

P.E.R.C. NO. 85-92

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SPOTSWOOD BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-82-262-138

SPOTSWOOD OFFICE PERSONNEL
ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission holds that the Spotswood Board of Education violated the New Jersey Employer Employee Relations Act when it unilaterally altered an existing term and condition of employment by requiring school secretaries to work a full day, instead of a half day, on the day before Thanksgiving and on the day before Christmas vacation.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SPOTSWOOD BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-82-262-138

SPOTSWOOD OFFICE PERSONNEL
ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Golden, Shore, Zahn & Richmond, Esqs.
(Philip H. Shore, of Counsel)

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

DECISION AND ORDER

On April 6, 1982, the Spotswood Office Personnel Association ("Association") filed an unfair practice charge against the Spotswood Board of Education ("Board") with the Public Employment Relations Commission. The charge, as later amended, alleges that the Board violated subsections 5.4(a)(1) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it denied its school secretaries on 10 month and 12 month contracts a half day off on the days before Thanksgiving and Christmas recess in 1981.^{2/}

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; 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."

^{2/} The charge had also alleged that this denial violated subsections 5.4(a)(3) and (7), but these conclusory allegations were dismissed because they were not factually specific.

Commission staff agents made an attempt to defer this case to binding arbitration under the parties' negotiated grievance procedures. That attempt was unsuccessful.

On June 11, 1982, the Director of Unfair Practices issued a Complaint and Notice of Hearing. At the parties' request, further proceedings were then held in abeyance while they explored a possible settlement.

After settlement discussions broke down, the Board filed an Answer. It admitted that it required all secretaries to work full days before Thanksgiving and Christmas recess in 1981. It denied, however, that this requirement unilaterally altered established terms and conditions of employment and averred that the requirement was consistent with the parties' collective negotiations agreement and past practice.

On January 17, 1984, Chief Hearing Examiner Edmund G. Gerber conducted a hearing. The parties made motions,^{3/} examined witnesses and introduced evidence. They waived closing argument, but filed post-hearing briefs by April 25, 1984.

On May 30, 1984, the Chief Hearing Examiner issued a report and recommended decision. H.E. No. 84-60, 10 NJPER 318 (¶15152 1984) (copy attached). He concluded that the Board violated subsections 5.4(a)(1) and (5) when it denied school secretaries, like teachers, a half day off before Thanksgiving.

^{3/} The Board twice moved unsuccessfully to dismiss the Complaint based on its reading of the parties' contract.

The Association then filed a motion for reconsideration of the recommended decision since it had not addressed the allegations with respect to the day before Christmas recess. The Chairman of the Commission granted this motion and remanded the matter to the Chief Hearing Examiner to issue a supplemental report.

On October 12, 1984, the Chief Hearing Examiner issued his second report. H.E. No. 85-16, 10 NJPER 610 (¶15286 1984) (copy attached). He concluded that the Board violated 5.4(a)(1) and (5) when it denied school secretaries, like teachers, a half day off before Christmas recess.

On November 15, 1984, the Board filed exceptions. It asserts the Hearing Examiner erred in: (1) overruling a leading question; (2) finding that prior to 1980-81, 10 month secretaries worked the same calendar as professional staff when school was in session; (3) finding that prior to 1980-81, 10 month secretaries were released on the two days in question 30 to 45 minutes after teachers left the schools; (4) admitting an unsigned photocopy of an alleged memorandum of agreement; (5) partially basing his decision on that memorandum; and (6) recommending that the Board be ordered to pay school secretaries for an additional 2 1/2 hours of work on each of the two days in question.^{4/}

We have reviewed the record. The pertinent facts follow.

The Association represents the Board's school secretaries on either 10 or 12 month contracts and Business Office secretaries on 12 month contracts. The Board and the Association entered

^{4/} The Board also requested oral argument. We deny that request.

a collective negotiations agreement effective 1980-1981; that contract was in effect when the instant dispute arose. Article VIII provides, in part:

B. School Secretary - 12 Months Work Year:

1. Same as calendar for professional staff when school is in session.
2. Will not be required to report to work when schools are closed because of weather conditions or other emergencies.
3. On school days having delayed openings, secretary must report one-half (1/2) hour before students.

C. School Secretary/Clerk - 10 Months Work Year:

1. September 1 through June 30 - same calendar as professional staff when school is in session.
2. July 1 through August 30 - per diem rate; number of days as requested by building principal - maximum 20 days.

* * *

E. Business Office - 12 Months Work Year:

1. Calendar shall be same as Board Office.
2. Personnel shall be entitled to fifteen (15) paid holidays as per contract, plus paid vacation as noted in ARTICLE XI.

Prior to 1980-81, 10 month school secretaries were historically released 30 to 45 minutes after teachers left the school buildings on the days before Thanksgiving and Christmas recess.^{5/} The superintendent routinely approved early release of secretaries on these days, and each building administrator would then release the secretaries in that building when the students and teachers had left, work was done, and the building was secure.

^{5/} The Chief Hearing Examiner did not err in stating that the contract prior to 1980-81 provided that 10 month secretaries "worked the same calendar as professional staff when school is in session." The Association's president testified, without contradiction, that previous contracts had contained that clause for 10 month secretaries.

Prior to 1980-1981, 12 month secretaries, whether in schools or the central administration office, worked a full day on the days before Thanksgiving and Christmas recess.^{6/} These work days concided with the central administration office's work days. School secretaries on 12 month contracts received 15 specified holidays per year.

Building administrators work on 12 month contracts. Like Board office secretaries, they follow the Board office calendar. There is no separate calendar for building administrators.

Calendars for the Spotswood Public School for the years 1978-1979, 1979-1980, 1980-1981, and 1981-1982 were introduced into evidence. These calendars set forth the days school would be open or closed for staff and students. For example, the calendars listed the days schools were closed, or open half day, because of NJEA conventions, staff in-service days, and parent/teacher conferences. Each calendar, with one minor exception, listed the days before Thanksgiving and Christmas recess as four hour days.^{7/}

The purpose of adopting Article VIII B in 1980-81 was to conform the work year and days of 12 month school secretaries to the calendar for professional staff when school is in session; the work year and days of 10 month school secretaries had already been conformed. Board office secretaries, by contrast, were to

^{6/} Apparently, some secretaries who work in the central administration building are nevertheless classified as school secretaries.

^{7/} The 1978-1979 calendar did not state that elementary schools would be open for only four hours on the day before Thanksgiving.

continue to work according to the central office calendar. Because the change from the central office calendar to the professional staff calendar would mean less work time for 12 month school secretaries than 12 month central office secretaries, the parties agreed 12 month secretaries would be paid less money.^{8/}

The Association's negotiators believed that the contract's incorporation of the "professional staff calendar" referred to the calendar governing teacher work days. These negotiators testified that they discussed this understanding with the Board's negotiators who agreed. The Association's negotiators believed this understanding meant that the 12 month school secretaries, like teachers but not like business office secretaries, would now be released early on Thanksgiving and Christmas consistent with the contract and past practice concerning 10 month school secretaries. The Board's superintendent, who attended the negotiations sessions but was not a member of the negotiations team, believed that the contract's incorporation of the "professional staff calendar" referred to the work day of building administrators and was meant to insure that school secretaries would not be required to work when building administrators were not, i.e. during Christmas and Easter vacations.

The Association introduced into evidence, over objection, an unsigned, typed "Memo of Agreement" dated January 22, 1981.

^{8/} One of the work time changes resulting from the change of 12 month school secretaries to the professional staff calendar was that school secretaries would no longer be required to work during Christmas and Easter vacations when their assigned schools were not in session.

This memo stated that the Association and the Board "...have reached agreement on the following issues, subject to approval by the Board and ratification by the Association." The memo then listed 16 items such as tuition reimbursement, salaries, longevity payments, and evaluations. Item No. 5 stated: "Twelve (12) month secretaries will work the teachers' calendar when school is in session." The Association's president testified that she helped prepare this memo; she kept it in the Association's files in her house; and she did not know who typed it. She further testified that the memo was agreed to and that she knew there was a signed copy, presumably in the superintendent's office.^{9/}

^{9/} The Board objected to the introduction of this unsigned document because of the best evidence rule. We agree and will exclude it from the record and our considerations. The parties signed an agreement -- attached to the Complaint and the amended Answer -- containing an article specifying secretaries' work years and relating those work years, depending on the type of secretary, to the calendar for professional staff or the calendar for Board office personnel. The Association attempted to introduce the unsigned document for the purpose of showing that the Board had explicitly agreed that "professional staff calendar" meant "teachers' calendar." In the absence of a Board negotiator's signature or direct proof that the memo was at least received by the Board without objection, the document should not be admissible for that purpose. Instead, the Association should have produced a signed memorandum from its files or subpoenaed a copy, if it existed, from the Board's files. We distinguish, however, between the inadmissibility of this unsigned document and the admissibility of oral testimony given by Association negotiators that they and Board negotiators referred to the teachers' calendar in their discussions concerning secretarial work years.

We also agree with the Board that one question the Association's attorney asked to refresh the memory of a witness on direct examination may have been technically objectionable. This error was clearly harmless and isolated. We specifically disagree with the Board's assertion that this ruling "set the tone" for the rest of the hearing and find, based on our review of the record, that the hearing was fairly and properly conducted.

Under all the circumstances of this case, we believe the Board violated subsections 5.4(a)(1) and (5) when it unilaterally altered an established term and condition of employment for school secretaries concerning their right to be dismissed early on the days before Thanksgiving and Christmas recess. The Board did not, however, violate the Act by requiring Board office secretaries to work on full days.

The work year for 10 month school secretaries, when school is in session, is and has been modelled on the calendar for professional staff. There are only two calendars in this school district -- the calendar which sets forth the days schools will be open or closed for staff and students and the calendar which sets forth the days the Board offices will be open. Article VIII draws a clear distinction between the professional staff calendar and the Board office calendar. Ten month school secretaries, under the instant contract and its predecessor, clearly do not work under the Board office calendar. We believe, therefore, it is equally clear that "professional staff calendar" must mean the calendar setting forth days schools are open or closed; this belief is reinforced by noting that the professional staff calendar is to govern "when school is in session." Under that calendar, it has long been established that schools would only be open a half-day on the days before Thanksgiving and Christmas recess. The past practice concerning 10 month school secretaries has been consistent with the understanding: prior to 1981, they had always been released 30-45 minutes after students and teachers

had been dismissed. The order in 1981 that 10 month secretaries work a full day before Thanksgiving and Christmas recess clearly repudiated the parties' long-established past practice and contract concerning the right of 10 month school secretaries to be released early on these two days.

The work year for 12 month school secretaries is now, but has not been before, modelled on the calendar for professional staff. These employees had previously worked according to the Board Office calendar, with specified vacation days not including the half days in question. In the 1980-81 contract, the work year for these employees, when school was in session, was switched off the Board Office calendar and onto the professional staff calendar; these employees accordingly received more time-off and less pay. We have already explained why "professional staff calendar" must mean the calendar setting forth when schools are open or closed and providing that the days before Thanksgiving and Christmas recess were half-days. We specifically reject the Board's contention that in extending the phrase "professional staff calendar" from 10 month school secretaries to 12 month school secretaries, the parties meant only to conform the workdays of these secretaries and their building administrators. Building administrators work according to the Board office calendar, the very calendar previously used by 12 month secretaries and now abandoned in favor of the professional staff calendar. In short, under the parties' 1980-81 contract, 12 month school secretaries were entitled to the same holidays as 10 month secretaries, and the Board clearly and without negotiations repudiated that commitment

when it required 12 month school secretaries to work full days before Thanksgiving and Christmas recess.

By way of contrast, the work year for 12 month Board office secretaries was and still is modelled on the Board Office calendar. These employees are entitled to 15 paid and specified holidays. They are not entitled to a half day off before Thanksgiving or Christmas recess.

We finally consider the remedy for the Board's repudiation of the rights of 10 and 12 month school secretaries. The Hearing Examiner recommended that the Board be ordered to pay affected secretaries 2 1/2 hours pay for each half day they were ordered to work. The Board excepts to this remedy as being arbitrary and unsupported. We disagree. The record is clear that school secretaries historically were released 30-45 minutes after students and teachers were dismissed; in 1981, however, they were required to work a full day. That order extended their work day by 2 1/4 to 2 1/2 hours. Because the Board's full day work order made it impossible to fix with precision when the secretaries would have been released ordinarily (i.e. 30 or 45 minutes after dismissal or somewhere in between), we believe it is reasonable to fix the extra time worked each day at 2 1/2 hours. A lesser remedy would improperly reward a wrongdoer for uncertainty caused by the wrong it committed.

ORDER

The Spotswood Board of Education is ordered to:

- I. 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 unilaterally altering the established term and condition of employment concerning the right of 10 and 12 month school secretaries to be released early the days before Thanksgiving and Christmas recess;

2. Refusing to negotiate in good faith and unilaterally altering the established term and condition of employment concerning the right of 10 and 12 month school secretaries to be released early the days before Thanksgiving and Christmas recess.

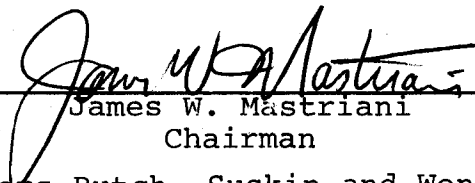
II. Take the following affirmative action:

1. Pay all 10 and 12 month school secretaries who worked full days on November 26 and/or December 22, 1981 for a total of 2 1/2 hours each day. This pay will be based on the hourly equivalent of each secretary's respective salary on that date, together with 12% simple interest per annum pursuant to R. 4:42-11.

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, reasonable steps shall be taken by the Respondent Board to insure that such notices are not altered, defaced, or covered by other materials.

3. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent Board has taken to comply herewith.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Suskin and Wenzler voted in favor of this decision. None opposed. Commissioners Hipp and Newbaker abstained. Commissioner Graves was not present.

DATED: Trenton, New Jersey
February 25, 1985
ISSUED: February 26, 1985

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 unilaterally altering the established term and condition of employment concerning the right of 10 and 12 month school secretaries to be released early the days before Thanksgiving and Christmas recess.

WE WILL NOT refuse to negotiate in good faith and unilaterally alter the established term and condition of employment concerning the right of 10 and 12 month school secretaries to be released early the days before Thanksgiving and Christmas recess.

WE WILL pay all 10 and 12 month school secretaries who worked full days on November 26 and/or December 22, 1981 for a total of 2 1/2 hours each day. This pay will be based on the hourly equivalent of each secretary's respective salary on that date, together with 12% simple interest per annum pursuant to R. 4:42-11.

SPOTSWOOD BOARD OF EDUCATION

(Public Employer)

Dated _____

By _____

(Title)

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

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission,
429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.

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

In the Matter of

SPOTSWOOD BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-82-262-138

SPOTSWOOD OFFICE PERSONNEL
ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends that the Commission find that the Spotswood Board of Education violated the New Jersey Employer-Employee Relations Act when it failed to release its school secretaries early on the day before Thanksgiving. This particular day was scheduled as an early release day for students and teachers and the Hearing Examiner found that the contract provision which stated that the school secretaries would work the same calendar as professional staff granted the secretaries the same 1/2 day schedule as enjoyed by the teachers in the district. The Board's refusal to release the secretaries early on the day in question constituted a violation of subsections 5.4(a)(1) and (5).

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

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SPOTSWOOD BOARD OF EDUCATION,

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-and-

Docket No. CO-82-262-138

SPOTSWOOD OFFICE PERSONNEL
ASSOCIATION,

Charging Party.

Appearances:

For the Respondent
Golden, Shore, Zahn & Richmond
(Philip H. Shore, Of Counsel)

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

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

On April 6, 1982, the Spotswood Office Personnel Association ("Association") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") alleging that the Spotswood Board of Education committed an unfair practice on November 25, 1981. It was alleged that the secretaries employed by the Board on a ten-month basis historically were allowed to go home early on the days before Thanksgiving and Christmas. A change in the contract was negotiated between the parties so that secretaries employed by the Board on a twelve-month schedule would be able to enjoy this same benefit. However, on November 25, 1981, the day before Thanksgiving, both ten-month and twelve-month secretaries were required to work the normal work day until 4:00 p.m. and not go home early. This, it was alleged,

was violative of N.J.S.A. 34:13A5.4(a)(1), (3), (5) and (7) of the Act. ^{1/} It appearing that the allegations of the charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on June 11, 1982 whereupon the parties requested that this Complaint and Notice of Hearing be held in abeyance while the parties engaged in settlement talks. This request was granted. However, said talks were unsuccessful and, pursuant to a "Motion For a More Definite Charge or Dismissal of Charge" filed by the Respondent, on November 15, 1982, the undersigned dismissed the allegations of the charge that subsections 3 and 7 of the Act were violated. No facts were alleged which constituted violations of these subsections. It was further ordered that certain paragraphs of the charge be amended since their clear meaning could not be readily ascertained from a simple reading of the charge. The charge was so amended and on December 15, 1982, the Respondent filed an answer admitting that the secretaries were required to work a full day on the day before Thanksgiving and were not dismissed early. It was, however, denied that this action was violative of the contract and, accordingly, this was not a unilateral change in the terms and conditions of employment of said secretaries. On January 17, 1984, a hearing was held before the

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act; (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the right 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; (7) Violating any of the rules and regulations established by the Commission."

undersigned at which time the parties were given an opportunity to examine and cross-examine witnesses, present evidence and argue orally. Both parties submitted briefs and a reply brief was submitted by the respondent on April 25, 1984.

The Spotswood Board of Education and the Spotswood Office Personnel Association are parties to a collective negotiations agreement. The Association represents secretaries and clerks employed by the Board. The employees in question are school secretaries. There are two types of secretaries, twelve-month, who are assigned to the Board's administrative offices and ten-month, who are assigned to the various schools in the district. ^{2/}

The contract, prior to the 1980-81 contract, provided that ten-month secretaries "worked the same calendar as professional staff when school is in session". There was no such provision for twelve-month secretaries. In the 1980-81 contract, ^{3/} the contract was revised so that twelve-month secretaries would also work "the same calendar as the professional staff when school is in session".

On the day before Thanksgiving, November 25, 1981, all secretaries employed by the Board were required to work a full-day, that is until 4:00 p.m. It is the Association's contention that the secretaries should have been released early, thirty to forty-five minutes after the teachers left their buildings.

Prior to the 1980-81 school year, the days before Thanksgiving and Christmas were typically half-days in the school district. On those

^{2/} There are certain exceptions which are not relevant to this discussion.

^{3/} This contract was in effect for the year in question.

days the secretaries in the schools (i.e. the ten-month secretaries) would be released thirty to forty-five minutes after the teachers left the school buildings. The twelve-month secretaries, those in the administrative offices, did not leave early. In 1980-81, the first year under the contract in question, the school board did not allow the secretaries to leave early, (although, apparently, some did), yet the Association did not contest the Board's action at that time. This does raise the question of why the Association slept on its rights if it believed the secretaries were entitled to the time off. Nevertheless, the Association argues that the parties negotiated for early dismissal for the 12 month secretaries and the secretaries had to receive a proportionate reduction in salary in order to get this new provision. The Association witnesses testified that "professional staff" referred to teachers and the teachers in the district were released early on the days before Thanksgiving and Christmas. The Board maintains that the term "Professional Staff" in the contract refers to the administrators and that the secretaries had to work the administrators' hours on the days before Thanksgiving and Christmas.

The Association, however, produced in evidence a memo of agreement which although unsigned, states: "Twelve (12) month secretaries will work the teachers' calendar when school is in session". It is the Association's contention that this was the language which was negotiated and without its knowledge or consent, when the Board had the contract printed, "teacher" was deleted and "professional staff" was substituted in its place. Although the Board objected to the consideration of this memorandum, since it was unsigned, there is no evidence which calls into question the document's authenticity.

The Board's witness, the superintendent of schools, could not recollect negotiations concerning this provision. Since the memo clarifies an ambiguity in the contract language and does not contradict the language of the contract, the memo is admissible. The memorandum is compelling evidence that professional staff in the contract is a reference to the teachers in the district. I so find that "same calendar as professional staff" refers to teachers not administrators.

The Board also argued that the contract provision does not cover the instant situation. The Board maintains even if the secretaries were entitled to follow the teachers' calendar under the contract the contract was not violated. This dispute, it is argued, does not concern the school calendar; the dispute concerns hours worked on one particular day. The Board relies on the dictionary meaning of the word calendar, i.e., the division of time into years, months, weeks and days, but not the hours in any particular day.

However, the Board's own historical use of the word calendar was more expansive than the definition it now urges. The Board printed and distributed calendars at the beginning of each school year. These school calendars identify the days before Christmas and Thanksgiving as "four hours session(s)". The Board's own calendars support the Association's definition of calendar. It is noted that school calendars commonly include 1/2 days. ^{4/} Accordingly, the Board's argument as to the meaning of the word calendar must be rejected.

There was testimony at the hearing to the effect that secretaries were never free to leave at the conclusion of the four-hour sessions. Granting of said leave was solely at the discretion of the

^{4/} The Commission may use its expertise to take administrative notice of commonly accepted practices in public sector labor relations.

superintendent. The superintendent or other administrator in charge would wait until all students, particularly those from outside of the school district, had an opportunity to arrive home safely. Once the administrator was satisfied that this had happened, he, or she, would then call up the various schools and announce to the principals that they were free to send the secretaries home. This testimony, however, does not establish that the secretaries did not have the contractual right to be released early. Rather, the Board was simply exercising its non-negotiable right to have employees available if any students needed assistance before they arrived home. The Association never challenged this right in the past nor do they do so in the instant action. The 10 month secretaries historically were released thirty to thirty-five minutes after the teachers were released on four-hour session days.

The contract language envisions that, on days when the school calendar provides for four-hour sessions, all secretaries would be released from their duties after the conclusion of a four-hour session, subject to the Board's legitimate policy of allowing sufficient time for all students to return home. The Board's refusal to release the secretaries on the day before Thanksgiving after the four-hour session as stated in the calendar, constitutes a violation of subsection 5.4(a)(5) and, derivatively, subsection (a)(1). In this regard see In re Wharton Bd. of Ed., P.E.R.C. No. 83-35, 8 NJPER 570 (¶ 13263 1982); In re Morris Park Commission, P.E.R.C. No. 83-31, 8 NJPER 561 (¶ 13259 1982). The Commission has held that during the term of an agreement, if a public employer desires to alter an established practice governing working conditions which are not an implied term of the agreement, the

employer must first negotiate such proposed changes with the employees' representative prior to its implementation.

RECOMMENDED ORDER

Accordingly, it is hereby recommended that the Commission issue the following 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 attempting to alter the provisions of the current agreement as to the calendar to be worked by both 10 and 12 month secretaries.

2. Unilaterally making changes or modifications in the collective negotiations agreement unless and until agreed upon by the Association.


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

1. Reimburse all 10 and 12 month secretaries in the district who worked a full day on November 26, 1981 for the additional 2 1/2 hours they had to work on that day in violation of the contract. This compensation will be based on the hourly equivalent of their respective salaries on that date, together with interest at the rate of 12% per annum since that date.

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 taken

by the Respondent Board to insure that such notices are not altered, defaced or covered by other materials.

3. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent Board has taken to comply herewith.



Edmund G. Gerber
Chief Hearing Examiner

DATED: May 30, 1984
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 attempting to alter the provisions of the current agreement as to the calendar to be worked by both 10 and 12 month secretaries.

WE WILL NOT unilaterally make changes or modifications in the collective negotiations agreement unless and until agreed upon by the Association.

WE WILL reimburse all 10 and 12 month secretaries in the district who worked a full day on November 26, 1981 for the additional 2 1/2 hours they had to work on that day in violation of the contract. This compensation will be based on the hourly equivalent of their respective salaries on that date, together with interest at the rate of 12% per annum since that date.

SPOTSWOOD 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 James Mastriani, Chairman, Public Employment Relations Commission, 429 East State Street, Trenton, New Jersey 08608 Telephone (609) 292-9830.

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

In the Matter of

SPOTSWOOD BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-82-262-138

SPOTSWOOD OFFICE PERSONNEL
ASSOCIATION,

Charging Party.

SYNOPSIS

The Charging Party filed a Motion for Reconsideration of a Hearing Examiner's Recommended Report and Decision. The Respondent opposed the Motion on procedural grounds claiming that a Hearing Examiner had no jurisdiction to hear a Motion for Reconsideration. The Public Employment Relations Commission ("PERC") upon consideration of the Respondent's application, remanded this matter for reconsideration to the Hearing Examiner on its own motion.

The Hearing Examiner granted the Motion for Reconsideration and modified the recommended order. The original Report and Recommended Decision found certain secretaries employed by the Spotswood Board of Education ("Board") were denied time off on the day before Thanksgiving recess. The motion argues that it should have been found that the secretaries were also unlawfully deprived of one-half day leave time on the day before the Christmas vacation. Although the Charging Party in its arguments did not discuss the leave time on the day before Christmas, there was credible testimony in the record stating that secretaries were entitled to such leave and, further, there was credible evidence that secretaries were entitled to the same under the contract. Accordingly, the Motion for Reconsideration was granted, the Recommended Order to the Commission was so amended.

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

SPOTSWOOD BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-82-262-138

SPOTSWOOD OFFICE PERSONNEL
ASSOCIATION,

Charging Party.

Appearances:

For the Respondent
Golden, Shore, Zahn & Richmond
(Philip H. Shore, Of Counsel)

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

HEARING EXAMINER'S RECOMMENDED DECISION
ON MOTION FOR RECONSIDERATION

On May 30, 1984, I issued a Hearing Examiner's Recommended Report and Decision in this matter and on June 4, 1984, Stephen E. Klausner, Attorney for the Charging Party filed the instant Motion to Reconsider. Although Philip H. Shore, the Attorney for the Spotswood Board of Education ("Board") opposed said application, the Public Employment Relations Commission ("Commission") has remanded this matter for my consideration of the Motion to Reconsider.

In the initial decision, it was recommended that the Commission find the Board committed an unfair practice when, in 1981, it ordered certain secretaries to work a full day on the day before Thanksgiving. It is the contention of the Association that a similar finding should have been made for the Board's conduct in requiring these same secre-

taries to work a full day on the day before Christmas recess in that same year.

The testimony of Joan Adelung (T.Pg.41) was that the secretaries in question were required to work a full day on the day before Christmas recess (as well as the day before Thanksgiving) but the Association never agreed to this change in the calendar. Miss Adelung's testimony, was credible ^{1/} and uncontradicted. I so find that both 10 and 12 month secretaries were required to work a full day on the day before Christmas recess in 1981.

There was no testimony concerning whether or not the day before Christmas recess was scheduled to be a half-day. However, the 1981-1982 school calendar for the Spotswood Public Schools (CP-4 in evidence) provides that Wednesday, December 23 is a "Four-Hour Session, Grades K-12."

Accordingly, I find that the day before Christmas recess was scheduled to be a half-day.

For the reasons expressed in the original Hearing Examiner's Recommended Report and Decision, I find that the Board's refusal to release the secretaries on the day before Christmas recess after the four-hour session as reflected in the school calendar, constitutes a violation of Subsection 5.4A-5 and derivatively, Subsection 5.4A-1.

I therefore recommend that the Recommended Order and accompanying Notice be amended as follows:

RECOMMENDED ORDER

Accordingly, it is hereby recommended that the Commission issue the following ORDER:

A. That the respondent Board cease and desist from:

^{1/} Her testimony was candid. She admitted to facts which were adverse to her position at the hearing.

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly by attempting to alter the provisions of the current agreement as to the calendar to be worked by both 10 and 12 month secretaries.

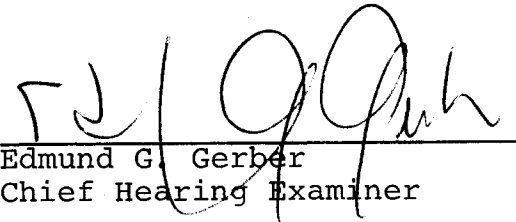
2. Unilaterally making changes or modifications in the collective negotiations agreement unless and until agreed upon by the Association.

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

1. Reimburse all 10 and 12 month secretaries in the district who worked a full days on both November 26 and December 22, 1981, for the total additional 5 hours of work, 2 1/2 hours per day, in violation of the contract. This compensation will be based on the hourly equivalent of their respective salaries on that date, together with interest at the rate of 12% per annum since that date.

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 taken by the Respondent Board to insure that such notices are not altered, defaced or covered by other materials.

3. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent Board has taken to comply herewith.


Edmund G. Gerber
Chief Hearing Examiner

DATED: October 12, 1984
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 attempting to alter the provisions of the current agreement as to the calendar to be worked by both 10 and 12 month secretaries.

WE WILL NOT unilaterally make changes or modifications in the collective negotiations agreement unless and until agreed upon by the Association.

WE WILL reimburse all 10 and 12 month secretaries in the district who worked full days on November 26, 1981 and December 22, 1981 for the additional 5 hours they had to work at 2 1/2 hours a day in violation of the contract. This compensation will be based on the hourly equivalent of their respective salaries on that date, together with interest at the rate of 12% per annum since that date.

SPOTSWOOD 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 James Mastriani, Chairman, Public Employment Relations Commission, 429 East State Street, Trenton, New Jersey 08608 Telephone (609) 292-9830