

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PISCATAWAY TOWNSHIP BOARD  
OF EDUCATION,

Respondent,

-and-

Docket No. CO-81-143-114

PISCATAWAY TOWNSHIP EDUCATION  
ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint issued on a charge filed by the Piscataway Township Education Association ("Association") against the Piscataway Township Board of Education ("Board"). The Association had alleged that the Board violated subsections (a)(1), (3), and (5) of the New Jersey Employer-Employee Relations Act when it unilaterally adopted a policy and an accompanying regulation which authorized certain steps to verify that sick leave is used for its intended purpose. The Commission rules that the Board has a managerial right to utilize reasonable means to verify employee illness or disability.

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PISCATAWAY TOWNSHIP BOARD  
OF EDUCATION,

Respondent,

-and-

Docket No. CO-81-143-114

PISCATAWAY TOWNSHIP EDUCATION  
ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Rubin, Lerner & Rubin, Esqs.  
(David B. Rubin, of Counsel)

For the Charging Party, Klausner & Hunter, Esqs.  
(Stephen E. Klausner, of Counsel)

DECISION AND ORDER

On November 3, 1980, the Piscataway Township Education Association ("Association") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission").<sup>1/</sup> The Association alleged that the Piscataway Township Board of Education ("Board") violated the New Jersey Employer-Employee Relations Act (the "Act"), N.J.S.A. 34:13A-1 et seq., specifically N.J.S.A. 34:13A-5.4(a)(1), (3) and (5),<sup>2/</sup> when on or about October 20,

<sup>1/</sup> Pursuant to the recognition clause of a collective agreement, the Association represents a negotiations unit of all non-supervisory personnel of the Board in certain classifications, including, in particular, classroom teachers.

<sup>2/</sup> 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."

1980, without prior negotiations with the Association, it adopted a new sick leave policy and accompanying regulation.<sup>3/</sup>

3/ The Association attached a copy of the challenged policy and regulation to its charge. The policy provides, in pertinent part:

The Board of Education shall grant sick leave to all eligible employees subject to negotiated agreements, statute and judicial precedent. The right to verify illness for which sick leave is claimed shall remain a prerogative of the Board of Education. The Superintendent of Schools is authorized to formulate administrative procedures and guidelines which will insure that sick leave is used for its intended purpose. These administrative regulations must be submitted to the Board for review and approval prior to their being put into effect.

The regulation promulgated pursuant to this policy provides:

- I. a. The employee's immediate supervisor will review the monthly "Employee Absence Register," and conduct a conference with any employee whose record indicates...
  1. A pattern of absences taking place on the same day(s), of the week.
  2. Absences in excess of the yearly allocation.
  3. Absences before or after non-working days.
  4. Employees whose records indicate that accumulated sick leave has been habitually exhausted.
- b. A written summary of the conference will be recorded on the appropriate form, and said record...
  1. May be used in the annual evaluation, and
  2. May become part of the employee's permanent personnel file.
- II. A physician's written statement certifying disability...
  1. MAY be required for any day of sick leave claimed, and
  2. SHALL be required for any absence which exceeds five consecutive days.
- III. When in the judgment of the employee's immediate supervisor, the Superintendent, or the Superintendent's designee, there is a need to verify any claimed disability on the date of an absence, such verification may be made by telephoning or visiting the home of the employee. Any employee who is not at home during claimed sick leave may be required to present acceptable proof of disability.

On March 5, 1981, the Director of Unfair Practices issued a Complaint and Notice of Hearing. On March 10, 1981, the Board filed an Answer in which it admitted unilaterally adopting the policy and regulation in question, but maintained that the provisions of the policy and regulation constituted "...either management prerogative and/or memorialization of pre-existing practices in the district."

On May 4, 1981, Commission Hearing Examiner Alan R. Howe conducted a hearing and afforded all parties an opportunity to examine witnesses, present relevant evidence, and argue orally. Both parties submitted post-hearing briefs.

On June 15, 1981, the Hearing Examiner issued his Recommended Report and Decision, H.E. No. 81-48, 7 NJPER 372 (¶12170 1981), a copy of which is attached hereto and made a part hereof. The Hearing Examiner found that the Board did not violate the Act when it required physician certificates from employees who are absent more than five days. However, he concluded that the Board did violate subsections 5.4(a)(1) and (5) of the Act when it authorized conferences, telephone verifications, and home visitations in certain instances of suspected abuse of sick leave; to remedy this violation, he recommended an order requiring the Board to rescind these provisions and to negotiate with the Association before adopting such provisions again. Finally, he recommended dismissal of the allegation that the Board violated subsection 5.4(a)(3) of the Act.

On June 26, 1981, the Board filed two exceptions in the form of a letter brief to the Hearing Examiner's recommended finding that the Board violated subsections 5.4(a)(1) and (5) when it authorized conferences, telephone verifications, and home visitations: (1) these provisions involved evaluation criteria beyond the realm of collective negotiations, and (2) these provisions continued a past practice.

On June 29, 1981, the Association filed an exception to the Hearing Examiner's determination that the Board's requirement of a physician's certificate for absences of more than five days did not violate subsection 5.4(a)(5) of the Act. The Association contended that such a blanket mandate is illegal. The Association attached its post-hearing brief to its exceptions.<sup>3/</sup>

On December 15, 1981, the Commission heard oral argument.

We first treat the Association's exceptions. We agree with the Hearing Examiner that Article X, Section A(4) specifically authorizes the Board to require a physician's certificate from any employee requesting sick leave.<sup>4/</sup> Therefore, the regulation

<sup>3/</sup> No party has excepted to the Hearing Examiner's determination that the Board did not violate subsection 5.4(a)(3). There is no evidence of such a violation; accordingly, we dismiss this portion of the Complaint.

<sup>4/</sup> That section provides:

Pursuant to N.J.S.A. 18A:30-4, the Board of Education may require, in order to obtain sick leave, a physician's certificate to be filed with the Secretary of the Board of Education

The contract language tracks the statutory language.

requiring the production of a physician's certificate when an employee is absent more than five days does not constitute a change in the negotiated terms and conditions of employment. Further, no statute invalidates such a "blanket" requirement.<sup>5/</sup> Accordingly, we hold that the Board's adoption of the provisions concerning the production of a physician's certificate did not violate either subsection 5.4(a)(1) or (5) of our Act.

We now turn to the Board's exceptions. Having viewed the entire record, we agree with the Board that it has a managerial right to implement measures to control abuse of sick leave by employees. In this endeavor, it may utilize reasonable means to verify employee illness or disability.

In re City of Trenton, P.E.R.C. No. 76-10, 1 NJPER 58 (1975) supports this conclusion. There, we held that the City's

<sup>5/</sup> The Association's reliance on Piscataway Bd. of Ed. v. Piscataway Maintenance & Custodial Ass'n, 152 N.J. Super. 235 (App. Div. 1977); East Orange Bd. of Ed., P.E.R.C. No. 79-4, 4 NJPER 309 (1978); Willingboro Bd of Ed v. Willingboro Ed. Ass'n, P.E.R.C. No. 80-46, 5 NJPER 475 (¶10240 1979), aff'd P.E.R.C. No. 80-75, 5 NJPER 553 (¶10287 1979), aff'd App. Div. Docket No. A-1756-79 (12/8/80), pet. for certif. den. 87 N.J. 320 (1981) and Hoboken Board of Education, P.E.R.C. No. 81-97, 7 NJPER 135 (¶12058 1981), appeal pending App. Div. Docket No. A-3379-80T2, is misplaced. None of these cases limit or even concern a public employer's right to demand verification through a physician's certificate of an employee's sick leave claim. Instead, these cases discuss under what circumstances contractual provisions guaranteeing extended sick leave benefits violate N.J.S.A. 18A:30-6 and N.J.S.A. 18A:30-7.

creation of an internal investigation unit to examine allegations of police officer misconduct was not mandatorily negotiable. While we acknowledge the existence of significant differences between police and teachers, the common thread between In re City of Trenton and the instant case is the public employer's managerial prerogative to monitor the performance of its workforce.

The New York State Public Employment Relations Board has come to the same conclusion. In City of Rochester, 12 PERB 3015 (¶3010 1979), the Board held that the City was not required to negotiate over a demand that would not obligate a police officer on sick leave to remain at home. The Board stated:

Although the subject of sick leave is a mandatory subject of negotiation, a demand that the employer relinquish to unit employees alone all control over abuses in the taking of sick leave is not.  
12 PERB at 3018.

More recently, a PERB Hearing Examiner, relying on City of Rochester, ruled non-negotiable the following employee representative proposal:

An employee on sick leave is only required to remain in his residence between...9:00 a.m. and 5:00 p.m. on a day he was regularly scheduled to have a tour of duty. The employee (on sick leave) may be visited by a supervising officer at any time between the hours of 9:00 a.m. and 5:00 p.m. on the day he was regularly scheduled to have a tour of duty.  
In re PBA of Nassau County, 14 PERB 4625, 4627 (¶4557 1981).

In reaching this conclusion, we stress what is not involved in this case. There is no allegation before us that any particular employee has been improperly deprived of sick leave

benefits as a result of the new policy or that the policy is being utilized to harass an employee, or is otherwise being implemented in an unreasonable manner which unduly interferes with the employee's welfare. The mere establishment of a verification policy is the prerogative of the employer. The application of the policy, however, may be subject to contractual grievance procedures.

N.J.S.A. 34:13A-5.3 provides:

Public Employers shall negotiate written policies setting forth grievance procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements and administrative decisions affecting them. See also, Op. of W. Windsor v. PERC, 78 N.J. 98 (1978).

Thus, if an employee believes that the Board erred in determining that the employee was not actually sick, the Association may file a grievance and, if necessary, take the matter to binding arbitration.<sup>6/</sup> In short, the Association may not prevent the Board from attempting to verify the bona fides of a claim of sickness, but the Board may not prevent the Association from contesting its determination in a particular case that an employee was not actually sick.

<sup>6/</sup> The distinction we make between establishment and application of a sick leave policy is consistent with a settlement the parties reached in 1978 when the Association filed suit challenging the Board's right to call teachers on sick leave at home and to demand physician's certificates from certain employees. The parties agreed to submit to arbitration the question of whether the Board's refusal to accept the explanation the employees offered for their absence was arbitrary, capricious or unreasonable; the arbitrator found that the Board had acted improperly in determining that the employees had abused sick leave privileges without at least considering the employees' explanations. The 1978 litigation thus did not restrict the Board's right to implement sick leave verification procedures, but merely the Board's ability to make unilateral determinations that employees were not in fact sick.



Further, even if an employee suffers no deprivation of a sick leave benefit, he may contest the application of the policy if particular home visitations or telephone calls were for purposes other than implementing a reasonable verification policy or constituted an egregious and unjustifiable violation of an employee's privacy. Such allegation could be grieved and arbitrated under N.J.S.A. 34:13A-5.3 and the contract.<sup>7/</sup>

Also, the employer's right to place memoranda memorializing conferences in employee personnel files is subject to other contract provisions granting employees the right to inspect their personnel files or to respond to material in their files. Again, the Board cannot unilaterally determine that an employee abused sick leave without affording the employee an opportunity to contest that determination. Further, in this regard we distinguish between the lawful prerogative of the Board to use unjustifiable absence from work as a criterion for evaluating employee performance, which is not reviewable, from a determination to withdraw a negotiated sick leave benefit, which we believe is reviewable under the parties' grievance mechanism.

Keeping these limitations on our holding firmly in mind, we conclude that the mere establishment of the Board's sick leave policy does not impinge on the Association's ability to negotiate sick leave benefits or on an individual's ability to utilize sick leave for proper purposes. To the contrary, the policy serves a legitimate and non-negotiable management need to insure that

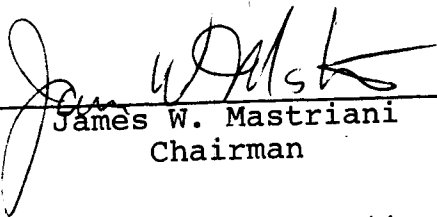
<sup>7/</sup> While it is not essential to our determination, contrary to the Association, we do not read the regulation in question as requiring an employee on sick leave to stay at home, to own a telephone, or to answer a telephone call. Instead, the regulation provides that an employee who is not at home during a sick leave "may be required to present acceptable proof of disability." As discussed above, whether an employee has or has not presented acceptable proof of disability may be litigated through the grievance procedure.

employees do not abuse contractual sick leave benefits. Accordingly, the Board did not violate our Act when it authorized home visitations, telephone calls, and conferences in an attempt to verify sick leave claims.

ORDER

IT IS HEREBY ORDERED that the Complaint in this matter is dismissed in its entirety.

BY ORDER OF THE COMMISSION

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

Chairman Mastriani, Commissioners Butch and Hartnett voted in favor of this decision. Commissioner Graves voted against the decision. Commissioners Hipp, Newbaker and Suskin abstained.

DATED: January 12, 1982  
Trenton, New Jersey  
ISSUED: January 13, 1982

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

In the Matter of

PISCATAWAY TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

DOCKET NO. CO-81-143-114

PISCATAWAY TOWNSHIP EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Hearing Examiner recommends that the Public Employment Relations Commission find that the Board violated Subsections 5.4 (a)(1) and (5) of the New Jersey Employer-Employee Relations Act when on October 20, 1980 it unilaterally and without negotiations with the Association adopted and implemented a sick leave policy which provided for conferences with employees with respect to abuses of sick leave and for telephone verification or the visiting of homes of employees on sick leave who are not then at home. The Hearing Examiner found that the employer did not violate the Act with respect to the requirement of physician certificates of employees on sick leave inasmuch as that was provided for expressly in the collective negotiations agreement between the parties. Finally, the Hearing Examiner recommended dismissal of allegations that the Board had violated Subsection 5.4 (a)(3) of the Act.

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.

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

In the Matter of

PISCATAWAY TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-81-143-114

PISCATAWAY TOWNSHIP EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Piscataway Township Board of Education  
Rubin, Lerner & Rubin, Esqs.  
(David B. Rubin, Esq.)

For the Piscataway Township Education Association  
Klausner & Hunter, Esqs.  
(Stephen E. Klausner, Esq.)

HEARING EXAMINER'S RECOMMENDED  
REPORT AND DECISION

---

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on November 3, 1980 by the Piscataway Township Education Association (hereinafter the "Charging Party" or the "Association") alleging that the Piscataway Township 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 on October 20, 1980 unilaterally, and without negotiations with the Charging Party, altered the existing sick leave practice by adopting

a new sick leave policy and supporting regulations, 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 March 5, 1981. Pursuant to the Complaint and Notice of Hearing, a hearing was held on May 4, 1981 in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Oral argument was waived and the parties filed post-hearing briefs by June 3, 1981.

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

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

#### FINDINGS OF FACT

1. The Piscataway Township 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 agents or representatives 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 Piscataway Township 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 has been in effect since May 29, 1979 and will by its terms expire on June 30, 1981 (J-1, p.37).

4. The current agreement provides in Article X, Section A, Para. 4, "Sick Leave," that: "Pursuant to N.J.S.A. 18A:30-4 the Board of Education may require, in order to obtain sick leave, a physician's certificate to be filed with the Secretary of the Board of Education" (J-1, p.19).

5. The testimony of Respondent's three witnesses, the Superintendent and two Principals, supports a finding that prior to October 20, 1980 there was no clear and consistent practice within the school district with respect to requiring documentation from or investigation of teachers on sick leave. For example, there was no uniform policy as to whether or when a physician's certificate was required to be produced. A teacher's obligation in reporting ill was to call a specified person at the Board's offices for the purpose of obtaining a substitute. In some instances school administrators telephoned teachers at their homes, either for the purpose of verification of illness or to inquire about the teacher's well being. There was no requirement that teachers have telephones in their homes or that they be at home at all times when on sick leave. <sup>2/</sup>

---

<sup>2/</sup> The testimony of the Charging Party's witnesses was consistent with that of Respondent's witnesses with respect to prior practice.

On December 16, 1977 the Superintendent instructed his clerical staff to call teachers who were on sick leave at their homes. This had never been done previously by the Superintendent's office nor has been done since. It resulted in litigation in the Chancery Division of the Superior Court (CP-2 through CP-8), which ultimately resulted in an arbitration wherein an Arbitrator ordered the Board to charge the affected teachers with one day of sick leave for December 16, 1977 but not to deduct one day's salary for absence on that date (CP-11). It was stipulated that the arbitration award was to be "without precedent effect" (CP-7, p.5).

6. Under date of October 17, 1980, the President of the Association sent a letter to the President of the Board, in anticipation of Board action on October 20, 1980 with respect to sick leave policy, in which the Association urged that any change in sick leave policy was a change in terms and conditions of employment and was, therefore, a negotiable issue (CP-1).

7. On October 20, 1980 the Board formally approved a sick leave policy for the district, which set forth as "Basic Policy" the following:

"The Board of Education shall grant sick leave to all eligible employees subject to negotiated agreements, statute and judicial precedent. The right to verify illness for which sick leave is claimed shall remain a prerogative of the Board of Education. The Superintendent of Schools is authorized to formulate administrative procedures and guidelines which will insure that sick leave is used for its intended purpose. These administrative regulations must be submitted to the Board for review and approval prior to their being put into effect." (J-2).

8. On the same date, October 20, 1980, specific implementing regulations were issued regarding "Use of Sick Leave," which set forth guidelines, inter alia, as to when an employee would be the subject of a conference on the use of sick leave and indicating when a physician's certificate would be required and, finally, authorizing verification by the telephoning or visiting the home of an employee claiming to be on sick leave. (J-3).

9. The current agreement provides in Article II, Section D, "Maintenance of Work Rules," that: "Proposed new rules or modifications of existing rules governing legally recognized working conditions shall be negotiated with the majority representatives before they are established" (J-1, p.3).

THE ISSUES

Did the Respondent Board violate the Act when it unilaterally adopted and implemented a change in sick leave policy on October 20, 1980 without negotiations with the Association?

DISCUSSION AND ANALYSIS

The Respondent Board Violated Subsections (a)(1) and (5) of the Act On October 20, 1980 When it Unilaterally Adopted And Implemented Those Portions Of Sick Leave Policy Which Exceeded The Requirement Of A Physician's Certificate

The Hearing Examiner finds and concludes that the Respondent Board violated Subsections (a)(1) and (5) of the Act when on October 20, 1980 it unilaterally adopted and implemented certain portions of a sick leave policy without collective negotiations with the Association before implementation. <sup>3/</sup>

Article X, Section A, Para. 4, "Sick Leave," in the current collective negotiations agreement provides that the Board may require a physician's certificate in order for a unit member to obtain sick leave (See Finding of Fact No. 4, supra). Thus, even though the practice prior to October 20, 1980 was that a physician's certificate was rarely requested by the Board, the Board had a right to request at anytime such a certificate, both under the agreement and under the Education Law, which is incorporated into the agreement (J-1, p.19 supra). The mere fact that the Board has not implemented the contract provision on physician's certificates with any consistency does not foreclose it from adopting a sick leave policy delineating the circumstances under which a physician's certificate would be required. <sup>4/</sup>

---

<sup>3/</sup> There was no evidence adduced that the Respondent Board violated Subsection (a)(3) of the Act by its conduct herein and the Hearing Examiner will recommend dismissal as to this allegation.

<sup>4/</sup> The sick leave regulations adopted on October 20, 1980 provide that a physician's certificate may be required for any day of sick leave claimed and shall be required for any absence which exceeds five (5) consecutive days (J-3).



Commission precedent is clear that where there is a contract provision explicitly permitting certain specified Board action there can be no violation of the Act committed, notwithstanding prior practice to the contrary: see Pascack Valley Board of Education, P.E.R.C. No. 81-61, 6 NJPER 554 (1980) and Delaware Valley Regional Board of Education, P.E.R.C. No. 81-77, 7 NJPER 34 (1980).

The Hearing Examiner now turns to those portions of the sick leave policy adopted and implemented on October 20, 1980 which, in the absence of prior negotiations with the Association, constitute a violation of the Act.

As indicated in Finding of Fact No. 8 supra, the implementing regulations (J-3) include provision for an employee conference in connection with the use of sick leave and telephonic verification or the visiting of the home of an employee on sick leave. More specifically, J-3 provides that an employee will be the subject of a conference in any one of the following four situations: (1) a pattern of absences taking place on the same day or days of the week; (2) absences in excess of the yearly allocation; (3) absences before or after non-working days; or (4) records indicate that accumulated sick leave has been habitually exhausted. After such a conference has taken place it is to be recorded on an appropriate form and the record thereof may be used either in the annual evaluation or become a part of the employee's permanent personnel file. Finally, J-3 provides for telephonic verification or visiting of the home of an employee on sick leave and if the employee is not at home during the claimed sick leave period he or she may be required to present "acceptable proof of disability."

As set forth in Finding of Fact No. 9, supra, Article II, Section D of the current agreement provides under "Maintenance of Work Rules," substantially in the language of Section 5.3 of the Act, that proposed new rules or modifications of existing rules governing legally recognized working conditions shall be negotiated with the majority representative before they are established.

The Hearing Examiner finds and concludes that under the Commission's decision in New Brunswick Board of Education, P.E.R.C. 78-47, 4 NJPER 84 (1978) the Respondent herein violated the Act as alleged when it unilaterally and without negotiations with the Association adopted and implemented on October 20, 1980 those provisions of the sick leave policy pertaining to employee conferences and telephonic verification or visiting the home of an employee on sick leave (J-3, supra).

The Commission said in New Brunswick, supra, that:

"...Where, during the term of an agreement, a public employer desires to alter an established practice governing working conditions (which is not an express or implied term of the agreement)... the employer must first negotiate such proposed change with the employees' representative prior to its implementation.

"...unilateral alteration of an existing term and condition of employment during the term of an agreement constituted an unfair practice complete in itself.

"...under N.J.S.A. 34:13A-5.3 the obligation is on the public employer to negotiate, prior to implementation, a proposed change in an established practice governing working conditions which is not explicitly or impliedly included under the terms of the parties' agreement. Accordingly, the Association was under no obligation to request negotiations subsequent to the Board's unilateral action..." (4 NJPER at 85) (Emphasis supplied).

The Hearing Examiner having found a violation of Subsections (a)(1) and (5) as heretofore set forth, an appropriate remedy will be recommended.

\* \* \* \*

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

CONCLUSIONS OF LAW

1. The Respondent violated N.J.S.A. 34:13A-5.4(a)(1) and (5) on October 20, 1980 when it unilaterally and without negotiations with the Association adopted and implemented a sick leave policy, which provided for conferences with employees with respect to sick leave and utilizing the results of same in annual evaluations or for the permanent personnel file of the employee, and providing further for verification by telephoning or visiting the home of employees on sick leave.

2. The Respondent Board did not violate N.J.S.A. 34:13A-5.4(a)(1) and (5) when on October 20, 1980 it unilaterally adopted and implemented without negotiations with the Association a sick leave policy providing for a physician's certificate in cases of sick leave.

3. The Respondent Board did not violate N.J.S.A. 34:13A-5.4(a)(3) by its conduct herein.

RECOMMENDED ORDER

The Hearing Examiner Examiner recommends that the Commission Order:

A. That the Respondent Board cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly, by refusing to negotiate in good faith with the Piscataway Township Education Association regarding a sick leave policy, which provides for employee conferences with respect to sick leave and for telephone verification or the visiting of the homes of employees on sick leave.

2. Refusing to negotiate in good faith with the said Association regarding the adoption and implementation of a sick leave policy, which provides for conferences with employees with respect to sick leave and for telephone verification or the visiting of the homes of employees represented by the Association.

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

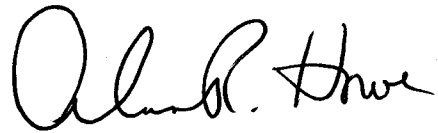
1. Forthwith restore the status quo ante by rescinding the sick leave policy adopted October 20, 1980, except as to the requirement of a physician's certificate, and thereafter, prior to implementation, negotiate in good faith with the Piscataway Township Education Association concerning proposed changes in sick leave policy with respect to conferences with employees and verification of sick leave by telephone or by visiting the homes of employees.

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

3. 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)(1) and (5) with respect to the requirement of physician's certificates be dismissed in their entirety.

D. That the allegations in the Complaint that the Respondent Board violated N.J.S.A. 34:13A-5.4 (a)(3) be dismissed in their entirety.

A handwritten signature in cursive script, reading "Alan R. Howe".

---

Alan R. Howe  
Hearing Examiner

Dated: June 15, 1981  
Trenton, New Jersey

# NOTICE TO ALL EMPLOYEES

## PURSUANT TO

AN ORDER OF THE

## PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

## NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL NOT interfere with, restrain or coerce our employees in the exercise of the rights guaranteed to them by the Act, particularly, by refusing to negotiate in good faith with the Piscataway Township Education Association regarding a sick leave policy, which provides for employee conferences with respect to sick leave and for telephone verification or the visiting of the homes of employees on sick leave.

WE WILL NOT refuse to negotiate in good faith with the said Association regarding the adoption and implementation of a sick leave policy, which provides for conferences with employees with respect to sick leave and for telephone verification or the visiting of the homes of employees represented by the Association.

WE WILL forthwith restore the status quo ante by rescinding the sick leave policy adopted October 20, 1980 except as to the requirement of physician's certificates, and thereafter, prior to implementation, negotiate in good faith with the Piscataway Township Education Association concerning proposed changes in sick leave policy with respect to conferences with employees and verification of sick leave by telephone or by visiting the homes of employees.

PISCATAWAY TOWNSHIP 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 Jeffrey B. Tener, Chairman, Public Employment Relations Commission, P.O. Box 2209, Trenton, New Jersey 08625 Telephone (609) 292-6780