

P.E.R.C. NO. 81-134

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BARRINGTON BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-80-335-110

BARRINGTON EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Commission grants reconsideration of P.E.R.C. No. 81-122 in order to review the Association's reply to exceptions filed by the Board of Education, which had not reached the Commission prior to its initial decision in this case. After a reexamination of the entire record in this matter, the Commission affirms its prior ruling.

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Appearances:

For the Respondent, Davis & Reberkenny, Esqs.
(Robert F. Blomquist, of Counsel)

For the Charging Party, Selikoff & Cohen, P.A.
(John E. Collins, of Counsel)

DECISION ON MOTION FOR RECONSIDERATION

On April 16, 1981, this Commission decided the above-entitled case in P.E.R.C. No. 81-122, 7 NJPER ____ (¶ ____ 1981), dismissing an unfair practice charge filed by the Barrington Education Association (the "Association") which alleged that the Barrington Board of Education (the "Board") had violated N.J.S.A. 34:13A-5.4(a)(1) and (a)(5) when the Board required the uncompensated attendance of three teachers at an outdoor education trip (the "trip") without prior negotiations.

Based upon the entire record and argument before the Hearing Examiner, post-hearing briefs and exceptions filed by the Board, the Commission found the Board's requirement that the three teachers participate in the trip not to have constituted an unlawful unilateral change in their terms and conditions of employment, based upon a long standing arrangement which led to a

reasonable expectation by all parties that the trip would continue to be staffed as it had been in the past.

On April 29, 1981, the Association filed a Motion for Reconsideration pursuant to N.J.A.C. 19:14-8.4 with a supporting letter brief. The Association asserts that "extra-ordinary circumstances" exist which warrant reconsideration. In our previous decision, we noted that "the Association has not filed a response to [the Board's] exceptions." The Association seeks the Commission's consideration of a Reply to Respondent's Exceptions to Hearing Examiner's Recommended Report and Decision which it alleges was mailed on December 11, 1980 and was not previously considered in the prior decision. The Association, in its Motion, concedes that its submission did not meet the technical requirements of N.J.A.C. 19:14-7.3(d) which requires such filing and proof of service with the Commission since that filing was directed to the Hearing Examiner rather than the Commission. An administrative inquiry reveals that the Reply was never received by the Hearing Examiner nor placed in the exception file; hence, the Commission did not have the benefit of the Reply for its review. The Association has submitted evidence that its Reply was served on the Board and while the Commission did not have the benefit of the document, we will presume the validity of the Association's position that the Reply was mailed to the Commission's offices.

The Board objects to the Motion for Reconsideration, asserting that the Association has not fulfilled the grounds for reconsideration as set forth in N.J.A.C. 19:14-8.4 inasmuch as its filing of the Reply was technically incorrect and secondly,

that no new issues have been raised which were not previously addressed. Inasmuch as we observe that the Association did mail the Reply as it asserts, we concur with the Association that it did have a right to expect consideration of its submission by the Commission prior to its rendering a decision. We therefore grant the Association's Motion for Reconsideration and will review the matter in light of its Reply accompanied by its letter brief in support of the instant motion. We deem these documents as included in the official record of this proceeding.^{1/}

The principal argument of the Association is directed towards the Board's position that the prior practice of the parties provided the necessary justification for its decision to require attendance on the trip. The Association cites a prior Commission decision, Caldwell-West Caldwell Board of Education, P.E.R.C. No. 80-64, 5 NJPER 536 (¶10276 1979), and argues that a consistent application of the holding in that case that "past practices are terms of employment which attach to positions, not individual employees", would lead to the result that an established practice could not be found to exist in the instant case. We disagree. An established practice is a factor unique to each factual context, and the facts in Caldwell are distinguishable from

^{1/} In the letter brief, the Association actually addresses, in the context of why we should reconsider, some of the points made in our initial decision.

those present herein. After a thorough reconsideration of the record, including the materials submitted in connection with the instant Motion for Reconsideration, we find no valid basis exists to disturb our previous findings.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hartnett, Parcels and Suskin voted in favor of this decision. Commissioners Hipp and Newbaker abstained from consideration. Commissioner Graves was not present.

DATED: Trenton, New Jersey
June 9, 1981
ISSUED: June 10, 1981