

P.E.R.C. NO. 82-105

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

UPPER FREEHOLD REGIONAL  
BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-81-51-22

UPPER FREEHOLD REGIONAL  
EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission adopts a recommendation of a Hearing Examiner that it dismiss a Complaint issued on an unfair practice charge the Upper Freehold Regional Education Association filed against the Upper Freehold Regional Board of Education. The charge had alleged that the Board violated the New Jersey Employer-Employee Relations Act when its Superintendent unilaterally removed from employees' files copies of an Addendum pertaining to Professional Improvement Plans. The Commission holds that N.J.A.C. 6:3-1.21(c) conferred a non-negotiable right upon the Superintendent to review policies concerning Professional Improvement Plans.



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UPPER FREEHOLD REGIONAL  
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Charging Party.

Appearances:

For the Respondent, Kalac, Newman & Griffin, Esqs.  
(Peter P. Kalac, of Counsel)

For the Charging Party, Katzenbach, Gildea &  
Rudner, Esqs.  
(Arnold M. Mellk, of Counsel)

DECISION AND ORDER

On September 3, 1980, the Upper Freehold Regional Education Association ("Association") filed an unfair practice charge against the Upper Freehold Regional Board of Education ("Board") with the Public Employment Relations Commission. The charge alleged that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), specifically subsections 5.4(a)(1), (3), and (5),<sup>1/</sup> when, in June 1980, its Superintendent unilaterally removed from employees'

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; (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; 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."



personnel files copies of an Addendum pertaining to Professional Improvement Plans ("PIP"). The removal allegedly breached an agreement to include the Addendum which the Association's president and an elementary school principal had reached in response to a grievance.

On August 24, 1981, the Director of Unfair Practices, issued a Complaint and Notice of Hearing pursuant to N.J.A.C. 19:14-2.1. The Board filed an Answer in which it asserted that the grievance did not deal with PIPs and the Superintendent's removal of the Addendum was required by the New Jersey Administrative Code which provides that PIP are to be developed under the direction of the Superintendent. Additionally, the Board maintained that the Commission should refrain from taking jurisdiction because the issues raised by the charge had been fully litigated and resolved by the Commissioner of Education in Douma v. Bd. of Ed. of Twp. of East Brunswick, 1981 S.L.D. \_\_\_\_ (April, 22 1981).

On January 4, 1982, Hearing Examiner Alan R. Howe conducted a hearing and allowed the parties to examine witnesses, present evidence, and argue orally. Both parties filed briefs and reply briefs by January 25, 1981.

On February 10, 1982, the Hearing Examiner issued his Recommended Report and Decision, H.E. No. 82-31, 8 NJPER \_\_\_\_ (¶ \_\_\_\_ 1982) (copy attached). The Hearing Examiner found, in part, that the Superintendent was acting under authority vested in him by the regulations issued by the Commissioner of Education,



N.J.A.C. 6:3-1.21, when he directed the removal of the Addendum from the personnel files of the teaching staff and that this authority could not be displaced by the principal's approval of the Addendum. Accordingly, he recommended that the Commission dismiss the Complaint. <sup>2/</sup>

On February 19, 1982, the Association filed Exceptions. Relying on Bethlehem Bd. of Ed. v. Bethlehem Ed. Ass'n, 177 N.J. Super. 479 (App. Div. 1981), certif. granted 87 N.J. 396 (1981), ("Bethlehem"), the Association challenged the Hearing Examiner's conclusion that the subject matter of the grievance has been precluded by regulations under State v. State Supervisory Employees Ass'n, 78 N.J. 54 (1978) ("State Supervisory"). The Association reasons, first, that the Addendum does not conflict with any specific statute or regulation, and second, that there was nothing for the Superintendent to resolve because no grievance regarding the Addendum was carried forward after the informal, first level resolution.

We have reviewed the record in this matter and find no merit to the Association's Exceptions. We adopt and incorporate here the Hearing Examiner's findings of fact.

<sup>2/</sup> The Board had filed a Motion to Dismiss on jurisdictional grounds under Hackensack v. Winner, 82 N.J. (1980). The Hearing Examiner denied the motion because there was no dual filing, unlike Hackensack. We agree with this ruling.





In State Supervisory, the New Jersey Supreme Court held:

Specific statutes or regulations which expressly set particular terms and conditions of employment, as defined in Dunellen for public employees may not be contravened by negotiated agreement. For that reason, negotiation over matters so set by statutes or regulations is not permissible. (citations omitted, p. 80).

The Commissioner of Education has issued regulations regarding Tenured Teacher Evaluations, including PIPs. N.J.A.C. 6:3-1.21 reads in pertinent part:

(c) The policies and procedures shall be developed under the direction of the District's chief school administrator in consultation with tenured teaching staff members and shall include but not be limited to:

\* \* \* \*

(6) Preparation of Individual Professional Improvement Plans

\* \* \* \*

(h)3. Individual Professional Improvement Plan is a written statement of action developed by the supervisor and the teaching staff member to correct deficiencies or to continue professional growth, timeliness for their implementation, and the responsibilities for the individual teaching staff member and the district for implementing the plan.

The New Jersey Superior Court in Bethlehem, in deciding to what extent N.J.A.C. 6:3-1.21 preempted negotiations, stated:



The court's interpretation [in State Supervisory of the 1974 amendments to N.J.S.A. 34:13A-8.1 clearly applies wherever any statute or regulation is alleged to preempt collective negotiations.... (p. 485).

The Court upheld our determination that the regulation, and specifically N.J.A.C. 6:3-1.21, did not totally preempt negotiation in the area of tenured teaching staff evaluations "as long as a proposal did not contravene any of the specific provisions of the applicable statute and concerned a term and condition of employment."

Bethlehem is authority for the proposition that procedural aspects of tenured teacher evaluations are mandatorily negotiable. Cf. North Bergen Twp. Board of Education v. North Bergen Fed. of Teachers, 141 N.J. Super. 97 (App. Div. 1976) (promotional criteria must be left to the local board as a matter of educational policy, but procedures by which promotional vacancies are filled should be negotiated). N.J.A.C. 6:3-1.21(c), however, clearly establishes that the policies and procedures governing the content of tenured teacher evaluations, including PIPs, must be developed under the direction of the district's chief school administrator. We agree with the Hearing Examiner that the Superintendent's review authority is non-negotiable and can not be usurped by an agreement reached between the Association and an elementary school principal.<sup>3/</sup> Compare, In re State of

<sup>3/</sup> We do not decide whether the subject matter of the Addendum is negotiable; we hold only that the Superintendent's right of review is not.



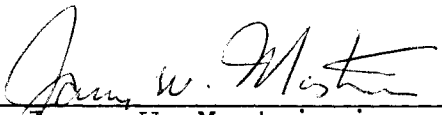
New Jersey, Dept. of Human Services (Division of Public Welfare),  
P.E.R.C. No. 82-83, 8 NJPER \_\_\_\_ (¶ \_\_\_\_ 1982) (collective agree-  
ment between County Welfare Board and employee representative  
does not displace right of review of Division of Public Welfare).  
Accordingly, we hold that the Superintendent acted within his  
mandated administrative authority when he reviewed the agreement  
to include the Addendum.<sup>4/</sup>

For the foregoing reasons, we adopt the Hearing Examiner's  
recommendation that the Respondent did not violate N.J.S.A. 34:13A-  
5.4(a)(1), (3) or (5).

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

  
\_\_\_\_\_  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Hartnett, Butch and Suskin  
voted for this decision. Commissioner Graves voted against this  
decision. Commissioner Hipp abstained. Commissioner Newbaker  
was not present.

DATED: Trenton, New Jersey  
May 4, 1982  
ISSUED: May 5, 1982

4/ We do not pass judgment on whether the Superintendent acted  
reasonably when he rejected the Addendum. That is a question  
for the Commissioner of Education, not us.



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

In the Matter of

UPPER FREEHOLD REGIONAL BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-81-51-22

UPPER FREEHOLD REGIONAL EDUCATIONAL ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent did not violate Subsections 5.4(a)(1), (3) and (5) of the New Jersey Employer-Employee Relations Act when its Superintendent rejected a certain Addendum pertaining to Professional Improvement Plans, which was agreed to by the President of the Association and the Principal of the Elementary School and thereafter directed that the Addendum be removed from the personnel files of the teaching staff. The Hearing Examiner found that the subject matter of Professional Improvement Plans is set by regulations of the Commissioner of Education and its said Plans were non-negotiable and non-grievable. The Association had challenged the right of the Superintendent to remove the Addendum from the personnel files of the teaching staff. The Hearing Examiner, in agreement with the Respondent, found that the Superintendent has ultimate authority over Professional Improvement Plans.

The Hearing Examiner did, however, deny Respondent's Motion to Dismiss on jurisdictional grounds under Hackensack v. Winner, 82 N.J. 1 (1980) on the ground that there had been no dual filing in the instant case with the Commission and with the Commissioner of Education.

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





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Appearances:

For the Respondent

Kalac, Newman & Griffin, Esqs.  
(Peter P. Kalac, Esq.)

For the Charging Party

Katzenbach, Gildea & Rudner, Esqs.  
(Arnold M. Mellk, Esq.)

HEARING EXAMINER'S RECOMMENDED  
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on September 3, 1980 by the Upper Freehold Regional Educational Association (hereinafter the "Charging Party" or the "Association") alleging that the Upper Freehold Regional Board of Education (hereinafter the "Respondent" or the "Board") had 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, after the settlement of a grievance filed in May 1980 wherein teaching staff members with satisfactory evaluations need only comply with professional improvement plans voluntarily, but the unilateral action of the Respondent thereafter deprived teaching staff members of rights under the Act, in that copies of a certain resolution, which was agreed to be placed in the personnel file of teaching staff members, were withdrawn therefrom, all of which was alleged to be a violation of



N.J.S.A. 34:13A-5.4(a)(1), (3) and (5) of the Act. <sup>1/</sup>

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 August 24, 1981. Pursuant to the Complaint and Notice of Hearing, a hearing was held on January 4, 1982 in Trenton, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. <sup>2/</sup> Oral argument was waived and the parties filed post-hearing briefs by January 25, 1982.

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 Respondent's Motion to Dismiss and 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 Upper Freehold Regional Board of Education is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

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.

"(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.

"(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."

2/ The Respondent initially made a Motion to Dismiss on jurisdictional grounds under Hackensack v. Winner, 82 N.J. 1 (1980) asserting that the matter was exclusively within the jurisdiction of the Commission of Education, citing Douma v. Bd. of Ed. of Twp. of East Brunswick, 1981 S.L.D. \_\_\_\_\_. (April 22). Decision was deferred and as will be apparent hereinafter, Respondent's Motion to Dismiss is denied.

The Respondent also moved to dismiss on the merits and the Hearing Examiner granted dismissal of the Section 5.4(a)(3) allegations only.



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

3. The current collective negotiations agreement between the parties is effective from July 1, 1979 through June 30, 1982 (J-1).

4. The Commissioner of Education has issued regulations regarding individual Professional Improvement Plans (N.J.A.C. 6:3-1.21(c)6), which provide, in pertinent part, as follows:

"(a) Every local board of education shall adopt policies and procedures requiring the annual evaluation of all tenured teaching staff members by appropriately certified personnel. (N.J.S.A. 18A:1-1; N.J.A.C. 6:11-3.4)

\* \* \* \*

"(c) The policies and procedures shall be developed under the direction of the district's chief school administrator in consultation with tenured teaching staff members and shall include but not be limited to:

\* \* \* \*

"6. preparation of individual professional improvement plans;"

5. On May 30, 1980 Warren Gessmann, Jr., the President of the Association, filed a grievance (R-1), which alleged that evaluations based on co-curricular activities violated Articles VI, VII and XVI of the collective negotiations agreement. The High School Principal denied the grievance on June 5, 1980, stating that the matter should be forwarded to the Ad Hoc Committee on Teacher Evaluation, and thereafter the grievance was forwarded to the Superintendent, Stephen L. Sokolow, who received it on June 9, 1980. On the same day Sokolow responded to the grievance, stating that all supervisory personnel were to review the evaluations for 1979-80, and to exclude involvement in extra-curricular activities as a criterion and revise performance ratings accordingly (R-2).

6. The foregoing grievance (R-1) did not deal with Professional Improvement Plans. Gessmann, as President of the Association, thereafter orally expressed a "concern" on behalf of other teaching staff members regarding the Professional



Improvement Plans [directed by the Commissioner of Education's regulations, Finding of Fact No. 4, *supra*, and incorporated into Board policy (R-3)] to the Principal of the Respondent's Elementary School, Thomas A. Qualiano, as a result of which Gessmann and Qualiano agreed that an Addendum would be placed in the personnel files of the teaching staff. This Addendum provides as follows:

"It is understood that the professional improvement activities are, in some instances, dependent upon the district's ability to provide released time, materials, and additional compensation as necessary, and professional staff member's willingness to volunteer services." (CP-1).

7. The Addendum (CP-1, *supra*) was intended to alleviate the concerns of the teaching staff by seeking to incorporate certain guidelines into the Professional Improvement Plans of the teaching staff. A copy of this Addendum was thereafter placed in the personnel file of each teaching staff member. Superintendent Sokolow, after reviewing the Addendum, found it inconsistent with the Board's policy on Professional Improvement Plans. Specifically, Sokolow found the Addendum to be defective in that it was contingent on the willingness of the teaching staff to volunteer services, contrary to Board policy (R-3, *supra*) and the regulations of the Commissioner of Education (see Finding of Fact No. 4, *supra*). Additionally, he was of the view that the Addendum would create future litigation. Accordingly, Sokolow removed the Addendum from all personnel files of the teaching staff.

8. Superintendent Sokolow, at a meeting with his administrators, directed them to inform the teaching staff of his rejection of the Addendum (CP-1, *supra*).

9. Thereafter, on September 3, 1980, the Charging Party filed the instant Unfair Practice Charge alleging, *inter alia*, that the Superintendent had unilaterally altered a term and condition of employment by rejecting the inclusion of the Addendum in the personnel files of the teaching staff.

10. There is no reference whatever to the Professional Improvement Plans in the collective negotiations agreement (J-1). However, Gessmann testified that the Professional Improvement Plans could impact on the teaching staff under Article VI,





Teacher Work Year; Article VII, Teaching Hours And Teaching Load; Article VIII, Non-Teaching Duties and Article XVI, Reimbursement for Continuing Education.

THE ISSUE

Did the Respondent Board violate Subsections(a)(1) and (5) of the Act when its Superintendent rejected the Addendum (CP-1), which pertains to Professional Improvement Plans, and which was agreed to by the President of the Association and the Principal of the Elementary School, the thereafter directed that the Addendum be removed from the personnel files of the teaching staff?

DISCUSSION AND ANALYSIS

Motion To Dismiss

The Respondent's Motion to Dismiss on jurisdictional grounds under Hackensack v. Winner, 82 N.J. 1 (1980) is denied. While the Supreme Court in Hackensack set out the standards for resolving the overlapping jurisdiction of State Agencies, the basic holding dealt with a dual filing in that case by Winner both before the Civil Service Commission and before the Commission herein. It is the dual filing, which is lacking in the instant case, and which impels the Hearing Examiner to proceed to adjudicate the pending controversy under our Act and in the light of relevant regulations of the Commissioner of Education.

The Respondent Board Did Not  
Violate Subsections(a)(1)  
And (5) Of The Act When Its  
Superintendent Rejected The  
Addendum Pertaining To Professional  
Improvement Plans And Thereafter  
Directed That The Addendum Be  
Removed From The Personnel Files  
Of The Teaching Staff

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The Hearing Examiner finds and concludes that the Respondent Board did not violate Subsections(a) (1) and (5) of the Act when Superintendent Sokolow rejected the Addendum (CP-1) pertaining to Professional Improvement Plans, which was agreed to by the President of the Association and Principal of the Elementary School, and thereafter directed that the Addendum be removed from the personnel



files of the teaching staff.

First, some preliminaries.

1. The gravamen of the Charge is that in May 1980 the Association filed at Level One a timely grievance under Article III, C of the contract (J-1) concerning the application and implementation of Professional Improvement Plans (hereinafter "PIP"). As a result of "discussion" the grievance was resolved and a "resolution" (Addendum) was agreed to whereby teaching staff with "satisfactory evaluations" need only comply with the PIP "voluntarily." Also, the District would provide supplies and other assistance made necessary by the implementation of the PIP. Finally, a copy of the "resolution" (Addendum) was to be placed in each teacher's personnel file and this was done. The Respondent thereafter "unilaterally changed Article III" in June 1980 when its Superintendent "unilaterally revoked the agreement... in removing the resolution (Addendum) from the teachers' personnel files."

2. A "Grievance" is defined in Article III, A of J-1 as follows: "A grievance is a claim by a teacher or the Association based upon the interpretation, application or violation of this Agreement affecting a teacher or a group of teachers ..." It is thereafter provided in Article III, B, 3, "Level One" of the grievance procedure, that: "A teacher with a grievance shall simultaneously present it in writing and discuss it with his principal and immediate supervisor..." (Emphasis supplied).

3. The New Jersey Supreme Court in Twp. of West Windsor v. PERC et al., 78 N.J. 98 (1978) held that public employees have the right under N.J.S.A. 34:13A-5.3 to present initially a grievance over the "...interpretation, application, or violation of policies, agreements and administrative decisions affecting them." Further, this right was held to be a term and condition of employment "set" by statute (78 N.J. at 106, 107). Matters concerning the grievance procedure, beyond the initial step, supra, are procedural and "...remain negotiable and are to be set by the negotiating parties..." (78 N.J. at 107). A written presentation at the



initial step may not be mandated.

4. "Level Two" of the grievance procedure in J-1 is the "Superintendent of Schools." At this level and beyond the definition of a "grievance" as provided in paragraph 2, supra, applies rather than that in Section 5.3 of the Act (paragraph 3, supra), i.e., Level Two and beyond must involve "a claim...based upon the interpretation application or violation of this Agreement..." and must be "in writing" as "set" by the parties.

5. Gessmann's written grievance, dated May 30, 1980 (R-1), which complained about evaluations based on co-curricular activities as an alleged violation of Articles VI, VII, XVI of the agreement, did not involve in any way the PIP. This grievance was essentially granted at Level Two by the Superintendent on June 9, 1980 (R-2).

6. Gessmann testified that he orally expressed to Qualiano a "concern" regarding the PIP, which occurred after the processing of R-1, supra. Gessmann conceded that there exists no provision in the agreement (J-1) regarding the PIP, notwithstanding that he testified additionally that the PIP could impact on Articles VI, VII, VIII & XVI of the agreement (see Finding of Fact No. 10, supra). In expressing his "concern" regarding PIP to his Principal, Qualiano, the Hearing Examiner acknowledges that Gessmann was acting under the Township of West Windsor case, supra, and was, thus, within the ambit of Section 5.3 of the Act, notwithstanding that his "grievance" was not in "writing" as required by Article III, B, 3 of the agreement (J-1). The Addendum resulted therefrom.

7. However, when Gessmann spoke to Superintendent Sokowlow in the latter part of June or early July 1980 regarding the Addendum the matter was at Level Two of the grievance procedure and the Superintendent, having no "written grievance" before him, was free to ignore the Addendum agreed to by Gessmann and Qualiano, based upon the regulations of the Commissioner of Education and the Board's policy on the PIP, supra. This will be discussed more fully hereinafter.



There having been no grievance cognizable under Level Two of the agreement regarding the PIP, there is next to be determined whether, irrespective of the agreement, the PIP constitute a negotiable term and condition of employment of the teaching staff of the Respondent, as a result of which the Superintendent's abrogating of the Addendum unilaterally would be a violation of Subsections(a)(1) and (5) of the Act.

The Act does not define what is a negotiable term and condition of employment. However, the New Jersey Supreme Court has on several occasions rendered a definition, two variations of which are as follows:

"Thus, negotiable terms and conditions of employment are those matters which intimately and directly affect the work and welfare of public employees and on which negotiated agreement would not significantly interfere with the exercise of inherent management prerogatives pertaining to the determination of governmental policy..."  
State v. State Supervisory Employees Association, 78 N.J. 54, 67 (1978).

"...Major educational policies which indirectly affect the working conditions of the teachers remain exclusively with the Board and are not negotiable whereas items which are not predominantly educational policies and directly affect the financial and personal welfare of the teachers do not remain exclusively with the Board and are negotiable."  
Bd. of Ed. of Englewood v. Englewood Teachers, 64 N.J. 1, 7 (1973)

With negotiable terms and conditions of employment vis-vis managerial prerogatives thus defined, the Hearing Examiner concludes that under the regulations promulgated by the Commissioner of Education with respect to the PIP (Finding of Fact No. 4, supra) and the Board's policy on the PIP (R-3, supra) the Superintendent or his designee has ultimate responsibility for the review of individual PIP's before implementation. Further, the review by the Superintendent or his designee is non-negotiable and non-grievable, either as a managerial prerogative as defined in State Supervisory or Englewood, supra, or as a term and condition of employment "set" by regulations of the Commissioner of Education which "...may not be contravened by negotiated agreement..." State Supervisory, supra, 78 N.J. at 80.

Thus, when Superintendent Sokowlow overruled Qualiano by vitiating the Addendum (CP-1) he was acting under the authority vested in him by the Commissioner of Education's





regulations, supra, and by Board policy (R-3). A logical extension of his authority was to direct the removal of the Addendum from each of the personnel files of the teaching staff.

It is noted that the Charging Party has not cited any Commission or Appellate Division decision, which would afford the Hearing Examiner a basis for finding a violation of Subsections(a)(1) and (5) of the Act. The Commissioner's decision in Law v. Board of Education of the Township of Parsippany-Troy Hills, 1981 S.L.D. (October 21), cited by the Charging Party, together with Douma, supra, stand for nothing more than that a principal may not unilaterally prepare a PIP (Law) and that a teacher may not veto a PIP (Douma).

On the other hand, the Respondent has cited the Commission's decision in North Bergen Board of Education, P.E.R.C. No. 82-29, 7 NJPER 581 (1981) where the Commission held that a certain grievance was non-arbitrable since the subject matter was pre-empted by the tenure statute, quoting freely from State Supervisory, supra. The Hearing Examiner also refers to the Commission's decision in Bethlehem Township Board of Education, P.E.R.C. No. 80-5, 5 NJPER 290 (1979), aff'd. 177 N.J. Super. 479 (App. Div. 1981), pet. for certif. granted, 87 N.J. 396 (1981) where the Commission analyzed and decided the negotiability of certain evaluation and dismissal procedures.

For all the foregoing reasons, the Hearing Examiner concludes that the instant Unfair Practice Charge, alleging a violation of Subsections(a)(1), (3) and (5) of the Act, must be dismissed.

\* \* \* \*

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

#### CONCLUSION OF LAW

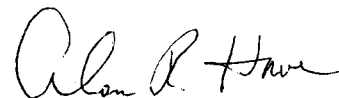
The Respondent Board did not violate N.J.S.A. 34:13A-5.4(a)(1), (3) and (5) when its Superintendent rejected the Addendum, which pertains to Professional and Improvement Plans, and which was agreed to by the President of the Association



and the Principal of the Elementary School and thereafter directed that the Addendum by removed from the personnel files of the teaching staff.

RECOMMENDED ORDER

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



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Alan R. Howe  
Hearing Examiner

Dated: February 10, 1982  
Trenton, New Jersey

