see Finding of Fact No. 36; CP-13). As recently as November 1983 and July 1984 the Board posted vacancies for the position of Assistant Principal (CP-31 & CP-32).

The problem for the Association herein is that the positions that the Board failed to post in or around December 1984 were vacancies for five administrative positions, which were in the unit represented by the Matawan Regional Administrators Association, which is not a party to the instant proceedings. It is the Administrators Association which would have standing to assert a violation of the past practice of posting and not the Matawan Regional Teachers Association, which does not represent the unit

positions involved in the failure of the Board to post in December 1984. Significantly, no objection was raised by the Administrators Association to the failure of the Board to post (see Finding of Fact No. 37, supra). Further, the Administrators agreement does not require posting as do several of the agreements to which the instant Association is a party (5 Tr 77-79).

It is elemental that to assert a violation of the Act as to terms and conditions of employment, the party asserting such violation must have standing to so assert. Here, the Association's standing, if any, is peripheral to the collective negotiations setting, the only conceivable basis being that the members of the four units represented by the Association were not given an opportunity to bid out of their respective units. This, of course, is alleged by the Association as the basis for the violation of the Act herein.

However, in the absence of some Commission or NLRB precedent, supporting the Association's contention that the Board's failure to post administrative positions illegally denied members of the four units represented by the Association the opportunity to bid out of the unit, the Hearing Examiner must recommend dismissal of the allegations regarding the failure of the Board to post.

The Board Violated The Act When, After "Riffing" 63 Positions In 1984, Including Six Clerical Positions, It Thereafter Employed Three "Substitute" Clericals, Who Were Not Paid Pursuant To The Clerical Agreement.

The recognition clause of the clerical agreement grants the Association exclusive representative status for "all clerical

personnel...on an hourly or per diem basis..." (see Finding of Fact No. 38, supra).

After the Board "riffed" six clerical positions at the end of the 1983-84 school year, the Board hired eight new full-time clerical employees, one of whom took the place of Sandra Richards, who was one of those "riffed." In September 1984, Richards was hired as a "substitute" secretary and, between September 1984 and April 30, 1985, Richards worked 124 out of a possible 146 school days (see Finding of Fact No. 40, supra). However, Richards was not paid the contract wage and received no contractual benefits (6 Tr 35).

Similarly, Ann Marino was hired as a "substitute" secretary and worked 110 days out of a possible 146 days between September 1984 and April 30, 1985. Finally, Carol Borr was also hired a "substitute" secretary in February 1985 and worked 43 days out of a possible 55 days (see Finding of Fact No. 40, supra).

Clearly, as provided in the clerical recognition clause, supra, "all clerical personnel," including those on a "per diem basis" are covered by the clerical agreement (J-22; J-9(c)). It is plain as plain can be that when Richards worked as a "substitute" (per diem) for 124 out of a possible 146 days between September 1984 and April 30, 1985, she was covered by the clerical agreement and was entitled to the contract wage and benefits. The same reasoning applies to Marino, who worked 110 days out of a possible 146 days, and to Borr, who worked 43 days out of a possible 55 days.

It is significant that although the Board does not acknowledge that the clerical agreement applies to "substitutes" or per diem employees such as Richards, Marino and Borr, the Board's past use of per diem clerical employees from a substitute list has involved employees who were out of work due to illness or as extra help when needed during busy periods (see Finding of Fact No. 41, supra). Richards, Marino and Borr worked far in excess of the number of days logically worked by "substitutes" for employees out due to illness or as extra help during busy periods.

In concluding that the Board has violated §§5.4(a)(1) and (5) of the Act by its failure to pay the above three "substitute" employees under the clerical agreement, the Hearing Examiner notes in passing that one of the inquiries, which the NLRB makes in determining whether the NLRA has been violated, is whether the use of "casuals" is of short duration. In Montgomery Ward & Co., Inc., 217 NLRB No. 35, 89 LRRM 1127 (1975) the Board found no violation where an employer hired four casuals to do unit work, which laid off employees could do, the employer there having had no policy of recalling laid off employees and the work of the casuals was of short duration. Extrapolating from Montgomery Ward, supra, the Hearing Examiner observes that the work of Richards, Marino and Borr

was clearly not of short duration.[23/]

For all the foregoing reasons, the Hearing Examiner will recommend an appropriate order to remedy the Board's violation of §§5.4(a)(1) and (5) of the Act.

The Board Did Not Violate The Act When Its Superintendent Summoned Certain Teachers To A Meeting In His Office On March 22, 1985 And Issued Two "Open Letters" To The Teaching Staff.

Although extensive testimony was adduced at the hearing on the workings of the PRC between 1983 and 1985, the Hearing Examiner fails to perceive any unfair practice involved in what transpired as to whether curriculum work was voluntary, whether the Association supported or opposed it, whether 17 teachers had been selected for curriculum work and would have to attend workshops, etc. The only conduct of the Respondent Board which can possibly be urged as a violation of the Act would be that of Superintendent Hall having called between 12 and 15 teachers to a meeting in his office on

---

23/ The Respondent asserts that the clerical issue in the unfair practice charge, supra, is a contract violation and, while not citing N.J. Dept. of Human Services, P.E.R.C. No. 84-148, 10 NJPER 419 (1984), this decision is clearly implicated. The Hearing Examiner declines to recommend dismissal as to the clerical issue, supra, because he concludes that essentially what is involved in the employer's conduct herein is a manifestation of bad faith and a repudiation of the clerical agreement vis-a-vis the three "substitute" clerical employees who worked substantial numbers of days during the 1984-85 school year. Bad faith and repudiation of an agreement are recognized as exceptions under Human Services (see 10 NJPER at 422, 423).

March 22, 1985 and having issued two "Open Letters" to the Teaching Staff. On March 22nd, Hall allegedly questioned the teachers as to why they did not participate in the workshops and why Panos was blocking the PRC and the curriculum (see Finding of Fact No. 47, supra). While one teacher testified that he was "scared" and "frightened" another teacher, who attended the meeting, testified that there was a two-way dialogue and that the Superintendent made no statement which could have been taken as an intimidation or a threat.

Also, in connection with the PRC, the Association had issued two "Action Line" flyers in September and December 1984, which prompted the Superintendent to issue an "Open Letter" the day following the second "Action Line." After the Association issued another flyer to its membership on March 27, 1985, the Superintendent shortly thereafter issued a "Second Open Letter," criticizing, inter alia, the Association's representation of its members.

What does all of the above boil down to? It seems to the Hearing Examiner that each party to this proceeding was throughout the period September 1984 through March 1985 engaging in the exercise of protected free speech. The Commission in Black Horse Pike Reg. Bd. of Ed., P.E.R.C. No. 82-19, 7 NJPER 502 (1981) established certain communication rights for public employers where the comments or letters are directed at the parties' labor relations. There the Commission said:

> It must be noted that the Hearing Examiner did not find that writing the letters were per se violative of the Act, nor do we. A public employer is within its rights to comment upon those activities or attitudes of an employee representative which it believes are inconsistent with good labor relations which includes the effective delivery of governmental services, just as the employee representative has the right to criticize those actions of the employer which it believes are inconsistent with that goal (7 NJPER at 503).

In Ridgefield Park Bd. of Ed., P.E.R.C. No. 84-152, 10 NJPER 437 (1984) the Commission held that statements made by a school principal to a union vice president concerning her role on the Advisory Council were not violative of the Act. The principal's comments were within the sphere of permissible criticism and discussion under Black Horse Pike, supra. In addition, the Commission held that the principal did not threaten any employees, change any terms and conditions of employment, or seek to undermine the union's exclusive majority status.

Finally, in the context of negotiations for a successor agreement, the Commission has decided three cases: City of Camden, P.E.R.C. No. 82-103, 8 NJPER 309 (1982); Rutgers, The State University, P.E.R.C. No. 83-136, 9 NJPER 276 (1983); and Spotswood Bd. of Ed., P.E.R.C. No. 86-34, 11 NJPER 591 (1985). In Camden the Fire Chief distributed a memorandum to employees during negotiations, which criticized the union president. The Commission concluded that there was no threat of reprisal or force or a promise of benefit and dismissed the complaint. In Rutgers, the University sent notices to unit employees advising them that as a result of

negotiations, the salary figure could be the same, higher or lower. The Commission again dismissed the complaint because there was no evidence of a threat of reprisal or force or a promise of benefit. Finally, in Spotswood no violation was found where the Board held non-mandatory meetings with its employees and gave its position in negotiations.

Although the specific language of §8(c) of the NLRA is not found in our Act, the Commission decisions in Camden, Rutgers, and Spotswood, supra, essentially incorporate the language of §8(c) which, in essence, provides that the expressing of any view, argument, or opinion whether in written, printed or visual form shall not constitute or be evidence of an unfair practice, providing that such expression contains "no threat of reprisal or force or promise of benefit."

It seems plain to the Hearing Examiner that the communications involved between the parties herein, including the March 22nd meeting, fall well within the protected sphere of expression and speech, which the Commission has recognized in the above decisions. Accordingly, the Hearing Examiner will recommend the dismissal of the allegations in the complaint which pertain to this issue (Complaint: ¶'s 54-60).

* * * *

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

CONCLUSIONS OF LAW

1. The Respondent Board violated N.J.S.A. 34:13A-5.4 (a)(1), (5) and (6) when on and after October 22, 1984, it refused to execute the four collective negotiations agreements, covering the four units represented by the Association.

2. The Respondent Board did not violate N.J.S.A. 34:13A-5.4(a)(1), (3), (4) or (5) when it promoted Mary Fankhauser and Barbara Cholewa out of the clerical unit and into newly created supervisory/confidential positions.

3. The Respondent Board did not violate N.J.S.A. 34:13A-5.4(a)(1) or (5) when it failed and refused to post notices of vacancies in five administrative positions on December 10, 1984.

4. The Respondent Board violated N.J.S.A. 34:13A-5.4 (a)(1) and (5) when, after "riffing" six clerical employees in 1984, it subsequently employed Sandra Richards, Ann Marino and Carol Borr as "substitutes" in the 1984-85 school year, each of whom worked substantial numbers of days as clerical employees but who were not paid the wages and benefits under the clerical agreement.

5. The Respondent Board did not violate N.J.S.A. 34:13A-5.4(a)(1), (2) or (3) by the distribution of "Open Letters" to its teaching staff or by the Superintendent's convening of a meeting of teachers on March 22, 1985, in his office, there being no threats of reprisal or force or promises of benefit.

6. The Respondent Board did not violate N.J.S.A. 34:13A-5.4(a)(7) by its conduct herein.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER:

A. That the Respondent 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 failing to execute the four collective negotiations agreements on and after October 22, 1984, and by failing to compensate the "substitute" clerical employees who worked substantial numbers of days under the clerical agreement.

2. Refusing to negotiate in good faith with the Association by failing to execute the four collective negotiations agreements on and after October 22, 1984.

3. Refusing to sign the four negotiated agreements covering the four units represented by the Association on and after October 22, 1984.

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

1. Forthwith execute the four collective negotiations agreements covering the units of professionals, clericals, custodial maintenance employees and bus drivers for the years 1983-86.

2. Forthwith make whole, under the terms and provisions of the 1983-86 clerical agreement, Sandra Richards, Ann Marino and Carol Borr, based upon the number of days worked by them in the 1984-85 school year with interest at the rate of 9.5% per annum.

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.

C. That the allegations in the Complaint that the Respondent Board violated N.J.S.A. 34:13A-5.4(a)(2), (3), (4) and (7) be dismissed in their entirety.

Alan R. Howe
Hearing Examiner

Dated: March 27, 1986
Trenton, New Jersey

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 NOT interfere with, restrain or coerce our employees in the exercise of the rights guaranteed to them by the Act, particularly, by failing to execute the four collective negotiations agreements on and after October 22, 1984, and by failing to compensate the "substitute" clerical employees who worked substantial numbers of days under the clerical agreement.

WE WILL NOT refuse to negotiate in good faith with the Association by failing to execute the four collective negotiations agreements covering the four units represented by the Association.

WE WILL NOT refuse to sign the four negotiated agreements covering the four units represented by the Association.

WE WILL forthwith execute the four collective negotiations agreements covering the units of professionals, clericals, custodial maintenance employees and bus drivers for the years 1983-86.

WE WILL forthwith make whole, under the provisions of the 1983-86 clerical agreement, Sandra Richards, Ann Marino and Carol Borr, based upon the number of days worked by them in the 1984-85 school year with interest at the rate of 9.5% per annum.

MATAWAN-ABERDEEN REGIONAL BOARD OF EDUCATION
(Public Employer)

Dated _____ By _____
(Title)

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

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with James Mastriani, Chairman, Public Employment Relations Commission, 495 W. State Street, Trenton, New Jersey 08618, Telephone (609) 292-9830