

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NORTH ARLINGTON BOARD OF EDUCATION,

Respondent,

Docket No. CO-77-123-16

-and-

NORTH ARLINGTON TEACHERS ASSOCIATION,

Charging Party.

SYNOPSIS

The Association filed an unfair practice charge against the Board alleging that it violated N.J.S.A. 34:13A-5.4(a)(1) and (5) when, without negotiations, it unilaterally altered a term and condition of employment by adopting, on May 17, 1976, a policy that thereafter prior approval would be required for courses taken by teachers to move up on the salary guide above the Bachelor's and Master's degree levels.

The Hearing Examiner concluded that, with respect to prior approval for courses taken for movement on the salary guide above the Master's degree, the Association was time-barred since the Board had established this policy at least by November 1974 and no charge of unfair practice was filed within the six-month limitation after January 20, 1975, the effective date of the amendments to the Act which established unfair practices. With regard to prior approval for courses taken for movement on the salary guide above the Bachelor's level, the Hearing Examiner concluded that the Board exercised a management prerogative when it unilaterally determined to require such approval. Further, the Hearing Examiner rejected the Board's contention that the Commissioner of Education had jurisdiction of the instant dispute.

The Commission adopts the findings of fact and conclusions of law in the Hearing Examiner's Recommended Report and Decision to the extent that the Commission has jurisdiction over this dispute, and that the Association is time-barred with respect to the Board's requirement of prior approval for courses taken for movement on the salary guide above the Master's degree level. However, the Commission declines to adopt the Hearing Examiner's recommendation that the Board was exercising a management prerogative when it unilaterally determined to require prior approval for courses taken for movement on the salary guide above the Bachelor's level. Contrary to the Hearing Examiner, the Commission finds that requirements which an

employee must comply with in order to qualify for salary placement or advancement are terms and conditions of employment which must be negotiated.

Accordingly, the Commission orders the Board to cease and desist from interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act by refusing to negotiate over the requirement of prior approval for courses taken for movement on the salary guide above the Bachelor's level. Further, the Commission orders the Board to cease and desist from requiring such prior approval.

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Docket No. CO-77-123-16

NORTH ARLINGTON TEACHERS ASSOCIATION,

Charging Party.

Appearances

For the Respondent, Glenn Taylor Leonard, Esq.

For the Charging Party, Goldberg & Simon, Esqs.
(Mr. Theodore M. Simon, of Counsel)

DECISION AND ORDER

On November 12, 1976, an Unfair Practice Charge was filed with the Public Employment Relations Commission by the North Arlington Teachers Association (the "Association") alleging that the North Arlington Board of Education (the "Board") engaged in an unfair practice within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1, et seq. (the "Act"). Specifically, the Association alleged that without prior negotiations the Board unilaterally adopted, on May 17, 1976, a policy that prior approval of graduate courses must be obtained from the superintendent for these courses to be "credited" for advancement on the salary guide based on additional training and, with regard to credits beyond the Master's degree level, such credits would be considered for advancement only if earned after the receipt of the Master's degree. The Association contends that this

action by the Board constituted a violation of N.J.S.A. 34:13A-5.4 (a)(1) and (5).^{1/}

The charge was processed pursuant to the Commission's Rules and, it appearing to the Director of Unfair Practices 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 August 17, 1977. A hearing was held on December 13, 1977, February 1 and March 27, 1978, before Alan R. Howe, Hearing Examiner of the Commission, at which both parties were represented and were given an opportunity to present evidence, to examine witnesses, and to argue orally. Briefs were submitted by the Association and the Board on June 5, 1978 and June 23, 1978, respectively.

On September 1, 1978, the Hearing Examiner issued his Recommended Report and Decision^{2/} which included findings of fact, conclusions of law, and a recommended order. The original of the Report was filed with the Commission and copies were served upon all parties. A copy is attached to this Decision and Order and made a part hereof. Exceptions and a brief in support thereof were filed by the Association on October 2, 1978. A brief in support of the Hearing Examiner's Recommended Report and Decision was

^{1/} These subsections prohibit 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."

^{2/} H.E. No. 79-13, 4 NJPER 389 (Para 4174 1978).

filed by the Board on October 12, 1978.

The Hearing Examiner concluded that, with respect to prior approval for courses taken for movement on the salary guide above the Master's degree, the Association was time-barred since the Board had established this policy at least by November 1974 and no charge of unfair practice was filed within the six-month limitation after January 20, 1975, the effective date of the amendments to the Act which established our jurisdiction over unfair practices.

With regard to prior approval for courses taken for movement on the salary guide above the Bachelor's level, the Hearing Examiner concluded that the Board exercised a management prerogative when it unilaterally determined to require such approval. Further, the Hearing Examiner rejected the Board's contention that the Commissioner of Education had jurisdiction of the instant dispute.

The Commission adopts the findings of fact and conclusions of law in the Hearing Examiner's Recommended Report and Decision to the extent that the Commission has jurisdiction over this dispute,^{3/} and that the Association is time-barred with

^{3/} N.J.A.C. 19:14-7.3(b) provides that any exception to a Hearing Examiner's Report which is not urged shall be deemed to have been waived. We note, nevertheless, that our assertion of jurisdiction is consistent with two recent decisions relating to jurisdiction overlap or conflict between agencies: City of Hackensack v. Richard Winner, et al, Superior Court, Appellate Division, Docket No. A-2546-76, (decided 7/31/78) and Patricia Hinfey, et al v. Matawan Regional Board of Education, et al, and Director of Division on Civil Rights, N.J., Supreme Court Docket No. A-82, September Term 1977 (decided 8/31/78).

respect to the Board's requirement of prior approval for courses taken for movement on the salary guide above the Master's degree level. However, the Commission declines to adopt the Hearing Examiner's recommendation that the Board was exercising a management prerogative when it unilaterally determined to require prior approval for movement on the salary guide above the Bachelor's level.

The minutes of the Board meeting for May 3, 1976^{4/} state that, "Placement on the salary schedules shall be based on college degree, professional training, experience and other criteria which may jointly be determined in negotiations." All of the contracts between the parties from 1969 through 1978^{5/} contain salary guides which provide for advancement in salary based on years of service and advanced professional training. The salary guides contain such headings as "BA", "BA+15", "MA", AND "MA+10". However, the agreements contain no definitions of these various headings. It is apparent that the parties agreed in principle that a teacher's salary would be dependent, in part, upon his or her level of educational training, and further educational training would be one of the criteria for advancement on the salary scale.

The Board asserts that it is requiring prior approval to insure that the quality of courses taken justifies salary advancement. The Hearing Examiner agreed with the Board that the Board was exercising a management prerogative when it decided that

^{4/} Exhibit CP-2.

^{5/} Exhibits CP-3, CP-6, CP-8, CP-9, CP-10, J-1 and J-2.

prior approval of graduate courses would be required for advancement on the salary guide. This change was unilateral.

In its major exception the Association objected to the Hearing Examiner's finding that the Board did not commit an unfair practice when it unilaterally instituted the requirement of prior approval for courses.

We agree with the Association. Movement on the salary guide relates to compensation, a clear term and condition of employment which is mandatorily negotiable. In a prior decision,^{6/} we held that increments are part of salary and, as such, related to terms and conditions of employment. In support of that decision, we cited Bd. of Ed. of Englewood v. Englewood Teachers, 64 N.J. 1 (1973). That case is particularly pertinent because one of the grievances which the court found arbitrable under the parties' collective negotiations agreement involved the question of whether a particular course which a teacher had completed fulfilled the requirement for placement on the salary guide at the "MA+30" level.

Although the instant case involves movement along the salary guide based on educational attainment rather than receipt of normal increments, we are satisfied that the issue nevertheless concerns compensation and cannot be changed unilaterally.^{7/} Accord-

^{6/} In re Salem Community College, P.E.R.C. No. 78-22, 3 NJPER 375 (1978).

^{7/} This holding in Education Assoc. of Passaic v. Passaic Bd. of Ed., Docket No. A-3082-75, ___ N.J. Super. ___ (App. Div. 1977) is also consistent herewith. In that case, the determination that a requirement that teachers obtain additional credits in order to qualify for a sixth year salary increment was mandatorily negotiable.

ingly, the Board violated the Act by unilaterally changing this term and condition of employment with its May 17, 1976 salary policy promulgation.^{8/}

The Association also excepts to the Hearing Examiner's finding that, with respect to prior approval for courses taken for movement on the salary guide above the Master's degree, its unfair practice complaint is time-barred by the six-month statute of limitation. After a careful review of the record, the Commission concludes that the documentary evidence cited by the Hearing Examiner in his Recommended Order and Decision constitutes substantial credible evidence for this conclusion. Further, the Commission finds that the circumstances of this case do not raise any equitable considerations from which it could be concluded that the Association was "prevented" from filing its charge with PERC in a timely fashion. See Kaczmarek v. N.J. Turnpike Auth., 77 N.J. 329 (1978). It is apparent from the record that the Association, from at least November 18, 1974, was well aware that the Board had reestablished the policy of prior approval for courses above the Master's degree level and simply slept on its rights.

^{8/} That a unilateral change in terms and conditions of employment constitutes a violation of the Act has been affirmed by the Supreme Court in the two recently issued Galloway decisions: Galloway Bd. of Ed. v. Galloway Tp. Ed. Assn., P.E.R.C. No. 76-32, 2 NJPER 186 (1976), App. Div. Docket No. A-3016-75, rev'd. 149 N.J. Super. 352 (1977), rev'd ___ N.J. ___ (A-134/135 Sept. Term 1977 8/1/78) and Galloway Bd. of Ed. v. Galloway Tp. Assn. of Educational Secys. P.E.R.C. No. 76-31, 2 NJPER 182 (1976), App. Div. Docket No. A-3015-75, affmd in part, revd in part 149 N.J. Super. 346 (App. Div. 1977), affmd in part, revd in part, ___ N.J. ___ (A-132/133 Sept. Term 1977 8/1/78).

For the reasons set forth above the Commission finds that the Board violated N.J.S.A. 34:13A-5.4(a)(1) and (5) when, without prior negotiations, it unilaterally adopted, on May 17, 1976, a salary advancement policy that prior approval would be required for courses taken for movement on the salary guide above the Bachelor's level.

ORDER

Accordingly, for the reasons set forth above, IT IS HEREBY ORDERED that the Respondent, North Arlington Board of Education, shall:

1. Cease and desist from:

(a) Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act by refusing to negotiate over the requirement of prior approval for courses taken for movement on the salary guide above the Bachelor's level.

(b) Requiring prior approval for courses taken for movement on the salary guide above the Bachelor's level.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

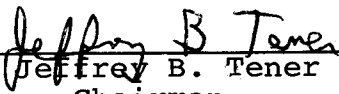
(a) Give credit to teachers for the purposes of placement on the salary guide for graduate courses completed subsequent to May 17, 1976 in the same manner as was done prior to that date; that is, without prior approval for courses taken beyond the Bachelor's degree but prior to receipt of the Master's degree.

(b) Post immediately, in plain sight, in all school buildings of the North Arlington Board of Education, copies of the attached notice marked "Appendix A". Copies of said notice, on forms to be provided by the Public Employment Relations Commission shall, after being duly signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof, and maintained by it for a period of at least sixty (60) consecutive days thereafter, including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that such notices will not be altered, defaced or covered by any other material.

(c) Notify the Chairman, in writing, within twenty (20) days of receipt of this Order what steps the Respondent has taken to comply herewith.

3. The complaint is dismissed to the extent that it alleges a violation of the Act based upon the Board's requirement that prior approval for courses taken beyond the Master's degree must be obtained.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Hartnett, Parcels, and Graves voted for this decision. Commissioners Hipp and Schwartz abstained. None opposed.

DATED: Trenton, New Jersey
October 23, 1978
ISSUED: October 25, 1978

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 interfering with, restraining or coercing our employees in the exercise of the rights guaranteed to them by refusing to negotiate over the requirement of prior approval for courses taken for movement on the salary guide above the Bachelor's level.

WE WILL cease and desist from requiring prior approval for courses taken for movement on the salary guide above the Bachelor's level.

WE WILL give credit to teachers for the purposes of placement on the salary guide for graduate courses completed subsequent to May 17, 1976 in the same manner as was done prior to that date; that is, without prior approval for courses taken beyond the Bachelor's degree but prior to receipt of the Master's degree.

NORTH ARLINGTON 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 Jeffrey B. Tener, Chairman, 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

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- and -

Docket No. CO-77-123-16

NORTH ARLINGTON TEACHERS ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission dismiss charges of unfair practices filed by the Association alleging that the Board unilaterally changed terms and conditions of employment without negotiations with the Association when it on May 17, 1976 adopted a policy that thereafter prior approval would be required for courses to be taken for movement on the salary guide above Bachelor's and Master's degrees.

The Hearing Examiner concluded that the Board exercised a management prerogative when it made the unilateral change and it was, therefore, under no duty to negotiate inasmuch as there was no term and condition of employment involved. The Hearing Examiner also noted that with respect to movement on the salary guide for courses taken above the Master's degree the Association was time-barred inasmuch as the Board had established such a policy in November 1974 and no charge of unfair practice was filed within the six-month limitation after the amendments to the New Jersey Employer-Employee Relations Act, effective January 20, 1975.

The Hearing Examiner rejected the contention of the Board that the Commissioner of Education had jurisdiction of the instant dispute. The Hearing Examiner stated that the Commission would have jurisdiction of whether or not an alleged unfair practice was committed and that such jurisdiction was exclusive under the Act.

A Hearing Examiner's Recommended Report and Decision is not a final administrative action 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.

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Charging Party.

Appearances:

For the North Arlington Board of Education
(Glenn T. Leonard, Esq.)

For the North Arlington Teachers Association
Goldberg and Simon, Esqs.
(Theodore M. Simon, Esq.; Sheldon H. Pincus on the Briefs)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on November 12, 1976 by the North Arlington Teachers Association (hereinafter the "Charging Party" or the "Association") alleging that the North Arlington Board of Education (hereinafter the "Respondent" or the "Board") has engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (hereinafter the "Act"), in that the Board unilaterally and without negotiations on May 17, 1976 adopted a salary level advancement policy which requires that advancement based on graduate credits can be "credited" only if there is approval by the superintendent prior to enrollment and, with regard to Master's credits beyond the Master's degree, such credits would be considered for advancement only if earned after the issuance of the Master's degree, which is alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1) and (5). ^{1/}

1/ These Subsections prohibit 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

(continued next page)

It appearing that the allegations of the Unfair Practice Charge may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on August 17, 1977. Pursuant to the Complaint and Notice of Hearing, hearings were held on December 13, 1977 and February 1 and March 27, 1978 in Newark, New Jersey, ^{2/} at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally.

A post-hearing brief was filed by the Association under date of June 1, 1978 and by the Respondent on June 23. A reply brief by the Association was filed on July 13, 1978. ^{3/}

An Unfair Practice Charge having been filed with the Commission, a question concerning alleged violations of the Act, as amended, exists and, after hearing and after consideration of the briefs by the parties, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

Upon the entire record, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. The North Arlington Board of Education is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. The North Arlington Teachers Association is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

1/ (continued)

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 pre-hearing was held on September 9, 1977. A hearing was originally scheduled to begin October 12, but was cancelled at the request of counsel for the Charging Party due to the Jewish Holiday, as a result of which the case was adjourned to November 22, the first mutually available date. This date was cancelled at the request of counsel for the Charging Party due to a conflict with another case before the Commission. The first mutually agreeable date thereafter was December 13, at which time the first hearing was held. The hearing was adjourned, pending settlement discussions, until February 1, 1978 when the second hearing was held. The delay between the second and third hearings was due to the unavailability of counsel for the Charging Party.

3/ Delay in the availability of the third hearing transcript resulted in a delay of the receipt of briefs. Briefs were initially due May 15, 1978 with 10 days for reply briefs.

3. The Board and the Association have had a collective relationship memorialized in collective negotiations agreements since September 1969 (CP-3, CP-6, CP-8, CP-9, CP-10, J-1 and J-2).

4. The collective negotiations agreements have never contained a provision with respect to the matter at issue between the parties, namely, a provision for prior approval, or lack thereof, by the Superintendent of courses to be taken for credit on the salary guide beyond "BA" and "MA". However, beginning with the 1975-77 collective negotiations agreement (J-1), the parties did provide that changes in salary status because of earned additional degree credits in order to become effective in September and February required that the teacher inform the Superintendent prior to specified dates of the anticipated additional earned credits (JE-1 and JE-2: Article VI, Salary, Paragraph F).

5. From 1963 through 1973, inclusive, the Board had a policy that all courses taken for salary credit beyond the Master's Degree must be approved by the Superintendent and that official transcripts of records for additional credits for salary recognition must be submitted to the Superintendent's office in order to give any teacher proper placement on the salary guide (R-2A through R-2K).

6. The minutes of a special meeting of the Board on November 18, 1974 indicate in part that:

- "2. The following policy was reestablished: 'Any degree credit for salary advancement beyond the master's degree scale, can be granted only if courses have been approved by the Superintendent of Schools prior to enrollment and earned after the issuance of the master's degree, on motion by Mr. Perlee, Mr. Holmes. On Roll Call, all members present voted in the affirmative, and none in the negative, it was so ordered.'" (R-1).

Thereafter, the documentation from the Superintendent's office conformed with the foregoing Board policy of November 18, 1974 (see R-2L through R-2N).

7. The Commissioner of Education decision in the case of John McAllen, Jr., confirmed that as of the date of that decision, February 24, 1975, the Board had not adopted a policy providing that "M.A. plus 30" on the salary guide required that the additional credits be taken after the master's degree in order to be placed at "M.A. plus 30" on the guide (CP-11).

8. The Association received a copy of the minutes of the special Board meeting of November 18, 1974 (R-1) shortly after the minutes were issued. No charge of unfair practices was ever filed by the Association with respect to that

action by the Board, notwithstanding that Chapter 123 became effective on January 20, 1975 and a charge of unfair practices could have been timely filed with the Commission under the Act on and after its effective date (See PBA Local 53 v. Town of Montclair, 70 N.J. 130 (1976) and City of Newark, P.E.R.C. No. 87, 1 NJPER 21 (1975)).

9. At a regular meeting of the Board on May 17, 1976, the Board adopted a salary policy for both BA and MA degrees, which was set forth in detail in a memorandum from the Office of the Superintendent under date of May 21, 1976 (CP-12B). The policy provides, in pertinent part, that in order to advance on the salary guide above the BA or MA degree, approval of the Superintendent of Schools for the courses to be taken must be obtained prior to enrollment and, in the case of the MA, the prior approved courses must be earned after the issuance of the Master's degree.

10. A charge of unfair practices, protesting the unilateral action of the Board in the matter of salary policy adopted May 17, 1976, was filed by the Association on November 12, 1976.

11. Evidence was adduced that specific teachers have taken and received credits, and advanced on the salary guide, all of which was consistent with Board policy in effect at the time the courses were taken. In other words, prior to May 17, 1976, courses beyond BA required no approval while courses beyond MA required prior approval at least back to 1963.

THE ISSUE

Did the Respondent Board violate the Act when it unilaterally, and without prior negotiations with the Association, adopted a salary policy on May 17, 1976 which required prior approval of the Superintendent for courses taken above BA and MA in order to advance on the salary guide?

DISCUSSION AND ANALYSIS

Positions of the Parties

The Association cites Board of Education of the City of Englewood v. Englewood Teachers Association, 64 N.J. 1 (1973) and East Orange Board of Education P.E.R.C. No. 77-60, 3 NJPER 126 (1977) for the proposition that working hours and compensation of teachers are terms and conditions of employment within the meaning of the Act and that proposed changes in such terms and conditions are mandatorily negotiable. The Association also cites cases in support of its contention that the Commission, and not the Commissioner of Education, has jurisdiction to hear

and decide the instant dispute.

The Respondent Board contends that it has negotiated with the Association the "quantitative" aspects of the salary policy, a conceded term and condition of employment within the meaning of Englewood, supra. However, Respondent Board contends that it has not, should not and cannot negotiate the "qualitative" aspects of the salary policy, i.e., the mechanism by which credits will be approved for movement on the salary guide. It contends that the approval process is purely a management prerogative, which is beyond the reach of negotiations and is in no way a term and condition of employment. The Respondent Board also argues that jurisdiction is vested in the Commissioner of Education over a dispute such as presented in the instant case and cites the case of Clifton Teachers Association v. Board of Education of Clifton, 136 N.J. Super 336 (App. Div. 1975).

The Respondent Board Did Not Violate
The Act When It unilaterally and
Without Negotiations on May 17, 1976
Adopted a Change in the Prior Salary
Policy With Respect to the Mechanism
for Advancement on The Salary Guide

The Hearing Examiner finds and concludes that the Respondent Board properly refused to negotiate with the Association with respect to the unilaterally adopted change in the salary policy of the Board. Plainly, the Respondent Board was exercising a management prerogative when it decided on May 17, 1976 that prior approval of the Superintendent would be required for courses taken for advancement on the salary guide both at the BA and MA levels.

In so deciding, the Hearing Examiner relies upon the rationale of the New Jersey Supreme Court in the Dunellen Trilogy, three cases decided in 1973 (64 N.J. 1 et seq.), the continuing force and effect of which was recently confirmed by the Supreme Court in the cases of State of New Jersey v. State Supervisory Employees Association et al. and Ridgefield Park Education Association v. Ridgefield Park Board of Education, both of which were decided on August 2, 1978.

The collective negotiations agreements are silent on prior approval, it being noted that the two most recent agreements make reference only to notification to the Superintendent with respect when advancement can be expected on the salary guide. There is no reference to approval or lack of approval by the Superintendent for courses to be taken for advancement on the salary guide. Hence, there is no prior past practice of negotiations by the parties in the area of the instant dispute.

The Hearing Examiner rejects the argument of the Respondent Board that the Commissioner of Education is vested with exclusive jurisdiction of the instant dispute. Clearly, if the Association was found to be correct in its contention that the Respondent Board unilaterally altered terms and conditions of employment then exclusive jurisdiction to remedy this change as an unfair practice would be vested in the Commission under Section 5.4(c) of the Act. Whether or not there is a violation of the Act as alleged is a matter for determination by the Hearing Examiner and ultimately the Commission. However, the Hearing Examiner, as indicated above, has determined that the dispute does not involve a change in terms and conditions of employment and therefore will recommend dismissal of the Complaint for that reason.

The Hearing Examiner notes that as to prior approval of courses beyond MA the Association would be time-barred from urging this as an unfair practice since the requirement of prior approval at least dated back to November 1974, if not 1963. The Association received timely notice of the Board's action of November 18, 1974 and would have had six months within which to file a charge of unfair practices, the forum for which was provided as of January 20, 1975, the effective date of Chapter 123 which vested unfair practice jurisdiction in the Commission. The MA policy was merely reaffirmed on May 17, 1976. As to the change in the BA salary policy on May 17, 1976, a charge was timely filed by the Association on November 12, 1976, that being a date within the six-month limitation period.

* * * *

Upon the foregoing, and upon the entire record in this case, the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

The Respondent Board did not violate N.J.S.A. 34:13A-5.4(a)(1) and (5) when it unilaterally on May 17, 1976 adopted a salary policy which required prior approval of the Superintendent before courses could be taken for advancement on the salary guide above BA and MA.

RECOMMENDED ORDER

The Respondent Board not having violated the Act, it is HEREBY ORDERED that the Complaint be dismissed in its entirety.

DATED: September 1, 1978
Trenton, New Jersey


Alan R. Howe, Hearing Examiner