

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

EDISON TOWNSHIP BOARD OF
EDUCATION,

Respondent,

-and-

Docket No. CO-82-115-82

EDISON TOWNSHIP ASSOCIATION
OF EDUCATIONAL SECRETARIES,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission holds that the Edison Township Board of Education did not violate the New Jersey Employer-Employee Relations Act when, after abolishing four "C" secretarial positions, it redistributed the work of these secretaries among "A" secretaries, "B" secretaries, and guidance secretaries within the negotiations unit represented by the Edison Township Association of Educational Secretaries and among aides outside that unit. The Commission found that secretaries and aides had a history of sharing clerical work and that the Board acted consistently with its past assignment patterns when it distributed the bulk of the "C" secretaries' work to other secretaries and then asked the aides to pitch in, as they had always done before, to complete the remaining tasks.

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Charging Party.

Appearances:

For the Respondent, R. Joseph Ferenczi, Esquire

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

DECISION AND ORDER

On February 5, 1981, the Edison Township Association of Educational Secretaries ("Association") filed an amended unfair practice charge against the Edison Township Board of Education ("Board") with the Public Employment Relations Commission. The charge, as amended, alleged that the Board violated the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically subsections 5.4(a)(1), (5) and (6), ^{1/} when in September 1981, it allegedly reassigned certain work previously performed by clerical employees in the Association's collective negotiations unit to other employees

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; (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; and (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

in job titles outside the unit.^{2/}

On March 1, 1982, the Director of Unfair Practices issued a Complaint and Notice of Hearing pursuant to N.J.A.C. 19:14-2.1. The Board then filed an Answer asserting, in part, that the reassignment of work was non-negotiable because it stemmed from a reduction in force.

On July 9, 1982, Hearing Examiner Alan R. Howe conducted a hearing at which the parties entered stipulations of fact, examined witnesses, and presented evidence. They waived oral argument, but filed post-hearing briefs by September 17, 1982.

On November 15, 1982, the Hearing Examiner issued his report and recommendations, H.E. No. 83-15, 8 NJPER ____ (¶ ____ 1982) (copy attached). He found that after the Board had abolished four "C" secretarial positions, it reassigned most of the work previously performed by these secretaries to "A" and "B" secretaries within the unit and some of the work to non-unit aides. He concluded that under Maywood Board of Education, P.E.R.C. No. 78-23, 3 NJPER 377 (1977), aff'd in part, rev'd in part, 168 N.J. Super. 45 (App. Div. 1979), pet. for certif. den., 81 N.J. 393 (1979) ("Maywood") and Milltown Bd. of Ed., P.E.R.C. No. 80-118, 6 NJPER 189 (1980), the Board had no obligation to negotiate the reassignment of work either in or outside of the unit. Therefore, he recommended dismissal of the Complaint.

On November 29, 1982, the Association filed Exceptions.

^{2/} The Association filed its original charge on November 25, 1981. This charge alleged that the Board assigned teachers to perform clerical functions during their duty periods in violation of §34:13A-5.4(a)(1) and (6).

Specifically, the Association maintains that the Board violated the Act by using non-unit personnel (the aides) to perform negotiations unit work. It cites Rutgers, The State University and Local 1761 AFSCME, 5 NJPER 186 (1979), aff'd App. Div. Docket No. A-3651-78 (7/1/80); Passaic County Regional High School, P.E.R.C. No. 81-70, 7 NJPER 155 (¶12068 1981), affirming H.E. No. 81-26, 7 NJPER 124 (¶12053 1981); In re Jersey City Bd. of Ed., P.E.R.C. No. 81-24, 6 NJPER 434 (¶11219 1980); In re County of Middlesex, P.E.R.C. No. 79-80, 5 NJPER 194 (¶19111 1979), aff'd in relevant part, App. Div. Docket No. A-3564-78; In re Deptford Bd. of Ed., P.E.R.C. No. 81-78, 7 NJPER 35 (¶13015 1980), aff'd App. Div. A-1818-80; and In re Matawan-Aberdeen Reg. Bd. of Ed., P.E.R.C. No. 82-56, 8 NJPER 31 (¶13013 1981). It requests the restoration of "C" secretary positions on a part-time basis, the payment of secretarial compensation to non-unit aides for the secretarial work they have performed, and a cease and desist order.

On December 2, 1982, the Board filed a response. The Board argues that the Association failed to establish by a preponderance of evidence that the contractual rights of "A" and "B" secretaries were violated, that the record establishes that only a minor portion of clerical duties were assigned to aides, and that Maywood controls this case.

We have reviewed the record. We will set forth the pertinent facts developed at the hearing as a background to our analysis of the legal questions presented.

The Association represents a unit of all school secretarial and clerical employees of the Board with the exception of

secretarial and clerical personnel in the Board and administrative offices. The Association does not represent school aides.

There are four junior high schools in Edison Township: John Adams, Thomas Jefferson, Woodrow Wilson, and Herbert Hoover. Prior to school year 1981-82, the Board had employed an "A" secretary, a "B" secretary, and a "C" secretary in the main office of each Junior high school. Prior to the 1981-1982 school year, the Board had also employed two general aides for six hours each day in each school.^{3/}

In the spring of 1981, the Board decided to eliminate the "C" secretary position in each school. The Board reached this decision because of a decline in enrollment totalling one-third of the student population during the previous four or five years. The Board also increased the work day of each aide by one hour. The work hours of the "A" and "B" secretaries remained the same.

The principals in each of the four schools redistributed the work previously performed by the "C" secretaries among the "A" and "B" secretaries, certain guidance department secretaries, and the aides. The president of the Association protested the assignment of this work to aides. The Assistant Superintendent

^{3/} The Board had employed aides for at least six years before 1981-1982. In the five years before the 1980-1981 school year, there were five aides in each school: a library aide (7 hours per day), a monitor aide (5-6 hours), a clinic aide (3 hours), a laboratory aide (3 hours) and a teacher's aide (5 hours). In the spring of 1980, the Board, as a result of a decline in enrollment, eliminated three aide positions in each school; the principal in each school was given broad authority to deploy the two remaining aides as he saw fit.

for Personnel declined to negotiate because he believed that the Board had a managerial prerogative after a reduction in force to reassign the work as it saw fit.

At Thomas Jefferson Junior High School, the following changes occurred. Prior to the reduction in force, the "A" secretary worked for the principal and did his reports, made appointments, and answered telephones; the "B" secretary worked for the vice principal and handled teacher absences, suspensions, and detention; and the "C" secretary handled student attendance, answered telephones, and responded to inquiries at the counter. Prior to the reduction in force, both of the aides worked in the main office doing clerical work such as filing, dittoing, and answering telephones; one worked for one hour, the other for 1 3/4 hours each day. After the reduction in force, the "A" secretary's work remained the same and the "B" secretary assumed responsibility for overseeing student attendance. One of the aides now spends 3 1/2 - 3 3/4 hours in the main office doing clerical work connected with student attendance; the other aide continues to work in the new office one hour each day and from 15-20 minutes each day makes some telephone calls the "C" secretary previously made.

At John Adams Junior High School, the following changes occurred. Prior to the reduction in force, the "C" secretary handled accounts, certain documents, and enrollment of new students. The record does not specify what duties the "A" and "B" secretaries and the aides previously performed. After the reduction in force, the "C" secretary's work was redistributed

among the "A" secretary, the "B" secretary, the secretary in the guidance department, and the two aides. The aides each worked exactly one hour per day on duties the "C" secretary previously performed. One aide handled accounts, documents, telephone calls, counter inquiries and intercom duties during that hour. The other aide worked on enrollment of new students in the guidance office during that hour. At the end of school one year, one of the aides worked for three days on school accounts.

At Woodrow Wilson Junior High School, the following changes occurred. Prior to the reduction in force, the "C" secretary handled the school accounts, student attendance, and miscellaneous duties such as stencilling, dittoing, and answering telephones, intercoms, and counter inquiries. Prior to the reduction, one aide worked in the office two hours each day; she primarily did student point cards, but she also answered telephones, intercoms, and counter inquiries on occasion. The other aide did not work in the main office. After the reduction in force, the "A" secretary received the school account duties, the "B" secretary received the student attendance duties, and a guidance department secretary absorbed some of the "A" secretary's work. After the reduction in force, the aide who had worked in the main office before increased her time there from two hours each day to three hours; her main function is still doing point cards, but if the office is busy she will help the other secretaries with phone calls, the intercom, and the counter. In addition, she will type an occasional stencil (four or five per year) or ditto (less than once a week). The other aide who did not work in the

main office before now works there one hour each morning; she collects sign in sheets and works at the counter.

At Herbert Hoover Junior High School, the following changes occurred. Prior to the reduction in force, the "A" secretary worked for the principal as well as handling telephone calls, intercoms, counter inquiries and miscellaneous duties; the "B" secretaries' duties were not described, and the "C" secretary handled student attendance, financial accounts, ordering, records, and telephone calls, etc. Prior to the reduction in force, neither aide worked in the main office. One aide, however, helped with the student attendance work by accepting tardy students. The other aide worked in the faculty room on teacher concerns. After the reduction in force, the "A" secretary assumed the financial accounts and ordering duties while the "B" secretary assumed responsibility for student attendance duties. The aide who had previously helped with these duties increased her assistance; she now tallies incidences of tardiness, issues detention slips, and keeps related records. This aide now spends about 1 3/4 hours each day working on student attendance; the record does not indicate how much time she spent on such duties in 1980/1981. The other aide now works in the main office from 8:30 a.m. to 1:00 p.m. She still does typing and dittos for teachers, but in addition she answers the intercom, the telephone, and counter inquiries, admits tardy students, and makes out passes. She expends approximately 1 3/4 hours per day on these duties.^{4/}

^{4/} Based on our independent review of the record and the facts we have set forth, we accept the Hearing Examiner's findings of fact with the exception of his finding that the aides had not

Under all the circumstances of this case, we hold that the Association has failed to prove by a preponderance of the evidence that the Board has committed an unfair practice. While we accept the Hearing Examiner's recommendation to dismiss the Complaint, however, we tailor our analysis a little more closely to the facts of this particular case.

We initially observe that the Association has neither pled nor proved that anti-union animus motivated the Board's redistribution of the "C" secretaries' work. We further observe, in agreement with the Hearing Examiner, that the Board's actions were in no sense a subterfuge to undermine the integrity of the secretaries' collective negotiations agreement. This is not a case where all or substantially all the duties of an eliminated position were reconstituted in a position outside the unit by merely exchanging personnel.^{5/}

^{4/} (Continued) previously performed clerical duties. As detailed above, the aides had helped out the secretaries with their clerical tasks before the reduction in force; for example, one or more aides had previously performed such clerical duties as filing, dittoing, filling out student point cards, working on student attendance, and answering telephones, intercoms, and counter inquiries. In addition, the aides had performed clerical tasks for teachers. The essential difference after the reduction in force was not a change in the nature of work done, but an increase of approximately one hour per day in the amount of time each aide spent helping secretaries on such tasks.

^{5/} Contrast the following cases: In Rutgers, supra, the overtime work of dispatchers was shifted to police officers during their regular tour of duty in violation of the Act. In Passaic County, supra, the school board abolished the computer room clerk position and assigned substantially the same duties to a newly constituted computer room aide outside the unit. In Jersey City Bd. of Ed., supra, the Commission held arbitrable the transfer of supervisors' work to non-unit coordinators and administrators. In Deptford Bd. of Ed., supra, the Commission found a merely

(Continued)

We believe that the Board had no obligation to negotiate because the redistribution of the "C" secretaries' work did not alter the previous terms and conditions of employment of unit members. The hours of work and compensation of "A" or "B" secretaries remained the same.^{6/} Further, there was no contract clause or past practice limiting the assignment of certain tasks to secretaries and precluding aides from doing such work. To the contrary, aides were assigned to help secretaries with their clerical duties before as well as after the reduction in force. Thus, secretaries and aides had a history of shared clerical work. Given the increased need for help from all employees after the reduction in force, the Board acted consistently with its past assignment patterns when it distributed the lion's share of the "C" secretaries' work to other secretaries and then asked the aides to pitch in, as they had always done before, to complete the remaining tasks. Accordingly, we hold that the Association

^{5/} (Continued) semantic change when the Board unlawfully replaced full-time itinerant teachers with part-time itinerant teachers in violation of the existing salary schedule. In Monroe Township School Board, P.E.R.C. No. 81-145, 7 NJPER 357 (¶13161 1981), the Board unlawfully assigned non-unit nurses to perform the work previously performed by unit certified nurses where there was no change in the level of Health Services. In Township of Weehawken, P.E.R.C. No. 81-147, 7 NJPER 361 (¶12163 1981), the Commission found mandatorily negotiable a clause protecting police from replacement by non-police. In Matawan-Aberdeen Reg. Bd. of Ed., P.E.R.C. No. 82-56, 8 NJPER 31 (¶13013 1981) the Board unilaterally created a new title, Coordinator of Theater Arts, and set a separate salary schedule in violation of the Act.


^{6/} Of course, their workload increased, but Maywood makes non-negotiable workload increases stemming from a reduction in force and bars the reconstitution of the "C" secretary positions. Also, the work hours of the aides increased, but they are not unit members and could not be entitled to relief in this proceeding.

has not proved by a preponderance of the evidence that the Board's distribution of the "C" secretaries' work to aides unlawfully modified the terms and conditions of employment of "A" and "B" secretaries.^{7/} We dismiss the Complaint.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

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

DATED: Trenton, New Jersey
February 16, 1983
ISSUED: February 17, 1983

^{7/} Under Maywood, it is clear that after a reduction in force, the redistribution of unit work within a unit is non-negotiable. We need not consider whether Maywood also confers a managerial prerogative upon an employer to redistribute work previously done by unit employees to employees outside the unit.

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
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In the Matter of

EDISON TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-82-115-82

EDISON TOWNSHIP ASSOCIATION OF EDUCATIONAL
SECRETARIES,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent Board did not violate Subsections 5.4(a)(1), (5) and (6) of the New Jersey Employer-Employee Relations Act when it unilaterally abolished the position of "C" Secretaries and reassigned the job duties to "A" and "B" Secretaries and Aides beginning with the 1981-82 school year. Because the Respondent "RIFED" "C" Secretaries for economic reasons due to declining enrollment the case is governed by Maywood Board of Education, 168 N.J. Super 45 (App. Div. 1979) where the Court held that the decision to RIF as well as any resulting impact from the decision are non-negotiable and not violative of the Act. The Charging Party had urged that the Board, in redistributing the job duties, had, in effect, sub-contracted the duties of the "C" Secretaries.

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.

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Appearances:

For the Respondent
R. Joseph Ferenczi, Esq.

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

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on November 25, 1981, and amended on February 5, 1982, by the Edison Township Association of Educational Secretaries (hereinafter the "Charging Party" or the "Association") alleging that the Edison Township 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 Respondent in September 1981 unilaterally removed certain work previously performed by clerical employees in the Association's collective negotiations unit and reassigned that work to other employees in job titles outside of the unit, all

of which is alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1), (5) and (6) of the Act.^{1/}

It appearing that the allegations of the Unfair Practice Charge, as amended, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of hearing was issued on March 1, 1982. Pursuant to the Complaint and Notice of Hearing, a hearing was held on July 9, 1982 in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Oral argument was waived and the parties filed post-hearing briefs by September 17, 1982.

An Unfair Practice Charge, as amended, 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 post-hearing brief of 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 Edison Township Board of Education is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. The Edison Township Association of Educational Secretaries is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

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.

"(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.

"(6) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

3. The current collective negotiations agreement between the parties is effective from July 1, 1980 through June 30, 1983 (J-1). This agreement was modified with respect to matter not material hereto on October 15, 1981 (J-2).

4. Article I, the Recognition Clause of J-1, provides that the Association is recognized as the exclusive and sole representative for "..all school secretarial and clerical employees..."

5. Over the past four to five years the enrollment in the District's four Junior High Schools has declined by approximately one third.

6. In each of these Schools, prior to June 30, 1981, there had been four "A" Secretaries, eight "B" Secretaries and four "C" Secretaries. Effective June 30, 1981 the Board decided to abolish the positions of the four "C" Secretaries due to the declining enrollment in the Junior High Schools, supra.

7. In each Junior High School there have for many years been two Aides, who are not in the collective unit represented by the Charging Party herein.

8. When the 1981-82 school year commenced on or about September 1, 1981 the job duties of the four "C" secretaries, whose positions were abolished in June, were redistributed among the "A" and "B" Secretaries and the Aides.

9. The Aides in the four Junior High Schools had, prior to the 1981-82 school year, worked six hours per day. Commencing with the 1981-82 school year, after the four "C" Secretaries' positions were abolished, the Aides were assigned to work an additional hour per day for a total of seven hours.

10. While some of the duties of the "C" Secretaries were redistributed to the "A" and "B" Secretaries, supra, the evidence clearly indicates that the Aides in the four Junior High Schools were assigned clerical duties, which they had not performed previously. These duties include answering the telephone and intercom, typing and duplicating, counter work and tallying tardy and detention records. According to the credited testimony of the Charging Party's witnesses, who included Secretaries and Aides, the Aides are performing at least one hour per day of

clerical duties within Charging Party's collective negotiations unit. Further, according to several Charging Party witnesses, the number of clerical hours worked per day is as high as two and one-half to three hours. The witnesses for the Respondent, including the Principals of the four Junior High Schools, did not dispute the testimony of the Charging Party's witnesses that the Aides were performing clerical duties during at least one hour per day.

THE ISSUE

Did the Respondent Board violate Subsections(a)(1), (5) and (6) of the Act when it unilaterally abolished the position on "C" Secretary and redistributed the duties to the "A" and "B" Secretaries and Aides?

DISCUSSION AND ANALYSIS

The Respondent Board Did Not
Violate The Act When It Unilaterally
Abolished The Position Of "C" Secretary
And Redistributed The Duties To "A" And
"B" Secretaries And Aides

The Findings of Fact, supra, indicate clearly that commencing with the 1981-82 school year the job duties of the four "C" Secretaries, whose positions were abolished in June 1981, were redistributed among the "A" and "B" Secretaries and Aides. It is undisputed that the hours of the Aides in the each of the four Junior High Schools were increased six hours per day to seven hours per day in the 1981-82 school year. Leaving aside what portion of the job duties of the "C" Secretaries was redistributed to the "A" and "B" Secretaries, it is clear that the Aides performed the job duties of the "C" Secretaries during at least one hour per day.

The question is whether or not the Respondent Board violated the Act when it reassigned the job duties of the "C" Secretaries, primarily among the Aides, for the 1981-82 school year in the context of the Board's decision to RIF the "C" Secretaries as of June 30, 1981. Legal precedent dictates the conclusion that the Board did not violate the Act and that the Complaint must be dismissed.

See Maywood Board of Education, P.E.R.C. No. 78-23, 3 NJPER 377 (1977), aff'd in part, rev'd in part, 168 N.J. Super. 45 (App. Div. 1979), pet. for certif. den., 81 N.J. 292 (1979), which holds that where there is a reduction in force for economic reasons, such as in the instant case, neither the decision to RIF nor any impact which flows from the reduction is negotiable. See also Milltown Board of Education, P.E.R.C. No. 80-118, 6 NJPER 189 (1980).

Thus, leaving aside the question of whether or not an affirmative remedial order could be made as to employees outside of the collective negotiations unit represented by the Charging Party, there is no way in which the Hearing Examiner can order a remedy for persons within the collective negotiations unit whose workload has been increased where the increase results from the impact of a RIF. This is clearly the lesson of Maywood, supra.

The subcontracting decisions cited by the Charging Party while of interest are clearly not pertinent to an adjudication based upon the facts presented herein. The Respondent's actions were in no sense a subterfuge to undermine the integrity of the collective negotiations unit.

For all of the foregoing reasons, the Hearing Examiner must recommend dismissal of the Complaint.

* * * *

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

CONCLUSION OF LAW

The Respondent Board did not violate N.J.S.A. 34:13A-5.4(a)(1), (5) and (6) when it unilaterally decided to RIF the "C" Secretaries, effective June 30, 1981, and thereafter redistributed their duties among the "A" and "B" Secretaries and Aides for the 1981-82 school year.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER that the Complaint

be dismissed in its entirety.



Alan R. Howe
Hearing Examiner

Dated: November 15, 1982
Trenton, New Jersey