

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MATAWAN-ABERDEEN REGIONAL  
BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-81-34-134

MATAWAN REGIONAL TEACHERS  
ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission holds that the Matawan-Aberdeen Board of Education violated the New Jersey Employer-Employee Relations Act, specifically, N.J.S.A. 34:13A-5.4(a)(5), when it refused to negotiate with the Matawan Teachers Association over the terms and conditions of employment for the position of Coordinator of Theatre Arts. The Commission does not find a violation of either N.J.S.A. 34:13A-5.4(a)(2) or (3). Since, after the infraction, the parties have come to agree that the position in question is within the negotiations unit and since the terms and conditions of employment are not alleged to be in conflict with the negotiated agreement, the Commission limits relief to an order to cease and desist from refusing to negotiate over the terms and conditions of employment of the Coordinator of Theatre Arts and a notice.

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Appearances:

For the Respondent, Vincent C. DeMaio, Esq., of Counsel

For the Charging Party, Rothbard, Harris & Oxfeld, Esqs.  
(Emil Oxfeld, of Counsel)

DECISION AND ORDER

An Unfair Practice Charge was filed with the Public Employment Relations Commission on August 7, 1980 by the Matawan Regional Teachers Association (the "Association") alleging that the Matawan Aberdeen Regional Board of Education (the "Board") had violated the New Jersey Employer-Employee Relations Act, as amended, by unilaterally and without negotiations setting the salary for a position represented by the Association, and by removing said position from the collective negotiations unit represented by the Association, and adding it to another negotiating unit of board of education employees. Specifically, the Association alleged that the Board's actions violated N.J.S.A. 34:13A-5.4(a)(2), (3) and (5).<sup>1/</sup>

<sup>1/</sup> These subsections provide that public employers, their representatives or agents are prohibited from: "(2) Dominating or interfering with the formation, existence or administration of  
(Continued)

It appearing that the allegations of the charge, if true, might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on April 9, 1981 by Carl Kurtzman, Director of Unfair Practices of PERC. On October 21, 1981, the parties appeared before Commission Hearing Examiner Alan R. Howe and entered into a complete stipulation of all the relevant facts. In lieu of filing briefs, the parties argued orally before Hearing Examiner Howe and then agreed to waive the issuance of a Hearing Examiner's Recommended Report and Decision in order that the case could be determined directly by the Commission. The matter is now properly before us for decision.

A summary of the relevant facts shows that prior to January 1980, Theodore Kurdyla held the position of Special Projects Teacher, a position which was represented by the Association, and was paid a salary in accordance with the salary guide contained in a collective negotiations agreement between the parties. Mr. Kurdyla also received a stipend for certain dramatic production efforts which he performed on a co-curricular basis. At a public meeting of the Board on January 28, 1980, a new title was created for Mr. Kurdyla, namely, Coordinator of Theatre Arts.<sup>2/</sup> The salary

1/ (Continued) any employee organization. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this Act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

2/ In their stipulation of facts, the parties refer to this position as either Coordinator of Theatre Arts or Coordinator of Performing Arts. It is apparent from the stipulated record that the two titles are interchangeable.

set by the Board was alleged by the Charging Party to be in conflict with applicable provisions of the collective agreement and thereafter a grievance was filed by the Association concerning the salary established for this new position. In April 1980, the grievance was resolved at the Superintendent's level of the grievance procedure in favor of the Association.

Thereafter during the Summer of 1980, the Board repudiated the Superintendent's settlement of the grievance by recreating the position of Coordinator of Theatre Arts, taking the position out of the negotiations unit, and appointing Kurdyla to fill the position. The filing of the Unfair Practice Charge followed shortly thereafter. The parties also stipulated to the following post-filing events: On June 29, 1981, the Board formally abolished the position of Coordinator of Theatre Arts. On July 27, 1981, the Board assigned Mr. Kurdyla to perform the identical functions he had performed as a member of the bargaining unit and the Board recognized that he belonged in the unit as of that time. At a Board meeting on August 31, 1981, Mr. Kurdyla was granted a leave of absence from September 8, 1981 to January 31, 1982. Thereafter, in September 1981, the Administration posted the position of Acting Theatre Arts Coordinator, a position which is conceded to be within the collective negotiations unit between the parties. The parties further stipulated that the Acting Theatre Arts Coordinator position will be filled by a teacher or teachers who will receive stipends for particular co-curricular activities performed and who will be considered to be within the bargaining unit. The parties also placed in evidence the job description entitled "Coordinator of Performing Arts"

which was stipulated to be an accurate description of the duties performed by Kurdyla at all times relevant to this proceeding.<sup>3/</sup>

Before determining the merits of the instant dispute, we reject the Respondent's contention that since the position in question, at present, is within the collective negotiations unit, the instant dispute is moot. As indicated by the Charging Party, cessation of an alleged unfair practice does not necessarily render moot the violation of the Act which may have occurred. See Galloway Twp. Bd. of Ed. v. Galloway Twp. Education Assn, 78 N.J. 25 (1978). As the Commission stated in Passaic County Regional High School District No. 1, supra, n. 3, a public employer has the ability to refuse to negotiate with a majority representative concerning a particular employee who it believes is no longer appropriately in the negotiations unit. But that is a decision the employer makes at its peril, and the legality of its action is dependent upon the accuracy of its judgment. Additionally, an employer is always well advised to avoid potential

<sup>3/</sup> The job description contained deletions of supervisory responsibilities in terms of curriculum development and personnel and program evaluation. Counsel for the Charging Party, in his oral argument, contends that should Mr. Kurdyla, upon his return from his leave of absence, begin to perform such supervisory responsibilities, his position should nonetheless be considered one within the collective negotiations unit. As counsel for the Respondent points out, such argument is speculative. The only evidence before us is that the position does not contain such supervisory responsibilities and we will not render an advisory opinion as to whether or not performance of the supervisory responsibilities, deleted from the job description, would warrant the position's removal from the collective negotiations unit represented by the Association.

We would, however, suggest to both parties that a non-adversarial unit clarification procedure pursuant to N.J.A.C. 19:11-1.5 is available to resolve questions of proper unit placement based on a change in the duties assigned to a particular position. See In re Passaic County Regional High School Dist. No. 1, P.E.R.C. No. 77-19, 3 NJPER 39 (1977).

violations by filing an appropriate unit clarification petition when it believes an employee's changed responsibilities have removed the position from the unit. Here the employer, on two occasions, chose to bypass the Association and unilaterally take action with respect to the position in question. While we recognize that the Board has rescinded its prior actions since the filing of the Charge, we find that the Association is entitled to the decision on the merits which it still seeks.

Based upon the stipulated record established herein, we find that the Board did have an obligation to negotiate with the Association concerning salary for the Coordinator of Theatre Arts position since the stipulated record establishes that the duties performed by Mr. Kurdyla were considered by both parties to be within the collective negotiations unit. The Board's unilateral action in setting the salary and removing the position from the bargaining unit amounts to a violation of its obligation to negotiate as enforced through Subsection (a)(5). However, based upon the evidence produced by the Charging Party and the current status of this matter we do not find a violation of either Subsection (a)(2) or (a)(3) of the Act.

Since at the present time the position in question is within the bargaining unit, and the terms and conditions of employment are not alleged to be in conflict with the negotiated agreement, the only appropriate remedy in the instance case is an order for the Board to cease and desist from the action found violative of the Act.

ORDER

The Respondent, Matawan-Aberdeen Board of Education,

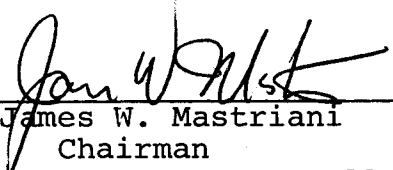
shall:

A. Cease and desist from refusing to negotiate with the Matawan Teachers Association with respect to the terms and conditions of employment for the positions within its negotiations unit, including specifically the position of Coordinator of Theatre Arts.

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

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

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Hartnett, Graves, Parcels and Suskin voted in favor of this decision. None opposed. Commissioners Hipp and Newbaker abstained.

DATED: Trenton, New Jersey  
December 15, 1981  
ISSUED: December 17, 1981

APPENDIX "A"  
**NOTICE TO ALL EMPLOYEES**

**PURSUANT TO**

AN ORDER OF THE

**PUBLIC EMPLOYMENT RELATIONS COMMISSION**

and in order to effectuate the policies of the

**NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,**

AS AMENDED

We hereby notify our employees that:

WE WILL cease and desist from refusing to negotiate with the Matawan Regional Teachers Association with respect to the terms and conditions of employment for all positions within the negotiations unit it represents, including specifically the position of Coordinator of Theatre Arts.

MATAWAN-ABERDEEN REGIONAL 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.