

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HACKETTSTOWN BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2003-038

HACKETTSTOWN EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the Hackettstown Board of Education violated the New Jersey Employer-Employee Relations Act when it refused to negotiate with the Hackettstown Education Association over compensation for employees required to attend an overnight field trip. The Commission orders the Board to negotiate over mandatorily negotiable matters relating to overnight field trips.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Docket No. CO-2003-038

HACKETTSTOWN EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Apruzzese, McDermott, Mastro & Murphy, attorneys (Robert J. Merryman, of counsel)

For the Charging Party, Oxfeld Cohen, attorneys (Nancy I. Oxfeld, of counsel)

DECISION

On May 17, 2004, the Hackettstown Board of Education filed exceptions to a Hearing Examiner's report and recommendations. The Hearing Examiner found that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1) and (5),^{1/} by refusing to negotiate over changing teacher participation in an overnight school trip from

1/ These provisions 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. (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."

voluntary to mandatory. The Hearing Examiner concluded that the Board should restore the practice of voluntary uncompensated attendance, negotiate regarding any changes, and post a notice of its violation.

This case is based on an unfair practice charge filed by the Hackettstown Education Association on August 8, 2002. The charge sought findings that participation as a chaperone on the eighth grade trip to Washington, D.C. had always been voluntary and that a change to mandatory participation violated the Act. The charge sought an order requiring the Board to cease requiring staff members to act as chaperones pending negotiations over the change and directing the Board to negotiate over compensation for staff members who chaperoned the 2002 trip.

On January 14, 2003, the Board filed its Answer, denying that attendance had been voluntary.

On November 12, and 13, 2003, Hearing Examiner Jonathan Roth conducted a hearing. The parties examined witnesses, introduced exhibits, and filed post-hearing briefs.

On April 30, 2004, the Hearing Examiner issued his report and recommendations. H.E. No. 2004-16, 30 NJPER 216 (¶82 2004). On May 17, the Board filed exceptions. On June 1, the Association filed an answering brief urging adoption of the Hearing Examiner's recommendations.

We have reviewed the record. We adopt and incorporate the Hearing Examiner's findings of fact, including his credibility determinations (H.E. at 3-15) with a modification and an addition discussed later. We now summarize the key events and respond to the Board's factual exceptions.

The district has long sponsored an eighth grade overnight field trip to Washington, D.C. Before 1985, teachers assigned to eighth grade classes were expected to attend. From 1985 through 1998, an assistant to the middle school principal organized the trip and solicited teacher volunteers to act as chaperones.^{2/} Staff volunteered or not, never having to explain their refusals. Beginning in 1992 or 1993, certain teachers received student invitations to attend the trip.^{3/} The Hearing Examiner concluded that from 1994 through 2001, eighth grade "team" members (core subject and special education teachers) were not required to attend. Most eighth grade team members did attend the trip in and after 1994, but teachers who declined to attend were not required or asked to provide a reason. The Association sought

2/ The Board disputes findings that a former principal expected special subject teachers to attend the trip and that teacher Scott Tomlinson did not attend the trip in 1998. These facts are not material to our determination.

3/ The Board disputes a determination crediting testimony that the students have decided which teachers they wanted to invite. We reject this exception because the Hearing Examiner also found that student invitations were not the exclusive means for securing chaperones. H.E. at 6.

unsuccessfully to negotiate compensation for trip attendance in two prior rounds of successor contract negotiations.

In 2002, the Board required that the school nurse and one eighth grade team member attend the trip.^{4/} In response, an NJEA field representative wrote to the superintendent protesting the proposed "punishment" of the two teaching staff members. She asserted that the trip had always been voluntary and that if attendance had become "required work," the Association was prepared to reach agreement on appropriate compensation. The superintendent responded that the Board was not interested in negotiating compensation because the Board had always considered attendance to be mandatory and uncompensated. The Association then sent a letter to the Board urging it to continue to use volunteers to staff events beyond the bargained workday. We add to finding 16 that the Association's letter stated that if the assignments were to be compulsory rather than voluntary, the Association demanded that the impact of this change be bargained, that the assignments be fairly distributed, and that the employees be fairly compensated. The Association urged the Board

^{4/} We modify finding of fact 15 to indicate that none of the district's nurses volunteered to go on the trip and that a certified substitute nurse did attend. Contrary to the Board's suggestion, a Board policy authorizing the school nurse to administer certain medications on the overnight trip does not specify that it must be the middle school nurse who attends the trip. Whether parents who were nurses attended the trips in 1998 and 2001 is a fact not material to our determination.

to reconsider its decision and allow employees to continue to voluntarily staff events without additional compensation.

Based on the testimony of ten witnesses and related documents, the Hearing Examiner concluded that since 1985, teachers have not been required to attend the eighth grade trip or to provide an explanation for not attending.^{5/} We recognize that from at least 1965 to 1985, attendance was required. But since 1985, teachers were free to decline invitations to attend without explanation and attendance was thus voluntary. In 2002, when the employer required the nurse and one teacher to provide an excuse for not attending, and subjected them to possible discipline, the employer effectively changed chaperoning duties from voluntary to mandatory.^{6/} When the Association became aware of the change, it sought negotiations over compensation. The Board refused. We must now decide whether the Board's action violated its obligation to negotiate in good faith and, if so, what remedy is appropriate.

The Hearing Examiner properly articulated our analytical framework:

^{5/} We reject the Board's exception asserting that the eighth grade team and the school nurse were required to attend. The Hearing Examiner found otherwise and we accept his findings.

^{6/} The nurse had her increment withheld for failing to perform assigned duties and insubordination. Hackettstown Bd. of Ed., P.E.R.C. No. 2003-48, 29 NJPER 22 (¶6 2003).

Section 5.3 of the Act requires that "proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established." Section 5.4a(5) prohibits public employers from refusing to negotiate in good faith with the majority representative concerning terms and conditions of employment. The Act requires negotiations, but not agreement. Hunterdon Cty. Freeholder Bd. and CWA, 116 N.J. 332, 338 (1989). [H.E. at 17]

Amendments to the Act enacted in 1990 changed the law on extracurricular activities by broadening the scope of mandatory negotiability. N.J.S.A. 34:13A-23 now makes mandatorily negotiable:

all aspects of assignment to, retention in, dismissal from, and any terms and conditions of employment concerning extracurricular activities. . . . If the employer is unable to employ a qualified person from outside of the district, the employer may assign a qualified teaching staff member from within the district.

Extracurricular activities are defined as:

those activities or assignments not specified as part of the teaching and duty assignments scheduled in the regular work day, work week, or work year[; i.e.,] that period of time that all members of the bargaining unit are required to be present and at work. [N.J.S.A. 34:13A-22]

Under these provisions, overnight field trips are extracurricular and compensation for such trips, whether voluntary or mandatory, is mandatorily negotiable. When the Board required the nurse and teacher to attend the 2002 trip, it

unilaterally changed a mandatorily negotiable term and condition of employment. In response, the Association requested negotiations. The Board's refusal to negotiate over compensation for employees subject to the change violated the Act.^{7/}

The Board argues that this case should be controlled by our holding in Barrington Bd. of Ed., P.E.R.C. No. 81-122, 7 NJPER 240 (¶12108 1981), recon. den. P.E.R.C. No. 81-134, 7 NJPER 336 (¶12150 1981). Barrington, however, is distinguishable. In that case, after many years of voluntary uncompensated attendance on a school trip, the majority representative sought to change the status quo by demanding mid-contract negotiations over compensation for voluntary attendance. In this case, by contrast, it was the Board that changed the status quo by mandating attendance.

We now address the appropriate remedy. Since neither the nurse nor the teacher ordered to attend the 2002 trip did attend, there is no basis to order retroactive negotiations. Nor will we order restoration of voluntary attendance, given the Association's statements in its opening statement, post-hearing brief, and exceptions that it does not challenge the Board's

^{7/} Even before the 1990 amendments, compensation for extracurricular activities was mandatorily negotiable. See, e.g., Ramapo-Indian Hills H.S. Dist. Bd. of Ed., P.E.R.C. No. 80-9, 5 NJPER 302 (¶10163 1979), aff'd 176 N.J. Super. 35 (App. Div. 1980).

right to mandate attendance but instead seeks to negotiate over compensation for teachers now required to attend.

However, we will order prospective negotiations over mandatorily negotiable aspects of this school trip consistent with N.J.S.A. 34:13A-23. The parties' contract expired on June 30, 2002 so this issue may already have been addressed during those negotiations. If not, the Board is required to negotiate upon demand over all mandatorily negotiable aspects of the trip consistent with N.J.S.A. 34:13A-23.

ORDER

The Hackettstown Board of Education is ordered to:

A. Cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of rights guaranteed to them by this Act, particularly by refusing to negotiate over mandatorily negotiable matters relating to overnight field trips.

2. Refusing to negotiate in good faith with a majority representative of employees concerning mandatorily negotiable terms and conditions of employment, particularly by refusing to negotiate over mandatorily negotiable matters relating to overnight field trips

B. Take this action:

1. Negotiate in good faith with the Association, upon demand, over mandatorily negotiable matters relating to overnight

field trips unless such matters were already addressed during the negotiations for a contract to succeed the one that expired on June 30, 2002.

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 shall, after being signed by the Respondent's authorized representative, be posted immediately and maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

3. Within twenty (20) days of receipt of this decision, notify the Chairman of the Commission of the steps the Respondent has taken to comply with this order.

BY ORDER OF THE COMMISSION



Lawrence Henderson
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, Katz and Mastriani voted in favor of this decision. Commissioners Sandman and Watkins abstained from consideration. None opposed.

DATED: August 12, 2004
Trenton, New Jersey
ISSUED: August 13, 2004



NOTICE TO EMPLOYEES
PURSUANT TO
AN ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION
AND IN ORDER TO EFFECTUATE THE POLICIES OF THE
NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,
AS AMENDED,

We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the New Jersey Employer-Employee Relations Act, particularly by refusing to negotiate over mandatorily negotiable matters relating to overnight field trips.

WE WILL cease and desist from 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, particularly by refusing to negotiate over mandatorily negotiable matters relating to overnight field trips.

WE WILL negotiate in good faith with the Association, upon demand, over mandatorily negotiable matters relating to overnight field trips unless such matters were already addressed during the negotiations for a contract to succeed the one that expired on June 30, 2002.

CO-2003-038

Docket No.

HACKETTSTOWN BOARD OF EDUCATION

(Public Employer)

Date: _____

By: _____

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

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, P.O. Box 429, Trenton, NJ 08625-0429 (609) 984-7372

H.E. NO. 2004-16

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

In the Matter of

HACKETTSTOWN BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-2003-38

HACKETTSTOWN EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Hackettstown Board of Education engaged in an unfair practice by unilaterally requiring a school nurse and an eighth grade teacher to chaperone an annual overnight trip of all eighth grade students to Washington, D.C. The Hearing Examiner found that attendance had been voluntary in the past and that the circumstances of the Board's mandate differed from those in Barrington Bd of Ed. P.E.R.C. No. 81-122, 7 NJPER 240 (¶12108 1981), recon. den. P.E.R.C. No. 81-134, 7 NJPER 336 (¶12150 1981), dism. NJPER Supp.2d 115 (¶96 App. Div. 1982). The Hearing Examiner recommended that the Board violated 5.4a(5) and derivatively a(1) 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. If no exceptions are filed, the recommended decision shall become a final decision unless the Chair or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

H.E. NO. 2004-16

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

In the Matter of

HACKETTSTOWN BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-2003-38

HACKETTSTOWN EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent,
Apruzzese, McDermott, Mastro & Murphy, attorneys
(Robert J. Merryman, of counsel)

For the Charging Party,
Oxfeld Cohen, attorneys
(Nancy I. Oxfeld, of counsel)

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On August 8, 2002, the Hackettstown Education Association filed an unfair practice charge against the Hackettstown Board of Education. The charge alleges that in April 2002, the Board for the first time mandated that two unit employees--Maryann Gibbs, an eighth grade teacher, and Colleen Ashley, middle school nurse--chaperone an annual, overnight or three-day eighth-grade trip to Washington, D.C. The charge alleges that at no time before 2002 were unit members required or paid to attend the annual trip. The charge further alleges that on April 19, 2002, the Association wrote a letter to the Board depicting "required"

attendance on the trip as a unilateral change in terms and conditions of employment, and demanding "to reach agreement on appropriate compensation," to which the Board did not reply. The Board's conduct allegedly violates section 5.4a(1) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

On December 19, 2002, a Complaint and Notice of Hearing issued. On January 14, 2003, the Board filed an Answer, denying any violation of the Act. It contends that the Complaint is barred by "the doctrines of laches, waiver and estoppel"; the dispute should be deferred to the parties' grievance procedure; and the Commission has no jurisdiction over the subject matter.

On November 12 and 13, 2003, I conducted a hearing at which the parties examined witnesses and presented exhibits. Briefs and replies were filed by March 22, 2004. On April 22, 2004, the Board filed a supplemental letter, in lieu of an additional brief, pursuant to my request. Based on the record, I make the following:

^{1/} These provisions 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; 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.

FINDINGS OF FACT

1. The Board and Association signed a collective negotiations agreement extending from July 1, 1999 through June 30, 2002. In Article I, the Association is recognized as the exclusive representative of certain certificated and non-certificated titles. Among the titles included in the unit are classroom teachers and nurses (R-9). Other articles pertain to teaching hours, load and work year (Articles VI and VII). An addendum provides stipend amounts for various activities at Board schools.

The district has four schools, including two grammar schools, one high school and one middle school, the last of which houses grades five through eight (1T117).

2. John Chamberlain was principal of the middle school from 1962 to 1985 (1T129). He is now retired from the district (1T128). Throughout his tenure, the school's eighth grade class attended an annual trip to Washington, D.C. By 1965, the trip lengthened to three days (1T130). Chamberlain attended the trip all 23 years (1T132). From the outset, the trip was part of the eighth grade curriculum (1T148). Teachers assigned to the eighth grade classes, together with "special subject teachers" (i.e., industrial arts, music, physical education) and the school nurse were "expected to attend" (1T137; 1T138). Chamberlain later

modified his testimony by conceding that he "individually invited" special subject teachers to attend the trip (1T149).

Chamberlain testified specifically that he "anticipated" the attendance of "core subject" teachers (social studies, language arts, mathematics) and that they could be excused "for a good reason," such as a pregnancy or illness (1T139). "Core subject" eighth grade teachers not wishing to attend explained their circumstances directly to Chamberlain and he always found the reasons credible (1T139; 1T142). The record does not reveal if "credible" means that the teachers were always excused from the trip.

Chamberlain passed the responsibilities for arranging reservations and issuing letters regarding the trip to Matthew Pinkman, the assistant principal, in or around 1984, the year preceding Chamberlain's retirement (1T151). Pinkman immediately succeeded Chamberlain as middle school principal (1T150). Chamberlain conceded that nothing was ever "written" about eighth grade teachers' mandatory attendance on the Washington trip during his tenure as middle school principal (1T153). Their expected attendance was mentioned at periodic eighth grade faculty meetings (1T153). Chamberlain also acknowledged that his involvement with the trip ended in the middle 1980's and that Pinkman, his successor, "probably" assigned duties regarding the trip to Frank Joseph (1T150; 1T151).

3. Frank Joseph has been employed 31 years in the middle school. Joseph was hired by Chamberlain in 1973 as a seventh and eighth grade social studies teacher and was "immediately aware" of the eighth grade trip to Washington, D.C. (1T34). He denied that Chamberlain advised him of "an expectation" that eighth grade teachers would attend the trip (1T35). I credit his recollection. He continued in the position and was an assistant to the principal (not assistant principal) from about 1984 to 1998, for which he received an annual stipend (1T20; 1T21; 1T35). In the last several of those years, Joseph shared responsibilities for planning the eighth grade trip with the eighth-grade team leader (a teacher) (1T21).

Planning the annual May trip begins more than a year in advance and includes arranging transportation and hotel accommodations for up to 170 students and adults (1T23). Joseph "inherited" responsibilities for the trip from Pinkman (1T36). Joseph typically asked teachers to attend beginning "early in [school] year", seeking roughly one teacher for every ten eighth grade students (1T37; 1T38). He first asked teachers he knew best in the middle school and eventually asked others from "all over the middle school" (1T36). He asked many more teachers than were actually needed for the trip (1T37). Teachers responded verbally and Joseph maintained a list of confirming attendees (1T38). Joseph testified that he "tried to find people willing

to go [on the trip to Washington]" and "did not know of anyone required to attend" (1T25). His testimony was unrebutted; I credit it.

Beginning in early 1992 or 1993, eighth grade student (elected) officers formally invited their favorite middle school teachers to chaperone the trip to Washington, D.C. (1T24; 1T25; 1T40; 1T41). Joseph did not direct the students to invite specific teachers (1T41). Teachers typically wrote notes replying affirmatively or negatively to the invitation(s), placing them in either Joseph's or the eighth grade team leader's mail box at the school (1T26). Teachers not replying were assumed not to be interested and those declining to attend were not required to provide a reason (1T26). Some teachers who initially agreed to attend later declined, pursuant to some impediment. They discussed their circumstances with Joseph, and he informed the school principal (1T44). The record does not indicate that student invitations to middle school faculty were the exclusive means for securing chaperones for the trip to Washington, D.C.

4. In 1994, the Board converted the "overall curricular structure" to "teaming", meaning that groups of teachers worked together on behalf of each grade in the middle school (1T27). From 1994 to 1998, two or more teams each taught the seventh and eighth grades in response to a temporarily "swollen enrollment"

(1T27). After 1998, one team was charged with establishing the curriculum for each grade level at the middle school. Each team is "interdisciplinary" and includes teachers of language arts, science, social studies, mathematics and special education (1T27; 1T45; 2T8). The eighth grade team met regularly to discuss all curricular matters pertaining to eighth grade students. Team members also spoke with the students' parents or guardians (2T9).

Joseph testified that from 1994 to 1998 "not all team teachers from the eighth grade attended the trip" and that other middle school teachers of computer science, music, art, family and consumer science attended, as did teachers from other middle school classes (1T29; 1T30). Joseph's testimony was corroborated by other witnesses, including teachers Allan Tomlinson, John Emr, Jr., and Judy O'Hora. I credit it.

Joseph did not attend the trip every year in which he was jointly responsible for its planning and was not required to explain or justify his decision (1T33). Joseph was never a member of the eighth grade "team", which assumed responsibility from him in 1997 or 1998 for planning the annual trip (1T31). Joseph has not attended the trip in the last several years (T33).

5. Allan Tomlinson has been employed by the Board as a teacher for more than 25 years. From 1980 to 1997, he taught social studies to seventh and eighth grade students at the middle school (1T48). He attended the Washington, D.C. trip a dozen or

more years (1T48). Between 1980 and 1982, Principal Chamberlain "invited" him to attend, and he attended. In 1983, the year his daughter was born, he was not invited (1T50; 1T51). In the 1990's, he was sometimes formally invited to attend but declined (1T51). In other years of that decade, "[teachers] were encouraged to attend, but whomever had to fill in, filled in" (1T51). By "encourage", Tomlinson specifically meant that the principal asked him to attend the trip (1T55). In 1997, Tomlinson taught eighth grade social studies and was an eighth grade team member but did not attend the trip. His daughter was an eighth grade student that year and she attended the trip (1T52). He was a member of the eighth team about four years (including 1997) during which he attended the trip once (1T53). Tomlinson conceded that a "majority" of eighth grade team members (teachers) attended the trip each year [after 1994] (1T54).

6. John Emr, Jr. has been a special education teacher in the middle school for the past 20 years (1T66). He has attended the Washington, D.C. trip ten times, the first in 1985, primarily to assist a handicapped eighth grade student confined to a wheelchair (1T66; 1T67). In all the years Emr attended, he either first mentioned his interest to Joseph or Joseph asked him to attend (1T67). In all those years, Emr taught eighth grade students. In some of the years he did not attend the trip, Emr did not teach eighth grade students (T68). On cross examination,

Emr acknowledged that he was an eighth grade team member two or three years and did not attend the trip at least once in those years (1999-2001) (1T69; 1T70).

7. Judy O'Hora taught science to eighth grade students at the middle school from 1968 to 1985 and from 1995 to 2001 (1T78; 1T82). She attended most of the trips (13 or 14) to Washington, D.C. from 1968 to 1985. She was never "invited" or directed to attend; she characterized the impetus for her attendance as: "you just went" (1T79; 1T84; 1T85). She also testified that teachers "generously volunteered to [attend the trip]" and that if she was not attending, she "just said I wasn't going" to mathematics teacher Katherine Bellis, who "ran the trip through 1985" (1T86). I infer that Bellis' responsibilities preceded at least some of those undertaken by Joseph. O'Hora testified that the trip was "more concerned" with the History and English curricula than with the Science curriculum (1T88).

O'Hora was a member of the eighth grade team from 1995 through 1997. She did not attend the trip to Washington, D.C. in those years and the four years afterwards; nor was she directed to attend and was not required to provide an explanation for not attending (1T81; 1T82; 1T88). She did not specifically recall receiving a written student invitation to attend the trip (1T89).

8. Gregory Amundsen has been employed as a special education teacher in the middle school for the past seven years

(1T58). Joseph invited Amundsen to attend the trip in his first year at the school and Amundsen volunteered his attendance in some other years (T60; T63). Amundsen attended the trip in 1999, when he was a member of the eighth grade team (1T61; 1T62). Amundsen was not "primarily" involved with special education of eighth grade students that year; a vacancy existed on the eighth grade team which he conveniently filled (1T62).

Marily Berrie has been employed as a music and chorus teacher of grades five through eight at the middle school for the past ten years (1T91). She has never attended the trip to Washington, D.C. and was never invited to attend (1T91). She has never been a member of the eighth grade team and has not taught eighth grade students, primarily (1T92).

9. In at least two collective negotiations for successor agreements before 2002, the Association proposed to the Board that unit personnel receive payment for their attendance on Board-sponsored overnight trips (1T113; 1T121). The Association teams believed or understood at the time of the proposals that unit personnel attendance on the eighth grade trip to Washington, D.C. was "voluntary" (1T114). No such proposal or counterproposal has been included as a provision of any collective agreement between the parties (1T121).

10. On February 28, 1996, the Board adopted a "policy" concerning "Field Trips." The policy was purportedly revised on

October 29, 1997 and July 28, 1999 (R-2; 2T5). In the policy, the Board "recognizes that field trips, used as a device for teaching and learning integral to the curriculum, are an educationally sound and important ingredient in the instructional program of the school" (R-2). The document also requires that field trips receive "advance approval" by the Board. The policy also states:

Pupil Self-Administration of Medication

The board shall permit self-administration of medication on field trips for asthma or other potentially life-threatening illness by pupils in grades K through 12. All conditions established by law and board policy shall be met.

Epinephrine shall be administered via epi-pen to pupils in emergencies on field trips by the school nurse, his/her designee(s), the student's parent/guardian or the student himself/herself, in accordance with policy 5141.21 Administering Medication. [R-2]

The policy applies to the trip to Washington, D.C (2T7).

On December 16, 1998, the Board adopted a "regulation" concerning "Administering Medication" (R-3). The regulation provides that during approved overnight field trips, "the school nurse may dispense . . . Tylenol, Advil and/or cough drops" to students in specified dosages over specified periods of time, "following signed, parent approval" (R-3).

11. In July 1997, the Board Superintendent formally approved an application for the eighth grade trip to Washington,

D.C. scheduled for May 13-15, 1998 (R-4). The application names 16 teachers as "chaperones," including Joseph, Emr, eighth grade team members Denise Fascia, Ms. Gibbs, Marsha Haag, Ms. Hartman, Ms. Lange, Mr. Tomlinson, Mr. Wiede, nurse Colleen Ashley, an unnamed "parent nurse volunteer" and an unnamed Board member to accompany about 180 students (R-4; R-5; 2T13). No evidence indicates how or when the chaperones for the trip were selected (2T31-2T32). The listing inaccurately includes Tomlinson; he did not attend the trip that year (see finding no. 5). In response to the printed question on the application, "What provision made for these pupils"?, the typed response states: "Grade 8 teachers provide a supervision schedule and assignments" (R-4). The same question and answer appears in two proffered applications for subsequent years (R-6; R-7).

12. A completed August 2000 "application for field trip" except for the Superintendent's signature approval was placed in the record (R-6). The trip that school year to Washington, D.C. was scheduled for May 17 and 18, 2001 and the Board estimated that about 90 students would attend. The application names 10 teachers as chaperones, including all eighth grade team members-- Emr, Fascia, Gibbs, Greenfeder, Hansen, and Pitt (R-1; R-6). It also includes as chaperones a "parent nurse" and "2 parents." No evidence indicates how the chaperones for the trip were selected or whether the school nurse was available to attend and declined.

13. In February or March, 2002, Association President Bettyann Sheruda learned that certain unit members were "required" to attend the eighth grade trip to Washington, D.C. (1T114; 1T124). In early April 2002, NJEA field representative Michael Carroll was informed by the Hackettstown Education Association that two teachers were directed over their objections to attend the eighth grade trip to Washington, D.C. (1T94; 1T95). On April 16, 2002, middle school principal Linda Nick issued a memorandum to nurse Colleen Ashley (2T28; 2T46). The memorandum states:

As you know, all eighth grade staff are expected to accompany the eighth grade students on their class trip to Washington, D.C. This year the trip is scheduled for May 16th and 17th. As you have done in the past ('95-'96, '96-'97, '97-'98, '98-'99), you are directed to accompany the students on this trip. [CP-3]

14. On April 19, 2002, Carroll sent a letter to Board Superintendent Joanne Calabro protesting a proposed punishment of nurse Ashley and teacher Gibbs because they declined to attend the eighth grade trip, inasmuch as past attendance had been "entirely voluntary." Carroll also wrote that if attendance has become "required work", the Association was prepared "to reach agreement on appropriate compensation . . ." (CP-1). Calabro soon thereafter telephoned Carroll, advising him that the Board was not interested in negotiating compensation if unit employees are required to attend the trip to Washington, D.C. She advised

Carroll that the Board has always considered teacher attendance "mandatory and without pay" (1T98).

15. On May 2, 2002, an application for a projected May 16 and 17 trip to Washington, D.C. for 95 students was issued and was complete, except for Board approval and Superintendent Calabro's signed approval (R-7; 2T40). Calabro testified that the application was "held" because "there were some problems with the bus, getting the students to have all their money in" (2T39-2T40). The application sets forth variable costs for adults, pupils and a "pupil assessment charge". It also notes that "4 chaperones are complimentary/\$96 [per] person for remaining chaperones" (R-7). The other proffered applications do not set forth a chaperone fee.

Calabro's testimony does not explain why the Board did not approve the trip in the summer preceding the annual May trip, as was its custom. She also testified that another reason why the trip was almost cancelled was because nurse Ashley "refused to go and we couldn't find a nurse. And we couldn't take the trip without a nurse" (2T41-2T42). I credit her unrebutted testimony. The Board, however, did not proffer specific evidence regarding the number of nurses it employs and whether any of them may have volunteered or would volunteer to attend the trip. The application provides the names of "chaperones", including eighth grade team members Fascia, Gibbs, Greenfeder and Hansen (R-7; R-

8,; 2T23). Gibbs' name is highlighted by a handwritten asterisk, the text for which states: "[E]nough chaperones without Mary Ann Gibbs." No evidence specifically proves that Gibbs attended the 2002 eighth grade trip to Washington, D.C. The application also sets forth nurse Ashley's name, highlighted by an asterisk, the text for which cautions: "[I]f Mrs. Ashley does not attend, Kim Pincus (substitute nurse) will attend" (R-7). The substitute nurse apparently attended the trip (2T42; 2T45).^{2/}

16. On May 8, 2002, the Association issued a letter to the Board reiterating its view that unit employee ". . . willingness to volunteer [staffing of overnight activities] has always been accompanied by the understanding that if pressing personal needs required it, an individual employee would be excused." The letter continues: "The Washington, D.C. trip is no exception. While most members of the eighth grade team have attended each year, on those occasions where a team member had some compelling reason not to attend it was understood that the individual would be excused." The letter also cautions that "employees who feel that their willingness to extend themselves is not appreciated, no longer volunteer." The Association urged the Board to "allow [unit personnel] to continue to voluntarily staff events beyond their bargained workday . . ." (CP-2).

^{2/} See also Hackettstown Bd. of Ed., P.E.R.C. No. 2003-48, 29 NJPER 22 (¶6 2003).

ANALYSIS

Section 5.3 of the Act requires that "proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established." Section 5.4a(5) prohibits public employers from refusing to negotiate in good faith with the majority representative concerning terms and conditions of employment. The Act requires negotiations, but not agreement. Hunterdon Cty. Freeholder Bd. and CWA, 116 N.J. 332, 338 (1989).

In Middletown Tp., P.E.R.C. No. 98-77, 24 NJPER 28 (¶29016 1997), the Commission described three types of cases involving allegations that an employment condition has been changed. In one type, indicated by the facts of this matter, an existing working condition is changed and the majority representative does not claim an express or implied contractual right to prevent that change while the employer does not claim, or cannot prove, an express or implied right to impose that change without negotiations.^{3/} Such a change triggers the duty to negotiate under section 5.3. As stated in Sayreville Bd. of Ed., P.E.R.C. No. 83-105, 9 NJPER 138, 140 (¶14066 1983):

^{3/} The other types are cases where the majority representative claims an express or implied contractual right to prevent a change, and cases where the employer alleges that the representative has waived any right to negotiate, usually by expressly or impliedly giving the employer a right to impose a change. Middletown Tp. at 24 NJPER 29.

[A]n employer violates its duty to negotiate when it unilaterally alters an existing practice or rule governing a term and condition of employment . . . even though that practice or rule is not specifically set forth in a contract. . . . Thus, even if the contract did not bar the instant changes, it does not provide a defense for the Board since it does not expressly and specifically authorize such changes.

To prove a violation, absent an applicable defense, the representative need show only that the employer changed an existing employment condition without first negotiating.

Middletown Tp. at 24 NJPER 30.

The HEA alleges that the Board unilaterally changed the existing practice of soliciting (or receiving) volunteer middle school teachers to chaperone the annual eighth grade overnight trip to Washington, D.C. It does not claim an express or implied contractual right to prevent a discontinuation of voluntary attendance.

In Barrington Bd. of Ed. and Barrington Ed. Ass'n., P.E.R.C. No. 81-122, 7 NJPER 240 (¶12108 1981), recon. den. P.E.R.C. No. 81-134, 7 NJPER 336 (¶12150 1981), dism. NJPER Supp.2d 115 (¶96 App. Div. 1982), the Commission held that the board of education did not violate 5.4a(1) and (5) of the Act when it assigned teachers to a camping trip and refused to compensate them since a "longstanding arrangement" showed that teachers had voluntarily performed that activity without compensation and since the teachers had unsuccessfully attempted to negotiate compensation

for that duty in each of the negotiations leading to the parties' two collective agreements preceding the one in effect at the time of the dispute. Contrary to the hearing examiner's finding that the Board's change to required attendance from a voluntary practice created a negotiations obligation, the Commission determined that the Board's conduct did not amount to an unfair practice.

The camping trip in Barrington Bd. of Ed. had been conducted annually for about 15 years, as was its planning, recruitment, budgeting and content. Even in the year in which the dispute arose, the teachers acknowledged the existence of the trip and anticipated their participation. The Commission wrote:

It is significant that the germination of the mandatory/voluntary attendance issue only arose when the Board refused a written request made by the three teachers to compensate them for attendance on the trip in the Spring of 1980, the year in dispute.
[7 NJPER 241]

The teachers then withdrew their anticipated voluntary attendance whereupon the Board required their attendance. The Board was specifically concerned that "qualified personnel" attended the trip. Noting the hearing examiner's finding that no established practice required teacher attendance, the Commission wrote:

What [the hearing examiner] failed to weigh was the fact that the change to required attendance arose after the refusal of the teachers to staff the trip which they originally anticipated attending subsequent

to the failure of the Board to provide compensation.
[7 NJPER 241]

The Commission wrote that the status quo of the "longstanding arrangement" led to "a reasonable expectation by all parties that the trip would be staffed through volunteers without additional compensation." By demanding compensation in the mid-term of the collective agreement in exchange for anticipated service, and then withdrawing service after being denied a concession on compensation, "the Board's response of required attendance cannot be interpreted as a unilateral change but rather, a direction to preserve the status quo of voluntary, non-compensated participation." Id. 241.

The Commission also noted that the collective agreement did not refer to the trip, its attendance and compensation. The record did show that in at least two prior sets of negotiations, the issue of compensated attendance was raised in written demands by the Association and rejected by the Board. Finally, the Commission denied that its findings meant that compensation for attendance was not mandatorily negotiable; rather, it determined only the parties obligations during the life of the contract and not regarding their future obligations to negotiate over terms and conditions of employment in future contracts.

This case is factually similar to Barrington Bd. of Ed. Like the teachers in that matter, the middle school teachers in

Hackettstown have a long history of voluntarily accompanying students on overnight trips without compensation. The record shows that from 1985 through 1998, stipended teacher Frank Joseph, as assistant to the middle school principal (Pinkman, et al.), solicited teacher volunteers for the annual eighth grade trip to Washington, D.C. His peers volunteered or not, never having to explain their refusals. Teachers were freed of any mandated attendance or coercion (inherently) associated with middle school principal Chamberlain's leadership role in organizing the trip from 1962 through 1984. Student invitations to middle school teachers, commencing in 1992 or 1993, further corroborate the voluntariness of teacher attendance on the trip. The Board did not prove that from 1994 through 2001, eighth grade "team" members (i.e., core subject and special education teachers) were required to attend, despite the uncontested fact that the trip was tied to the eighth grade curriculum. The evidence shows that most eighth grade team members attended the trip in and after 1994, a fact also conceded in Association correspondence to the Board (finding no. 16). No evidence indicates that from 1994 through 2001, eighth grade teachers or eighth grade team members declining to attend were required or asked to provide a reason. (I am not referring to teachers who initially volunteered and later declined.)

The HEA, like the Barrington Education Association, sought unsuccessfully to negotiate compensation for trip attendance in two prior negotiations for a collective agreement. The Barrington Education Association sought compensation a third time, during a contract term, triggering the dispute resulting the Commission's 1981 decision. Nothing in the agreement between the Hackettstown Board and the HEA refers to the trip, attendance or compensation.

Unlike the circumstances in Barrington Bd. of Ed., in which the "germination" of the dispute was the teachers' mid-contract term demand for compensation, the origin of the dispute in Hackettstown was the Board's mid-contract term order that the school nurse and an eighth grade teacher/team member attend the trip. No evidence indicates that a deficient number of middle school teachers or eighth grade teachers volunteered or would volunteer without compensation to chaperone students on the trip. In fact, the 2002 field trip application for the Washington, D.C. trip notes that a sufficient number of volunteer chaperones had been secured without eighth grade team member Gibbs. Similarly, no evidence indicates whether the Board regularly employs more than one nurse (Ashley). The record shows that in 1998 and 2001, nurses not included in the unit (and probably not employed by the Board) voluntarily attended the trip without compensation.

Before 1990, extracurricular appointments and retentions were not mandatorily negotiable or legally arbitrable. Teaneck Teacher Ass'n v. Teaneck Bd. of Ed., 94 N.J. 9 (1983); Mainland Reg. Teachers Ass'n v. Mainland Reg. School Dist. Bd. of Ed., 176 N.J. Super. 476 (App. Div 1980), certif. den. 87 N.J. 312 (1981). But in 1990, the Legislature amended N.J.S.A. 34:13A-1 et seq. to overrule that case law. N.J.S.A. 34:13A-23 now states:

All aspects of assignment to, retention in, dismissal from, and any terms and conditions of employment concerning extracurricular activities shall be deemed mandatory subjects for collective negotiations between an employer and the majority representative of the employees in a collective bargaining unit, except that the establishment of qualifications for such positions shall not constitute a mandatory subject for negotiations. If the negotiated selection procedures fail to produce a qualified candidate from within the district the employer may employ from outside the district any qualified person who holds an appropriate New Jersey teaching certificate. If the employer is unable to employ a qualified person from outside of the district, the employer may assign a qualified teaching staff member from within the district.

N.J.S.A. 34:13A-22 defines "extracurricular activities" to include "those activities or assignments not specified as part of the teaching and duty assignments scheduled in the regular work day, work week or work year." "Regular work day, work week, or work year" means "that period of time that all members of the bargaining unit are required to be present and at work."

The Board argues that the trip to Washington, D.C. is not an extracurricular activity because it is "tied directly into the curriculum for eighth grade students." I disagree. An overnight or multi-day trip to Washington, D.C. by some middle school teachers falls outside of the period of time in which all members of the unit are required to be "present and at work." I find that the trip to Washington, D.C. is "extracurricular" within the meaning of the statute, notwithstanding its locus in the eighth grade curriculum.

I also find that in April 2002, the Board unilaterally modified an existing rule governing working conditions. By ordering the school nurse and an eighth grade teacher to attend the annual overnight eighth grade trip to Washington, D.C., the Board changed the status quo of voluntary middle school teacher and eighth grade team member attendance. The change from voluntary to mandatory attendance is "an aspect" of unit employee "assignment" to an extracurricular activity, defined by N.J.S.A. 34:13A-23 as a mandatorily negotiable subject. The Board did not meet its legal burden to negotiate before implementing the change, thereby violating 5.4a(5) and derivatively a(1) of the Act.

REMEDY

The record does not show that the nurse and teacher ordered to attend did attend the Washington, D.C. trip in May 2002.

Although I have found that the Board violated section 5.4a(5) and (1) of the Act that spring, no make-whole remedy for that violation appears warranted. Accordingly, the Board is ordered to negotiate in good faith concerning prospective changes to the practice of "voluntary" attendance, subject to the parameters of the "Assignment to Extracurricular Activities Amendment", N.J.S.A. 34:13A-23.

RECOMMENDED ORDER

I recommend that the Commission ORDER:

A. That the Hackettstown Board of Education cease and desist from:

1. Refusing to negotiate in good faith with a majority representative of employees concerning mandatorily negotiable terms and conditions of employment, particularly changes to unit personnel's voluntary and uncompensated attendance on the annual eighth grade trip to Washington D.C.

2. Interfering with, restraining or coercing employees in the exercise of rights guaranteed to them by this Act, particularly by refusing to negotiate mandatorily negotiable terms and conditions of employment concerning changes to unit personnel's voluntary and uncompensated attendance on the annual eighth grade trip to Washington, D.C.

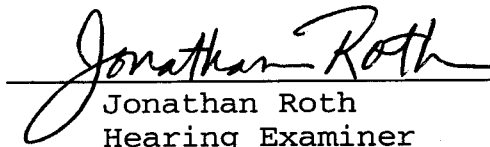
B. That the Board take the following action:

1. Restore the status quo practice (i.e, the practice in effect before April, 2002) of voluntary, uncompensated attendance of unit personnel on the annual eighth grade trip to Washington D.C. subject to the parameters of N.J.S.A. 34:13A-23.

2. Negotiate in good faith with the Association regarding any proposed changes to the practice of voluntary, uncompensated attendance of unit personnel on the annual trip to Washington, D.C., subject to the parameters of N.J.S.A. 34:13A-23.

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

4. Within twenty (20) days of receipt of this decision, notify the Chairman of the Commission of the steps the Respondent has taken to comply with this order.


Jonathan Roth
Hearing Examiner

Dated: April 30, 2004
Trenton, New Jersey



RECOMMENDED



NOTICE TO EMPLOYEES

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION AND IN ORDER TO EFFECTUATE THE POLICIES OF THE NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT, AS AMENDED,

We hereby notify our employees that:

WE WILL cease and desist from refusing to negotiate in good faith with a majority representative of employees concerning mandatorily negotiable terms and conditions of employment, particularly changes to unit personnel's voluntary and uncompensated attendance on the annual eighth grade trip to Washington D.C.

WE WILL cease and desist from interfering with, restraining or coercing employees in the exercise of rights guaranteed to them by this Act, particularly by refusing to negotiate mandatorily negotiable terms and conditions of employment concerning changes to unit personnel's voluntary and uncompensated attendance on the annual eighth grade trip to Washington, D.C.

WE WILL restore the status quo practice (i.e, the practice in effect before April, 2002) of voluntary, uncompensated attendance of unit personnel on the annual eighth grade trip to Washington D.C. subject to the parameters of N.J.S.A. 34:13A-23.

WE WILL negotiate in good faith with the Association regarding any proposed changes to the practice of voluntary, uncompensated attendance of unit personnel on the annual trip to Washington, D.C., subject to the parameters of N.J.S.A. 34:13A-23.

Docket No. _____

(Public Employer)

Date: _____

By: _____

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

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, PO Box 429, Trenton, NJ 08625-0429 (609) 984-7372