

P.E.R.C. NO. 81-98

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TRENTON BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-80-199-37

TRENTON EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

In an unfair practice which was submitted on stipulated facts, the Commission concluded that the Board did not violate the Act when it failed to negotiate over an isolated alteration in the pay schedule as a result of a unilateral extension of the vacation period. The extended vacation period fell on a day when pay checks were normally issued and delayed the pay day for three days. The Association argued that a clause in the collective agreement required the Board to issue checks on the last previous working day when a pay day fell on a school holiday or vacation day. The Commission dismissed the complaint in its entirety holding that the Board's activity did not warrant an unfair practice finding.

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Appearances:

For the Respondent, Merlino, Rottkamp & Grillo, Esqs.  
(Robert B. Rottkamp, of Counsel)

For the Charging Party, Greenberg & Mellk, Esqs.  
(Alan G. Kelley, of Counsel)

DECISION AND ORDER

On January 14, 1980, an Unfair Practice Charge was filed with the Public Employment Relations Commission by the Trenton Education Association (the "Association") alleging that the Trenton Board of Education (the "Board") engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act") by failing to pay the 1979 Christmas vacation check in December of that year.

A complaint was issued in this matter on October 16, 1980, and a pre-hearing conference was held on October 28, 1980. Pursuant to N.J.A.C. 19:14-6.7, the parties stipulated the facts in this matter at the pre-hearing conference and waived an evidentiary hearing and a Hearing Examiner's Recommended Report and Decision and agreed to submit this matter directly to the Commission based upon the formal pleadings, the stipulation of facts,

the contract between the parties, and the briefs.<sup>1/</sup> A timetable for the submission of briefs was established and the last brief was received by November 26, 1980.

Based upon the entire record, including the stipulated facts and the briefs submitted in this matter, the Commission finds the following:

1. The Board is a public employer within the meaning of the Act and is subject to its provisions.

2. The Association is an employee representative within the meaning of the Act and is subject to its provisions.

3. The Association alleges that the Board violated Sections (a)(1), (a)(3), and (a)(5) of the Act<sup>2/</sup> by failing to give the employees their Christmas vacation checks prior to the vacation period, when the normal pay day would fall on a day that was to be within the vacation period.

4. There is no disagreement between the parties that the check was not paid prior to the vacation period.

The parties' collective agreement which was in effect from September 1, 1978 through August 31, 1980, contained the following salary provision:

When a pay day falls on a school

<sup>1/</sup> The stipulated facts are appended to this decision.

<sup>2/</sup> These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this Act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

holiday or vacation day, teachers shall receive their pay checks on the last previous working day. Art. IV (B) (2).

Both parties agree that in late December 1979, the Board unilaterally extended the vacation period from January 3, 1980 through January 6, 1980. Originally the employees were scheduled to return to work on January 4, 1980, which was a Friday, and the next pay day. Since January 4 became a vacation day as a result of the Board's extension of the vacation period, the Board did not pay the employees until the following Monday, January 7.

The Commission notes that had the original calendar been adhered to, it is stipulated that checks would not have been due until January 4, 1980, after Christmas. It was only because January 4, 1980 became part of the Christmas vacation that this issue has arisen. There has been no objection made by the Association concerning the unilateral addition of extra vacation days which resulted in a benefit to the employees, merely an objection as to when the pay checks were issued.

The Association alleges that since January 4, 1980 was a vacation day, then pursuant to Article IV (B) (2) of the contract the employees should have received the vacation pay check on the last work day prior to the vacation which was December 21, 1979. The Association contends that the failure of the Board to give the pay checks on December 21, or to negotiate over the failure to issue the checks on that date, violated the contract and the cited portions of the Act.

The Commission has, on several occasions, addressed the issue of alteration of salary payment. It has been the holding of

the Commission that the date upon which employees receive their payment is a mandatorily negotiable term and condition of employment. A closer inspection of these decisions, however, clearly reveals that the factual patterns upon which they are based vary substantially from the present instance.

In the case of In re College of Medicine and Dentistry of New Jersey, P.E.R.C. No. 77-35, 3 NJPER 70 (1970), the Commission found there to be an unfair practice committed by the College when it unilaterally imposed a five day salary holdback without negotiating first with the union. A similar conclusion was reached by the Commission in a decision concerning In re Garfield Board of Education, P.E.R.C. No. 80-67, 5 NJPER 542 (1979). In that case the members of the Association had been receiving their pay checks on the fifteenth day and the last working day of each month. Subsequently the Board, with the Association's consent, changed the payment schedule to alternate Fridays. Later the Board unilaterally reinstated the old pay schedule and the Commission ruled this to be an unfair practice, stating that the time of salary payments intimately affects the welfare of employees and must be negotiated. A like decision has been reached in other cases.<sup>3/</sup>

In a very recent New Jersey Superior Court decision the court affirmed a Public Employment Relations Commission order directing that an implementation of a one-week salary holdback by the City of Paterson was a mandatory subject of negotiations.

<sup>3/</sup> In re City of Paterson, P.E.R.C. No. 80-68, 5 NJPER 543 (1979); and In re Garfield Board of Education, P.E.R.C. NO. 81-40, 6 NJPER \_\_\_\_\_ (¶ \_\_\_\_\_ 1980).

The holdback resulted in one weeks loss of wages to the employees for the year of 1979, and such loss could not be made up until a week after an employee terminated his employment. Such a holdback altered a wage payment practice that had been in effect for a considerable period of time.<sup>4/</sup>

The facts of the present case do not mirror the facts found in these cases. There has been no change in the payment schedule, unilaterally implemented by the Board. Rather in one isolated instance, not likely to reoccur, the Board changed its pay schedule by three days. This was an unusual situation where the Board, acting in good faith, extended the vacation which had the possible effect of changing the date for receipt of the January 4, 1980 pay check under the terms of the contract.

None of the cases previously cited involve such a minimal impact as does this present one. In those cases where unfair practices were found due to an employer's unilateral change in the pay system, those changes permanently altered practices long in existence. It must be emphasized that there has been no alteration in the Board's pay system to the employees. It was merely one isolated incident that has had a minimal impact, if any, on the agreement between the two parties. The level of significant pay alteration found in other cases is simply not reached by the Board in this instance.

Based upon our discussion herein and a review of the stipulated facts, we do not believe that the Board's

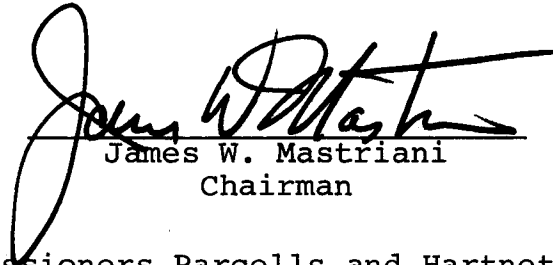
<sup>4/</sup> In the Matter of Paterson, Superior Court of New Jersey, App. Div. Docket No. A-1318-79 (1981), which affirmed P.E.R.C. No. 80-68, supra fn. 3.

conduct warrants a finding that an unfair practice has been committed. It is also clear that the Board's actions were not motivated by anti-union animus. The allegations of violation of N.J.S.A. 34:13A-5.4 (a) (1), (a) (3) and (a) (5) are therefore dismissed.

ORDER

The complaint in this matter is hereby dismissed in its entirety.

BY ORDER OF THE COMMISSION



James W. Mastriani  
Chairman

Chairman Mastriani and Commissioners Parcels and Hartnett voted for this decision. Commissioner Graves voted against this decision. Commissioners Hipp and Newbaker abstained.

DATED: Trenton, New Jersey  
March 10, 1981  
ISSUED: March 11, 1981

In the Matter of  
 Trenton Board of Education,  
 Public Employer,  
 -and-  
 Trenton Education Association,  
 Charging Party.

Docket No. CO-80-199-37

STIPULATIONS OF FACT

The parties in the above captioned matter stipulate to the following:

1. The Trenton Board of Education is a public employer within the meaning of the New Jersey Employer-Employee Relations Act.

2. The Trenton Education Association is an employee representative within the meaning of the Act.

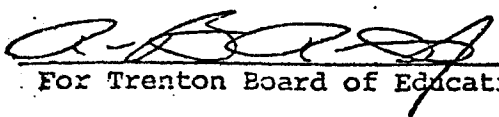
3. The Board and the Association were parties to a collective negotiations agreement effective September 1, 1978 through August 31, 1980, a copy of which is included herewith. The operative clause of the contract is Article IV (B) (2).

4. The parties agree that December 21, 1979 was the last work day and pay day in 1979 prior to the vacation which originally ran through January 1, 1980.

In late December 1979, the Board extended the vacation period through January 6, 1980. The normal pay day would have been January 4, 1980, but for the extended vacation. The unit members did receive the pay checks on January 7, 1980.

5. Pursuant to N.J.A.C. 19:14-6.7, the parties agree to waive a hearing and a hearing examiner's recommended report and decision and send this matter directly to the Commission for a decision based upon the charge, the complaint, the contract, the answer, the stipulations of fact, and the briefs.

6. The parties agree to the simultaneous submission of briefs in this matter by November 14, 1980.

 11-3-80  
 For Trenton Board of Education Date

For Trenton Education Association Date