P.E.R.C. NO. 81-106

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WAYNE BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-81-2-70

WAYNE EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

In an unfair practice case which was submitted on stipulated facts, the Commission concluded that the Board violated the Act when it refused and failed to negotiate over a representation fee in lieu of dues pursuant to N.J.S.A. 34:13A-5.4(a)(5) after July 1, 1980, the date upon which the law took effect. The Board argued that it is under no obligation to negotiate this new mandatory subject, which took effect during the term of the existing agreement, until the negotiations for the successor agreement begin. Labor stability and fairness are promoted by interpreting the legislative intent in enacting the representation fee negotiation law, to require mid-term negotiations on the subject. Federal law has long required mid-term negotiations in particular circumstances. Jacobs Mfg. Co., 94 NLRB 1214 (1951). The Board, however, did not violate the Act in refusing and failing to negotiate over representation fee prior to July 1, 1980.

The Board was ordered to cease and desist from refusing to negotiate over representation fee in lieu of dues upon the Association's request and to negotiate upon request by the Association on this matter. The Board was also ordered to post a notice.

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WAYNE BOARD OF EDUCATION,

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WAYNE EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Williams, Caliri, Miller, Otley & Horn, P.C.
(David Golub, of Counsel)
For the Charging Party, Ruhlman & Butrym, P.C.
(Cassel R. Ruhlman, Jr., of Counsel)
For the Amicus Curiae, New Jersey School Boards Association, David W. Carroll, General Counsel
(William Wallen, on the Brief)

DECISION AND ORDER

On July 2, 1980, an Unfair Practice Charge was filed with the Public Employment Relations Commission by the Wayne Education Association (the "Association") alleging that the Wayne Board of Education (the "Board") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), by refusing to negotiate with the Association concerning a representation fee in lieu of dues to be deducted from the salaries of employees who were not Association members pursuant to N.J.S.A. 34:13A-5.5. The requests for negotiations and corresponding refusals to negotiate occurred prior to the effective date of said law and continued to the period immediately thereafter.

A Complaint was issued in this matter on December 15, 1980, and a pre-hearing conference was held on January 29, 1981. Pursuant to N.J.A.C. 19:14-6.7, the parties stipulated the facts in this matter at the pre-hearing conference, waived an evidentiary hearing and a Hearing Examiner's Recommended Report and Decision, and agreed to submit this matter directly to the Commission based upon the formal pleadings, the stipulation of facts, the contract between the parties, and the briefs.

On January 27, 1981, the New Jersey School Boards Association filed with the Director of Representation and Unfair Practices, a Motion for Leave to Intervene as Amicus Curiae, pursuant to N.J.A.C. 1:1-12.6. Neither the Board nor the Association objected to such intervention for the purpose of submitting briefs, and a timetable for the submission of all briefs was established and the last brief was received by February 18, 1981.

Based upon the entire record, including the stipulation of facts [1/] and the briefs submitted in this matter, the Commission finds the following:

1. The Board is a public employer within the meaning of the Act and is subject to its provisions.

2. The Association is an employee representative within the meaning of the Act and is subject to its provisions.

3. The Association made an oral demand of the Board on May 4, 1980 and written demands on May 27, 1980 and June 12, 1980 that the Board negotiate concerning a representation fee as provided

1/ Those stipulations are attached hereto.

in Chapter 477, P.L. 1979 codified as N.J.S.A. 34:13A-5.5 et seq. during the term of an existing agreement between the parties.

4. The Board refused to negotiate with the Association on the matter of a representation fee on May 5, 1980 and has continued in that refusal to negotiate through July 2, 1980, the date upon which the charge was filed.

Both parties agree that the issues in dispute in this matter are;

a. Did the Board have an obligation to negotiate with the Association concerning a representation fee during the life of the existing collective agreement? and

b. Did the Board have an obligation to negotiate with the Association concerning a representation fee prior to July 1, 1980 which was the date upon which the representation fee statute became effective?

Prior to the passage of P.L. 1979, Ch. 477, agency shop clauses had been found to be illegal, and thus an impermissible subject of negotiations between public employers and the representatives of their employees, New Jersey Turnpike Employees' Union, Local 194 v. New Jersey Turnpike Authority, 123 N.J. Super. 461 (App. Div. 1973), aff'd 64 N.J. 579 (1974). This finding, in the absence of legislation to the contrary, held that an agency shop provision would interfere with the rights of employees to refrain from forming, joining or assisting any employee organization as per N.J.S.A. 34:13A-5.3.

On July 1, 1980, N.J.S.A. 34:13A-5.5 took effect, granting majority representatives of employees the right to

negotiate for the payment of a representation fee in lieu of membership dues. This fee is to be paid by employees in the units who have chosen not to join their organizations. This statute in part reads:

> Notwithstanding any other provisions of law to the contrary, the majority representative and the public employer of public employees in an appropriate unit shall, where requested by the majority representative, negotiate concerning the subject of requiring the payment by all nonmember employees in the unit to the majority representative of a representation fee in lieu of dues for services rendered by the majority representative. Where agreement is reached it shall be embodied in writing and signed by the authorized representatives of the public employer and the majority representative.

This law establishes the "agency shop" as a mandatorily negotiable subject, and creates an obligation on the part of the employer to negotiate this matter when requested by the majority representative. The question before this Commission involving the Board and the Association is not whether the agency shop is to be a mandatory subject of negotiation, but rather at what time can these negotiations occur. The parties entered into a collective negotiations agreement which commenced on July 1, 1979 and expires on June 30, 1982. This agreement does not now contain an agency shop clause and the Association has requested that the Board negotiate concerning agency shop.

The question before the Commission is really one of interpreting the legislative intent as expressed in N.J.S.A. 34:13A-5.5(a). The Association maintains that the language of

Chapter 44, P.L. 1979 itself indicates that with the passage of the agency shop law, a majority representative has the right to demand negotiations on a representation fee. It does not have to wait for the commencement of negotiations on a new total contract, which in this case would mean the successor to the 1979-1982 current agreement. The Board agrees that Chapter 477 changed agency shop from an illegal to a mandatory subject of negotiation but argues that it should be under no obligation to negotiate on this new subject until the negotiations for the successor agreement begin. In this way the Board and the Amicus NJSBA argue that negotiations on agency shop could take place as part of the give and take of the normal negotiation process.2/

The Association relies primarily on the language of N.J.S.A. 34:13A-5.5(a) which it argues plainly requires negotiations when requested by the majority representative. It emphasizes the following language:

> ...the public employer of public employees in an appropriate unit shall, where requested by the majority representative, negotiate concerning the subject of requiring payment by all nonmember employees in the unit to the majority representative of a representation fee...
> N.J.S.A. 34:13A-5.5(a) (emphasis supplied).

2/ It must be emphasized that this case presents a situation in which a subject has been changed from illegal to mandatory by statute. This case therefore addresses only the unique situations of the reopening of negotiations during the term of contracts in existence at the time the statute was enacted or became effective. It does not address the question of whether a public employer is required to negotiate on this subject during the term of a contract negotiated since July 1, 1980. That issue would be governed by the normal principles on negotiations during the term of an existing contract.

The Association maintains that there is absolutely no indication that its implementation is to be delayed until an existing contract has expired. Such negotiations shall occur, where requested, and there appears to be no ambiguity in this statement and no language that would preclude the majority representative from requesting negotiation prior to an agreement's expiration.

The statement which accompanied Assembly Bill No. 688, which became Chapter 477, is also helpful in ascertaining the legislative intent:

> For many years, the "new Jersey Employer-Employee Relations Act" has required that a majority representative of public employees which has negotiated a labor agreement covering such employees to represent the interests of all employees in the bargaining unit, regardless of organizational membership, without discrimination. Non-members of the majority organization, therefore, enjoy virtually equal benefits and protections without sharing in the costs, incurred by collective negotiations, grievance representation, and other services. In the recent May, 1977 decision of the United States Supreme Court (Abood et al. v. Detroit Board of Education et al.) which upheld the constitutional validity of state "agency shop" legislation, the Court pointed to the fact that the tasks of negotiating and administering an agreement are continuing and difficult ones and entail the expenditure of much time and money, often requiring the services of lawyers, expert negotiators, economists, research staff, as well as administrative personnel. In that decision, the Court went on to state that "a union shop arrangement has been thought to distribute fairly the cost of these activities among those who benefit, and it counteracts the incentive that employees might otherwise have to become 'free riders'-to refuse to contribute to the union while obtaining benefits of union representation that necessarily accrue to all employees." Many analysts feel that union security agreements such as the agency shop are vital to the stability and sense of responsibility of public sector unions.

Thus, it appears that it would be consistent with this statement of the legislative intent to permit, upon demand, immediate discussions of the viability of adding a clause on a representation fee in lieu of dues to an existing written agreement.

The Board and the NJSBA argue that the purpose of the Employer-Employee Relations Act as stipulated in N.J.S.A. 34:13A-2 is to "promote permanent public and private employer-employee peace." They maintain that the negotiation of an agency shop clause during mid-term of an agreement would have a disruptive influence on labor relations. The Association responds by pointing to the sponsor's language in the statement quoted above in which it is stated that "agency shops are vital to the stability and sense of responsibility of public sector unions." It appears that the Legislature believed that the agency shop statute would not be disruptive. The Association maintains that had the Legislature believed that mid-term negotiations would contribute to labor strife, it surely could have prohibited such activity.[3/]

The New Jersey Supreme Court has explicitly recognized that the duty to negotiate extends beyond the period of contract

3/ Contrast the absence of such a provision with Section 9 of Chapter 85, P.L. of 1977 in which the Legislature carefully precluded the possibility that interest arbitration would apply to unsettled negotiations which were then ongoing for periods prior to the passage of the interest arbitration law. Section 9 which is codified as a legislative note to N.J.S.A. 34:13A-14 provides:

> This act shall take effect immediately and shall apply to all negotiations for new agreements, renewals of existing agreements, and reopener provisions of existing agreements that are or shall become effective during the first full fiscal year of the public employer after the effective date of this act.

negotiations, in the context of an employer's attempt to unilaterally alter terms and conditions of employment. In Galloway Township Board of Education v. Galloway Township Education Ass'n, 78 N.J. 25 (1978) at fn. 9, pages 48-49, the Court referred to that portion of N.J.S.A. 34:13A-5.3 which states:

> Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established.

However, the issue at hand does not involve a unilateral change by the employer, but rather the employer's obligation to negotiate at the Association's request, during the term of an existing agreement, pursuant to new legislation creating agency shop as a mandatory subject of negotiations.

Since this is a matter of first impression before this Commission and since there are no previous cases concerning this subject within the New Jersey Courts, it is helpful to review federal law and precedent from other jurisdictions where relevant. The New Jersey Supreme Court in Lullo v. Int'l Ass'n of Firefighters, 55 N.J. 409 (1970), stated that the New Jersey Act was modeled after the LMRA and, therefore, the "experience and adjudications" under the federal Act should guide the Court in interpreting the New Jersey law. The Court reiterated this admonition in Galloway Twp. Bd of Ed v. Galloway Twp. Ass'n of Educational Secretaries, 78 N.J. 1 (1978) and specifically applied it to the unfair practice provisions of the LMRA. Thus, adjudications under the LMRA will serve as an aid in interpreting the New Jersey Act.

Section 5.3 of the Act states that the employer and the employee organization "shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment." The NLRB stated that similar language in the LMRA (§158(d) "to meet and discuss at reasonable times..."), established a continuing duty on the part of the employer to bargain over union initiated proposals. Allied Mills, Inc., 82 NLRB 854, 23 LRRM 1632 (1949).

The obligation to bargain during the term of an agreement is limited by §8(d) of the LMRA which reads in part:

> ...the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provision of the contract... (emphasis added) 4/

The NLRB has interpreted this provision to mean that neither party has a duty to discuss any proposed modification of any term which has been "interpreted and embodied into writing." Tidewater Associated Oil Co., 85 NLRB No. 189, 24 LRRM 1520 (1949). As to unwritten terms and conditions of employment, "The obligation remains on both parties to bargain continuously." Tidewater. However, in both Allied Mills and Tidewater, the unions had raised the subjects in question during pre-contractual negotiations

4/ While the New Jersey Act has no parallel provisions, it has never been interpreted to require mid-term negotiations over terms and conditions already contained in an existing contract. Thus, the experience and adjudications under federal law appear applicable to this Act in this circumstance.

and the respective employers refused then and after the execution of the contracts to bargain about these particular terms. Cox and Dunlop, The Duty to Bargain Collectively During the Term of an Existing Agreement, 63 Harv. L. Rev. 1097 (1950).

The issue of an employer's duty to bargain during the contract term about a demand not raised in pre-contractual negotiations was decided in Jacobs Mfs. Co., 94 NLRB 1214, 28 LRRM 1162 (1951), enf'd (2d. Cir. 1952). There, the employer and the union executed a two-year agreement in July 1948, with a one-year reopening clause for discussion of wage demands. In July 1949, the Union invoked the reopener clause and gave notice to the employer of its demands which included a wage increase, the entire cost of an insurance program, and the establishment of a pension plan. The NLRB held that the wage reopening clause did not impose any obligation on the part of the employer to negotiate over the insurance and pension demands. However, the Board determined that the LMRA itself imposed a duty on the employer to discuss pensions, as this subject was not embodied into the written contract and had never been discussed in negotiations. The employer had no obligation to discuss the insurance demand because, although it similarly was not embodied in the written contract, the subject had been fully discussed at pre-contractual negotiations. Thus, the complaint as to this aspect of the case was dismissed.

In its Jacobs decision, the Board reasoned that the LMRA's policy of encouraging the practice and procedure of collective bargaining "was furthered by requiring negotiations over

subjects not covered by a contract and not previously discussed." The Board stressed the duty entailed good faith bargaining and did not require that "either side agree or make concessions." Jacobs, 28 LRRM at 1164.

The holding of Jacobs still controls; N.L. Industries, Inc. v. NLRB, 536 F.2d 786 (8th Cir. 1976), enf'g 220 NLRB 41 (1975). In N.L. Industries the employer adopted an amended profit sharing plan during the term of the contract, but refused to negotiate about it at the union's request. The court enforced the Board's order in favor of the union as there was evidence that neither party knew the profit sharing plan would be instituted.

In the instant case, agency shop was an illegal subject of negotiations prior to the passage of Chapter 44, P.L. of 1979 so no agency shop clause could have been included in the current contract which became effective on July 1, 1979. The Amicus NJSBA argues that since proposals for an agency shop law had been before the Legislature for a considerable period prior to the enactment of this statute, that the Association could have contemplated the possible enactment of the law and negotiated for a reopener if the statute was passed. It, therefore, argues that this subject could have been within the contemplation of the parties and this case does not meet the requirements of Jacobs Mfg. Co., supra. We do not accept this argument, as we do not believe that it would foster meaningful collective negotiations to suggest that parties are obligated to anticipate possible

changes in the law in their negotiations. It is difficult enough to agree on what the existing state of the law makes negotiable without anticipating what changes in the law might occur.[5/]

There are only two cases which Commission research and that of the parties have uncovered with fact patterns similar to those in the instant case and the Commission finds these decisions to be influential. In the Redmond School District v. PERB, 527 P.2d 143, 87 LRRM 3059 (Oregon Ct. Apps 1974), the Oregon Court affirmed an order that the school district negotiate several items which were previously non-negotiable, during the term of an agreement. These items became negotiable by statute six months after the effective date of the contract and had not been discussed at the bargaining table.[6/] The Oregon PERB held that in the absence of any specific language to the contrary, any issue which was not previously negotiable by law, can be immediately negotiated upon a change of law which makes that issue negotiable.

A similar holding was made in New Paltz Central School District v. New Paltz United Teachers, 11 PERB 3057 (1978), where the New York Public Employment Relations Board allowed negotiations

5/ In 1976 the Commission held that an "if and when" clause on agency shop subject to legislative authorizations was not a mandatory subject of negotiations because it would require negotiation on a subject which was currently illegal. In re Rutgers, The State University, P.E.R.C. No. 76-13, 2 NJPER 13, 20 (1976).

6/ The reported case does not specify what subjects were at issue in the case.

on agency shop during the term of a contract which had been agreed upon at a time when agency shops were unlawful. A "zipper clause" in the agreement did not specifically prohibit the right to negotiate an agency shop and therefore the Board found that there was "a duty to negotiate over mandatory subjects not covered by the agreement unless there is a specific waiver." The Board did note that there was only a two year limit on the agency shop statute and that it was instituted as an experiment. Thus, to not order mid-term negotiations would serve as a hardship on those employees whose contracts did not expire during the two year period and limit the value of the "experiment." This reason however was secondary to the fact that the agreement did not specifically waive the union's right to negotiate an agency shop.

In the present instance, the agency shop statute did not take effect until after the execution of the agreement between the Board and the Association, as in the cases just cited. There also was no specific clause in the agreement prohibiting the reopening of negotiations as to matters not considered during the previous negotiations. There is nothing in this factual setting which would require the Commission to find a holding different from that found in Redmond or New Paltz, supra, and the Commission determines that a public employer has an obligation to negotiate with the majority representative of its employees concerning a representation fee in lieu of dues during the life of a collective agreement in existence on the effective date of Chapter 477, P.L. of 1979.

The Commission is well aware of the possible ramifications discussed in the Amicus brief, but fails to find those consideration so onerous as to reach a different result. It is difficult to know the exact number of contracts that will be reopened due to this finding, but the Commission does not believe it to be so great as to be disruptive to labor stability throughout the State, nor does the Commission believe that the reopening of negotiations will cause turmoil between the Board and the Association in the present matter. It is also apparent that simply because the Commission finds that mid-term negotiation on representation fees, is appropriate for those contracts in existence when the statute took effect, it is not saying that all terms and conditions of employment are subject to mid-term reopening. The issue before us is a newly created mandatory subject of negotiation where no legislative limitation as to the timing of negotiations has been set forth. In fact given our conclusion as to the legislative intent expressed in Chapter 477, it is doubtful if we could reach any other conclusion even if we found the policy arguments of the Board and the Amicus persuasive.

It is also important to emphasize, as we have in many past decisions, that simply because a public employer is required to negotiate on a subject it does not mean that it is under any obligation to agree to the majority representative's proposals. See State of N.J. v. Council of New Jersey State College Locals, 141 N.J. Super. 470 (App. Div. 1976), affirming E.D. No. 79, 1

NJPER 39 (1975) and In re Byram Township Bd of Ed and Byram Township Ed Ass'n, 152 N.J. Super. 12, 30 (App. Div. 1977). In the instant situation the fact that the Association is able to propose an agency shop provision during the term of the existing agreement does not mean that the Board must agree to it as part of the negotiations.

Applying the above analysis to the two issues stipulated by the parties, it is our conclusion that the Board did have an obligation to negotiate with the Association concerning a representation fee during the life of the existing collective agreement, but that the obligation did not commence until July 1, 1980, the date upon which the representation fee law became effective. In the otes pertaining to N.J.S.A. 34:13A-5.5 it provides that "this act shall take effect July 1 next following its enactment." By those terms, representation fee negotiations became law on July 1, 1980 and no sooner.

It was stated in Brasko v. Duchek, 127 N.J. Eq. 567, 570 (Prerog. Ct. 1940) that, "the general rule is that a statute which expressly provides that it shall become effective on a certain date in the future is to be construed in the same manner as it if had been enacted on that date,...that it speaks only from the date on which it is to go into effect, and has no force or effect whatever until the arrival of that date." This rule when applied to the facts in the present case creates an obligation on the part of the Board to negotiate only after the effective date of the statute, and not before.

The stipulations establish that the majority of the operative events occurred prior to July 1, 1980. Thus, there is no violation arising from the refusal to negotiate prior to that date. However, the parties also stipulated that the refusal to negotiate "continued through the date upon which the charge was filed." (Stipulation of Fact 5),[7/] July 2, 1980. Therefore, we do find that the continued refusal to negotiate on this subject after July 1, 1980 is a violation of N.J.S.A. 34:13A-5.4 (a)(5) as alleged.

ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that the Respondent Wayne Board of Education:

A. Cease and desist from refusing to negotiate in good faith with the Wayne Education Association, when requested by the Association concerning the subject of requiring the payment by all nonmember employees in the unit to the Association of a representation fee in lieu of dues as provided by Chapter 477, P.L. of 1979.

B. Take the following affirmative action:

1. Negotiate in good faith upon request of the Wayne Education Association concerning the subject of requiring the payment by all nonmember employees in the unit to the Wayne

7/ We realize that this stipulation may have been worded to permit the Commission to resolve all the issues between these parties. The parties are to be commended for their cooperation in litigating this matter in a manner which will resolve their legal dispute without producing any unnecessary hostility in their negotiations relationship.

Education Association of a representation fee in lieu of dues as provided by Chapter 477, P.L. of 1979.

2. Post at places where notices to employees are customarily posted, copies of the attached Notice marked as "Appendix A." Copies of such notices 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 the Respondent for a period of at least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondent to insure that such notices are not altered, defaced or covered by any other material. The Respondent shall notify the Chairman of the Commission within twenty days of the receipt of the notice of the steps the Respondent has taken to comply herewith.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani and Commissioner Hartnett voted for this decision. Commissioner Parcells voted against this decision. Commissioners Hipp, Newbaker and Graves abstained.

DATED: Trenton, New Jersey
March 10, 1981
ISSUED: March 11, 1981

"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 negotiate in good faith upon request of the Wayne Education Association concerning the subject of requiring the payment by all nonmember employees in the unit to the Wayne Education Association of a representation fee in lieu of dues as provided by Chapter 477, P.L. of 1979.

WAYNE 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, 429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

Wayne Board of Education

- and -

Wayne Education Association

Docket No. CO-81-2-70

STIPULATIONS OF FACT

The parties in the above matter agree to the following:

1. The Wayne Board of Education is a public employer within the meaning of the Act and is the employer of the employees involved in the above matter.

2. The Wayne Education Association is an employee representative within the meaning of the Act and is the recognized majority representative of the employees involved in the instant matter.

3. The parties are signatories to a collective negotiations agreement effective July 1, 1979 - June 30, 1982 which was in effect when the instant charge was filed. The parties agree to the admission of said document into evidence as Exhibit J-1.

4. That the Wayne Education Association made an oral demand on May 5, 1980 and written demand by letters dated May 27, 1980 and June 12, 1980 (attachment to charge) upon authorized representatives of the Board demanding negotiations concerning a representation fee as provided in Chapter 477 P.L. 1979 codified as N.J.S.A. 34:13A-5.4.a(5) and 5.5. The relevant letters are admitted as evidence herein.

5. That on May 5, 1980 the Board refused to negotiate with respect to the demand and its refusal continued through the date upon which the charge was filed. The Wayne Education Association was aware of the Board's oral refusal to negotiate with respect to the demand. The Wayne Education Association does not dispute the Board assertion that it sent a letter to the Association dated June 17, 1980 refusing the demand to negotiate, but the Board does not dispute the Associations assertion that the letter was not received by the Association.

6. That the parties agree that the issues in this matter are as follows:

a) Did the Board have an obligation to negotiate with the Wayne Education Association concerning a representation fee during the life of the existing collective agreement?

b) Did the Board have an obligation to negotiate with the Wayne Education Association concerning a representation fee prior to July 1, 1980 which was the effective date of Ch. 477 P.L. 1979?

7. The parties agree there are no facts in dispute in this matter and pursuant to N.J.A.C. 19:14-6.7 agree to waive a hearing in this matter and a hearing examiner's recommended report and decision and agree to submit this matter directly to the Commission for determination based upon the charge and attachments, the complaint, the answer and attachments, the collective agreement, the stipulations of fact, and briefs.

8. Neither party objects to the intervention of the New Jersey School Boards Association as amicus curiae for the purpose of submitting briefs in this matter based upon the briefing schedule.

9. The parties agree to the submission of briefs herein as follows:

Joint submission due February 18, 1981.
Reply brief due February 25, 1981.

/S/
David Golub, Esq.
For the Wayne Board of Education

/S/
Cassel R. Ruhlman, Jr., Esq.
For the Wayne Education Association

Before Arnold H. Zudick, Hearing Examiner
Dated: January 29, 1981