P.E.R.C. NO. 77-70

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LONG BRANCH BOARD OF EDUCATION,

Respondent-Charging Party,

-and-

Docket Nos. CO-76-94-27
and CE-76-26-40

ASSOCIATION OF LONG BRANCH EDUCATIONAL SECRETARIES AND CLERKS, INC.,

Charging Party-Respondent.

SYNOPSIS

The Commission adopts the findings of fact and conclusions of law of the Hearing Examiner in an unfair practice proceeding and finds the exceptions filed by the Board of Education to be without merit. The Commission, in agreement with the Hearing Examiner, concludes that the Board of Education committed an unfair practice in violation of N.J.S.A. 34:13A-5.4(a)(5) and (a)(6) by refusing to enter into a negotiated contract with the Association of Educational Secretaries and Clerks in conformity with a Memorandum of Understanding entered into between the parties on November 3, 1974. The Commission further concludes that the Board of Education committed unfair practices by unilaterally reclassifying the three members of the Association who did not participate in a strike by the secretaries (as well as school district custodians and teachers) against the Board in the fall of 1974, who thereby received salary increases of 10.5% -- as opposed to the 10% increase for unit members specified in the Memorandum of Agreement. During the negotiations leading up to the execution of an "Addendum to Collective Bargaining Agreement" in October of 1973, the Association had unsuccessfully sought to have these three secretaries placed at the levels to which they were "promoted" by the Board after the strike. The Commission, while noting that striking is not a protected activity under the Act, determines, as did the Hearing Examiner, that the disparity of treatment accorded to these three secretaries -- the women apparently deserved higher classifications yet they could not get them through the efforts of the Association -- clearly discouraged employees in the exercise of their legitimate rights of representation, in violation of N.J.S.A. 34:13A-5.4(a)(1) and (a)(3). The Commission finds that the net effect of the Board's actions concerning these three secretaries was to encourage employees to deal with the Board directly and bypass their designated representative, the Association, who pursuant to Section 5.3 of the New Jersey Employer-Employee Relations Act "shall be the exclusive representative for collective negotiations concerning the terms and conditions of employment of the employees" in a given unit.

The Commission orders the Board of Education to cease and desist from failing to formally execute and implement the negotiations agreement agreed upon by the parties on November 3, 1974, and to cease and desist from discriminating in regard to any term or condition of employment to discourage employees in the exercise of the rights guaranteed to them by the Act, and affirmatively orders the Board of Education to execute and implement the aforementioned negotiations agreement and give retroactive effect to the provisions thereof; to negotiate with the Association concerning future reclassifications and salary increases of unit employees; to post appropriate notices supplied by the Commission; and to notify the Chairman, in writing, of the steps taken to comply with the Order. It was further ordered that the particular section of the complaint that alleged that the Board engaged in violations arising under N.J.S.A. 34:13A-5.4(a)(2) be dismissed. Further, the complaint referring to the charges filed by the Long Branch Board of Education [Docket No. CE-76-26-40] was dismissed in its entirety.

P.E.R.C. NO. 77-70

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LONG BRANCH BOARD OF EDUCATION,
Respondent-Charging Party,

-and-

Docket Nos. CO-76-94-27
& CE-76-26-40

ASSOCIATION OF LONG BRANCH EDUCATIONAL SECRETARIES AND CLERKS, INC.,
Charging Party-Respondent.

Appearances:

For the Board of Education, McOmber & McOmber, Esqs. (Mr. Richard D. McOmber, of Counsel and Mr. John W. Wopat, III, of Counsel and on the Brief)

For the Association, Rothbard, Harris & Oxfeld (Mr. Sanford R. Oxfeld, of Counsel and on the Brief)

DECISION AND ORDER

The Association of Long Branch Educational Secretaries and Clerks, Inc. (the "Association") filed an Unfair Practice Charge with the Public Employment Relations Commission (the "Commission") on October 2, 1975, alleging that the Long Branch Board of Education (the "Board") had violated N.J.S.A. 34:13A-5.4(a)(1), (2), (3), (5) and (6).[1/] The Board, in turn, filed an Unfair Practice Charge

1/ The cited subsections provide that employers, their representatives or agents are prohibited from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (2) Dominating or interfering with the formation, existence or administration of 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 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."

alleging that the Association had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act (the "Act") in violation of N.J.S.A. 34:13A-5.4(b)(1) and (4).[2/] The cases were consolidated and heard by Hearing Examiner Edmund G. Gerber on December 8, 1975 and March 3, 1976. At the close of the hearing, the Board moved to dismiss its charge against the Association and the complaint in Docket No. CE-76-26-40 was accordingly dismissed. Both parties had the opportunity to present evidence, examine and cross-examine witnesses and argue orally. All briefs were received from the parties by May 26, 1976, and the Hearing Examiner issued his Recommended Report and Decision[3/] on February 7, 1977, a copy of which is annexed hereto and made a part hereof. Exceptions were filed by the Board on March 28, 1977 after extensions of time were granted by the Commission pursuant to N.J.A.C. 19:14-7.3(a),[4/] and the Association filed a letter memorandum in response on April 21, 1977 in which no cross-exceptions were presented.[5/] The case has now been transferred to the Commission.

2/ These subsections prohibit employee organizations, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of rights guaranteed by this act. (4) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

3/ H.E. No. 77-12, 3 NJPER ____ (1977).

4/ While pursuant to N.J.A.C. 19:14-7.2 the record before the Commission normally does not include the briefs presented to the Hearing Examiner, the brief in support of exceptions incorporates by reference the brief submitted at the close of the hearing and the arguments therein insofar as they relate to the exceptions filed have been considered.

5/ N.J.A.C. 19:14-7.1 et seq. The Board has requested oral argument before the Commission pursuant to N.J.A.C. 19:14-8.2, but the Commission does not believe it would serve any useful purpose herein, and therefore exercises its discretion to deny permission to argue orally.

Preliminarily, it is noted that the Hearing Examiner found that no evidence had been adduced in support of the charge of a violation of § 5.4(a)(2) and he therefore recommended dismissal of that portion of the Complaint. No exception having been taken to that finding, it is hereby adopted.

Briefly, the facts may be summarized as follows. Pursuant to a reopener clause in a collective negotiations agreement between the parties for the 1972-73 and 1973-74 school years, an "Addendum to Collective Bargaining Agreement" was signed in October 1973 which the Hearing Examiner found became part of the 1972-74 contract. Included in the Addendum was a schedule placing all unit members in a grade and step salary classification.

In the fall of 1974 negotiations for a successor contract to the 1972-74 contract broke down, and the Association along with the teachers and custodians went out on strike. On November 3, 1974, a Memorandum of Understanding was signed by the parties which included salary increases to unit members and made several other specific provisions for the 1974-75 and 1975-76 school years and otherwise provided that the terms of the prior contract would continue unchanged.

When the Board presented a draft of the formal contract for 1974-76, the schedule created in the October 1973 Addendum to the 1972-74 contract was omitted, and the Association rejected the contract as drafted. The Hearing Examiner found that the Memorandum of Agreement bound the Board to include that schedule in the successor contract as part of the prior contract. He

therefore concluded that the Board had violated § 5.4(a)(5) and (6).

The Hearing Examiner also found that three members of the Association unit who did not participate in the strike were unilaterally reclassified (the Board would say promoted) and received salary increases of 10.5% - as opposed to the 10% specified in the Memorandum of Agreement - shortly after the strike. His conclusion was that the Board had thereby violated § 5.4(a)(3) and, by extension, § 5.4(a)(1). During the negotiations leading up to the Addendum in 1973, the Association had sought to have these three secretaries placed at the levels to which they were "promoted" by the Board after the strike.

The Board has put forth eleven exceptions to the Recommended Report and Decision which will be treated seriatum. First, the Board objects to the finding that by signing the Memorandum of Understanding through its negotiator, the Board thereby bound itself to the provisions of the Memorandum. It is argued that the Board could only be so bound by a ratification vote of the whole Board, and that in fact the Board voted not to ratify the entire Memorandum and merely approved the salary guides therein.

In the main, the Board's objection goes to the undue weight it believes was placed on testimony by the Association's negotiator, Marie Panos, that it was her understanding that the Board's negotiator, Anthony Migliaccio, was empowered to act for the Board in that the Memorandum's contents were what had been presented to the Association as the Board's final offer. In the

past, the Board had always taken a ratification vote, and it is submitted therefore that the Association should have known that ratification would be necessary.

We believe that the Hearing Examiner's treatment of the question of ratification is the proper one. As we stated in In re Bergenfield, P.E.R.C. No. 90, 1 NJPER 44 (1975), the requirement that a Board of Education act by resolution must be read in pari materia with the Act's mandate that a negotiated agreement be put into writing and signed. As a result, the passage of a resolution approving a negotiated agreement becomes a ministerial act unless it is specifically stated at the negotiations that the negotiator may only bargain for a proposal that can be taken back to the Board for formal, binding approval. Ms. Panos testified that no such statements were ever made on behalf of the Board,[6/] and this was not contradicted.

The above analysis is sufficient to warrant upholding the Hearing Examiner on this point without reference to the testimony as to Ms. Panos' belief that the Board itself made the offer that became the Memorandum as opposed to just the negotiator. Nevertheless, we wish to state that it is for the trier of fact to weigh the evidence and testimony, and the Commission will not normally choose to substitute its second-hand reading of a transcript for the Hearing Examiner's judgment based upon observation of demeanor and the like. While it is possible that, upon reflection,

6/ T2:149.

the Hearing Examiner gave more weight to this testimony than he had originally indicated,[7/] that is not sufficient reason for us to overrule him.

The Board has relied upon the case of Stonehurst at Freehold v. Township Committee, Township of Freehold, 139 N.J. Super. 311 /Law Div. 1976/ for the proposition that the Board's negotiators could not legally reach agreement on the new contract. Stonehurst dealt with an attorney's ability to bind the Township Committee to passage of an ordinance as part of a consent judgment to settle a lawsuit. The Court found that a resolution by the Committee either by a prior vote authorizing the Attorney's action, or a later one ratifying it was necessary. We believe the facts in the Stonehurst case are readily distinguishable from a negotiations setting in that in Stonehurst there was no statute placing the kind of duty on the public body that is present in collective negotiations pursuant to the Act. Bergenfield, supra, and later Commission decisions such as In re East Brunswick Board of Education, P.E.R.C. No. 77-6, 2 NJPER 279 (1976), motion for reconsideration denied, P.E.R.C. No. 77-26, 3 NJPER 16 (1977), appeal pending, App. Div. Docket No. A-3018-75, in our view are dispositive of this issue.

Exception number two is the finding that the duties of the three promoted secretaries increased only as much as other

7/ We note that the Hearing Examiner in his opinion states only, "It was Panos' understanding that the Board negotiations (sic) had the authority to bind the Board." This does not indicate that he placed any great weight upon that testimony.

unit members. The Board cites at length the testimony of Margaret Lancton and Herbert Korey, supervisors of two of the promoted secretaries - Christine Palumbo and Anne Manetti, respectively. This particular statement by the Hearing Examiner appeared in the context of consideration of whether the promotions constituted a violation of §5.4(a)(3), and it is clear that his decision on this point did not turn on whether the work load of the three secretaries had increased more than the other unit members, but instead revolved around the timing of the promotions. No evidence was presented that any of the three supervisors made recommendations to the Superintendent regarding promotions of these secretaries at any time more recent than October of 1973, over a year before the actual promotions took place. In light of this fact, the Commission believes that it is unnecessary to resolve the question of whether this finding of fact was correct, and will not adopt it.[8/]

The Hearing Examiner found that the three promoted secretaries were the only non-participants in the strike, and the Board now disputes this finding. However, the Board does admit that no evidence that others did not strike was presented, nor did the Board make any effort to reopen the hearing to present any evidence on this point. To grant the Board's exception at this time would negate the Association's right to a fair hearing on this point and therefore this exception is denied.

8/ The conclusion of law in this regard is taken up in later exceptions and we deal with those infra, at p. 9.

Another finding of fact to which the Board excepts is that in all cases where a unit employee departed and was replaced, the new employee was placed in the same grade on Schedule D as his/her predecessor. The testimony relied upon is a statement by Superintendent Hughes that while it was possible that all replacements had gone into the same slots on the schedule he would have to check the records. While this is not totally conclusive, it is not vital to the finding that Schedule D was a binding, negotiated part of the 1972-74 agreement. The Hearing Examiner found that it was undisputed that the Schedule was contained in the Addendum, and the Addendum contained a specific reference to Schedule D plainly incorporating it as part of the Agreement. Therefore Schedule D may be found to constitute a binding portion of the 1972-74 Agreement without reference to the Hughes testimony. The fact that the Superintendent, later on, may not have felt that the Schedule was binding can in no way detract from the clear language of the Addendum itself.

The Board argues that promotions are a managerial prerogative and hence non-negotiable so that there can be no §(a)(5) violation in regard to a contract clause on promotions. However, Schedule D was not directly a promotional limitation, but rather a means of pegging the employees' salaries to the duties performed. Compensation is incontrovertably a term and condition of employment. Moreover, there is no evidence in the record that anyone was actually promoted by Schedule D inasmuch as its creation marked the beginning of a classification system. While some employees

may have gotten higher wages that is no more than a negotiated change in compensation.[9/]

We are not convinced by the Board's attack on the Hearing Examiner's conclusion that the three promotions violated §(a)(3). Even the Board's witnesses were at a loss to explain why their recommendations of promotions were not acted upon for over a year, until just after the strike in which the three women in question did not participate. The timing created a clear implication that they were rewarded for not striking, and even assuming that the promotions may have been deserved, the Board is not free to take otherwise permissible steps in such a way as to attempt to restrict other employees in the exercise of their rights under the Act. While striking is not a protected activity,[10/] the Hearing Examiner correctly points out that the Association had bargained unsuccessfully to have the same three women put at the higher grades. Yet as soon as they acted apart from the Association, they were promoted. To accept that the Board's conduct was not directed at the Association would be to ignore everything but the surface fact of the promotion when there is an unavoidable implication stemming from that action. In the absence of any evidence presented by the Board to explain the timing of these promotions, the Commission refuses to adopt the ostrich-like stance pressed upon it by the Board.

9/ As the Hearing Examiner makes clear at p. 9 of his Recommended Report, only the setting of promotional qualifications is a managerial right, and procedures for promotions are mandatorily negotiable.

10/ Cf. 29 U.S.C. 163.

In its next two exceptions the Board takes contradictory positions. It complains that because it did not know of the two-fold standard to be used in §(a)(3) cases it did not have opportunity to prove business justifications for its acts, yet it also claims to have proved business justification. While it is true that at the time this hearing took place the Commission had not yet issued a decision setting forth the specific details of the standard it would apply in analyzing (a)(3) violations, the fact that the Board itself claims to have submitted sufficient proof to establish business justification would seem to dispose of any argument that it was prejudiced in this regard. Additionally, it must be noted that the statutory language of this subsection is almost identical to that of subsection 8(a)(3) of the National Labor Relations Act as amended, (29 U.S.C.A. §158 (a)(3)) and voluminous precedent exists discussing the various standards utilized by the National Labor Relations Board and the federal courts in evaluating conduct under that subsection. Similarly, numerous agencies from other states with public employment statutes modeled after the federal legislation have issued decisions applicable to this issue. The Hearing Examiners and the Commission have reviewed this precedent and applied it in arriving at the standards which are now being utilized in reaching decisions under N.J.S.A. 34:13A-5.4(a)(3).[11/] The continuing

11/ In re City of Hackensack, H.E. No. 77-1, 2 NJPER 232 (1976) affirmed P.E.R.C. No. 77-49, 3 NJPER ___ (1977) presently pending appeal, App. Div. Docket No. A-2597-76; In re Borough of Haddonfield, H.E. No. 77-9, 2 NJPER 365 (1976) aff'd P.E.R.C. No. 77-36, 3 NJPER ___ (1977).

development of standards through case law by which tribunals evaluate conduct as falling within or without a particular statutory prohibition is a common occurrence in the growth of a new area of the law or a new statute.[12/] There is no indication in the record that the Hearing Examiner ever misled the Board as to the standard he would apply.

As to the evidence actually presented, we agree that it was insufficient to counter the presumptions raised by the inherently destructive nature of the timing of the Board's actions in promoting the secretaries. Whatever additional duties were being performed, the Superintendent had knowledge over a year before the promotions, and no additional factors were shown to have arisen in that period between the recommendations and the promotions.

Because the three promoted secretaries got only a slightly larger pay increase than the other unit members, the finding of an inherently destructive act is attacked as not substantiated. In response we point out that it is the disparity of treatment that is the key and not the exact number of additional dollars received by those getting extra benefits. It is the whole notion of differing treatment growing out of the assertion of the right to be collectively represented that is in issue. Aside from the salary, the three employees singled out can also be said to enjoy enhanced status which the others could hardly fail to perceive. In any

12/ The unfair practice sections of the New Jersey Employer-Employee Relations Act became effective January 20, 1975, as amendments made by P. L. 1974, Chapter 123.

event, even if the effect were "comparatively slight" actual proof of intent is necessary only after the employer has substantially shown business justification. As we have already decided, the evidence presented by the Board did not rise to that level.

The Hearing Examiner in his recommended order suspended the reclassifications of the three secretaries and their salary increases prospectively and ordered the Board to negotiate the said reclassifications and salary with the Association. We agree that the suspension should not be retroactive since no one has alleged any wrongdoing on the part of these three individuals. 13/ However, for the same reasons we would not suspend their reclassification or increases prospectively either. It must be noted that the period of the contract in question has already passed. The reclassifications themselves were originally requested for these individuals by the Association itself. A sufficient remedy against the Board in light of these facts is a cease and desist order plus the obligation to negotiate future salary increases with the Association. Any further remedy would only work against the three individual employees which is not the purpose of the Act.

The final exception is that there was not discrimination as to a term and condition of employment. We believe this is disposed of by our earlier discussion of promotion as a managerial

13/ In fact, the Hearing Examiner made it a point to note that this decision was in no way intended to condemn those who decline to participate in a job action. We wish to reemphasize that point.

prerogative. A salary guide relates to terms and conditions of employment and therefore so does discriminatory conduct affecting the placement of employees on that guide.

ORDER

For the above stated reasons, we find that the Long Branch Board of Education has violated N.J.S.A. 34:13A-5.4(a)(1), (3), (5) and (6), and IT IS HEREBY ORDERED that said Board shall:

A. Cease and desist from:

1. Failing to formally execute and implement in its entirety, upon request, the collective negotiation agreement /including Schedules C and D as of the October 1973 Addendum to the Collective Negotiations Agreement/ that was agreed upon by the duly authorized negotiating team of Association of Long Branch Educational Secretaries and Clerks, Inc. and the Long Branch Board of Education on November 3, 1974.

2. Discriminating in regard to any term or condition of employment to discourage employees in the exercise of the rights guaranteed to them by the Act.

B. Take the following affirmative action:

1. Formally execute and implement in its entirety, upon request, the collective negotiation agreement /including Schedules C and D as of the October 1973 Addendum to the Collective Negotiations Agreement/ that was agreed upon by the duly authorized negotiating team of Association of Long Branch Educational Secretaries and Clerks, Inc. and the Long Branch Board of Education on November 3, 1974.

2. Upon the execution and implementation of the aforesaid agreement, give retroactive effect to the provision thereof, where appropriate.

3. Negotiate with the Association concerning future reclassifications and salary increases of unit employees.

4. Post at its central offices in Long Branch, New Jersey, copies of the attached notice marked Appendix A. Copies of said notice, on forms provided by the Commission shall, after being signed by Respondent's representative, be posted by the Respondent immediately upon receipt thereof, and maintained by it for a period of at least sixty (60) consecutive days thereafter in conspicuous places where notices to its employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that such notices are not altered, defaced or covered by any other material.

5. Notify the Chairman of the Commission, in writing, within 20 days from the date of the Commission decision what steps have been taken to comply herewith.

IT IS FURTHER ORDERED that the particular section of the complaint that alleges that the Respondent engaged in violations arising under N.J.S.A. 34:13A-5.4(a)(2) be dismissed. Further, the

complaint of the Long Branch Board of Education /Docket No. CE-76-26-407 is dismissed in its entirety.

BY ORDER OF THE COMMISSION

Jeffrey B. Tener
Chairman

Chairman Tener and Commissioner Hipp abstained. Commissioners Parcells and Forst voted for this decision and Commissioner Hartnett voted against the decision. Commissioner Hurwitz was not present.

DATED: Trenton, New Jersey
June 21, 1977
ISSUED: June 22, 1977

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 fail to formally execute and implement in its entirety, upon request, the collective negotiations agreement /including Schedules C and D as of the October 1973 Addendum to the Collective Negotiations Agreement/ that was agreed upon by the duly authorized negotiating team of Association of Long Branch Educational Secretaries and Clerks, Inc. and the Long Branch Board of Education on November 3, 1974.

WE WILL NOT discriminate in regard to any term or condition of employment to discourage employees in the exercise of the rights guaranteed to them by the Act.

WE WILL formally execute and implement in its entirety, upon request, the collective negotiation agreement /including Schedules C and D as of the October 1973 Addendum to the Collective Negotiations Agreement/ that was agreed upon by the duly authorized negotiating team of Association of Long Branch Educational Secretaries and Clerks, Inc. and the Long Branch Board of Education on November 3, 1974.

WE WIL, upon the execution and implementation of the aforesaid agreement, give retroactive effect to the provision thereof, where appropriate.

WE WIL negotiate with the Association concerning future reclassifications and salary increases of unit employees.

LONG BRANCH 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, P.O. Box 2209, Trenton, New Jersey 08625 Telephone (609) 292-6780

H.E. No. 77-12

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

In the Matter of

LONG BRANCH BOARD OF EDUCATION,

Respondent in the matter of CO-76-94-27
Charging Party in the matter of CE-76-46-26

-and-

Docket Nos. CO-76-94-27
CE-76-46-26

ASSOCIATION OF LONG BRANCH EDUCATION
SECRETARIES AND CLERKS, INC.,

Charging Party in the matter of CO-76-94-27
Respondent in the matter of CE-76-46-26

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission has issued a Recommended Report and Decision in which he concluded that the Long Branch Board of Education committed unfair practices by refusing to enter into a negotiated contract with the Association of Long Branch Educational Secretaries and Clerks, Inc. in conformity with a Memorandum of Understanding entered into between the parties on November 3, 1974, and issued a recommended Order that the Board of Education reduce the negotiated agreement to writing and enter into the contract as agreed to on November 3, 1974.

In his recommended decision the Hearing Examiner, Edmund Gerber, further concludes that the Board of Education committed unfair practices by unilaterally granting wage increases to three employees who were denied increases by the Board during negotiations with the Association the prior year. The Hearing Examiner notes that the three employees did not participate in a strike by the secretaries (as well as the custodians and teachers) against the Board, but holds that the strike per se was not relevant to the finding of an unfair practice. The action taken by the Board violated a provision of the New Jersey Public Employer-Employee Relations Act which holds that only designated employee representatives may negotiate the terms and conditions of employment of the employees in a given unit. By initially refusing to grant increases to the three employees when represented by the Association, but granting the same raises when these employees appeared to have split from the Association, the Board violated the rights of all its employees to be represented exclusively by the Association of Long Branch Educational Secretaries and Clerks, Inc.

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.

H.E. No. 77-12

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

In the Matter of

LONG BRANCH BOARD OF EDUCATION,

Respondent in the matter of CO-76-94-27
Charging Party in the matter of CE-76-46-26

Docket Nos. CO-76-94-27
CE-76-46-26

-and-

ASSOCIATION OF LONG BRANCH EDUCATION
SECRETARIES AND CLERKS, INC.,

Charging Party in the matter of CO-76-94-27
Respondent in the matter of CE-76-46-26

Appearances:

For the Long Branch Board of Education,
Rothbard, Harris & Oxfeld, Esqs.
(Emil Oxfeld, Of Counsel, and Sanford R.
Oxfeld, On the Brief)

For the Association of Long Branch Education
Secretaries and Clerks, Inc.
McOmber & McOmber, Esqs.
(Richard D. McOmber and John W. Wopat, III,
On the Brief)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

The Association of Long Branch Education Secretaries and Clerks, Inc. (the "Association") and the Long Branch Board of Education (the "Board") were involved in protracted negotiations for a successor collective negotiation contract for 1974-75. The negotiations lasted through the summer and into the fall of 1974. In October of 1974 the parties were still without an agreement when the secretaries, who were members of the Association, along with teachers and custodians employed by the Board, engaged in a strike. (The Association prefers the appellation "job action.") The secretaries did not return to work until November 3, 1974, when the parties signed a Memorandum of Understanding (Attachment 1). This Memorandum provides that salary guides would be developed granting 10% increases for the 1974-75 and 1975-76 school years and, apart from two other matters specifically enumerated in the Memorandum, the balance of the

prior contract between the parties would be incorporated into the new contract unchanged.

The prior contract seemingly consisted of two documents -- an "Agreement" between the parties from July 1, 1972 to June 30, 1974, which was signed in January of 1973, and an "Addendum to Collective Bargaining Agreement" between the parties July 1, 1972 to June 30, 1974. This Addendum was dated October 1973.

A few months after the November 3, 1974 Agreement was signed, the Board submitted to the Association a proposed contract. The Association refused to sign this proposed contract claiming that two items contained in the October 1973 Addendum were missing from the contract: namely,Schedule C, a listing of holidays, and Schedule D, a list of all employees by name, grade and step. A dispute arose over the inclusion of these schedules into the contract. During this period of time, the Association learned that three secretaries were unilaterally reclassified by the Board and consequently received a 10.5% salary increase, rather than the 10% received by the rest of the unit. These three secretaries (and as far as the evidence reveals, only these three secretaries) did not participate in the strike of October and November 1974. The Board would not sign a contract that contained Schedule D and the Association would not sign a contract without it. Accordingly, the contract has never been signed. The Association brought the instant action by filing an Unfair Practice Charge with the Public Employment Relations Commission (the "Commission") on October 2, 1975, alleging that the Board's action constituted unfair practices within the meaning of N.J.S.A. 34:13A-5.4(a)(1), (2), (3), (5) and (6). [1/] The Commission issued a Complaint and Notice of Hearing and the matter was heard by the

---

1/ The cited subsections provide that employers, their representatives or agents are prohibited from:

"(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act."

"(2) Dominating or interfering with the formation, existence or administration of 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 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."

undersigned. 2/ The Association has alleged that in refusing to insert Schedule D of the Addendum to the 1972-74 contract into the new contract the Board has violated N.J.S.A. 34:13A-5.4(a)(5) and (6) by refusing to negotiate in good faith and refusing to reduce a negotiated contract to writing.

Further, by unilaterally increasing the classification of the three secretaries, the Board has violated N.J.S.A. 34:13A-5.4(a)(2) and (3), by dominating or interfering with the existence and administration of the Association and discriminating among its employees in regard to a condition of employment to discourage employees in the exercise of their rights.

The Board maintained that they reserved the right to ratify the contract. Since it was never ratified, they maintained the contract was not binding. Further, they argue Schedule D was not part of the prior contract -- it was attached to the contract for convenience only and did not bind the Board to negotiate any schedule changes. Finally, they maintain the promotion of the three secretaries was within the exclusive and inherent management prerogative of the Board. 3/ 4/

2/ A Complaint and Notice of Hearing in this matter was issued on October 23, 1975. A hearing was held in this matter on two separate dates, December 8, 1975 and March 3, 1976. Both parties were represented by counsel and did present evidence and give testimony.

The parties herein stipulated that the Association is an employee representative, and the Board is a public employer, within the meaning of the New Jersey Employer-Employee Relations Act ("Act"), as amended, and both are subject to the Act's provisions. Accordingly, I find that a question concerning an alleged violation of the Act exists and this matter is appropriately before the Commission for determination.

3/ The Board filed an Unfair Practice Charge with the Commission on November 3, 1975 alleging the Association engaged in certain unfair practices within the meaning of N.J.S.A. 34:13A-5.4(b)(1) and (4), Docket No. CE-76-26-40. The Board did not introduce any evidence to support the allegations contained in their charge during the two days of hearing in this matter and after the close of hearing, the Board itself moved to dismiss their charge. Accordingly, said complaint is dismissed.

4/ The Board argues that the Commission should have deferred this proceeding to the "grievance" procedure in the parties contract. It is noted, however, that the grievance procedure does not provide for arbitration. The final step of the procedure is review of the grievance by the Board itself. The whole intent of the Commission deferral policy is to permit expert neutrals, in the appropriate circumstances, to resolve disputes arising under the parties' contract. This policy is discretionary with the Commission and will be invoked only when a fair and expeditious means of disposing of the dispute can be achieved. See In re City of Trenton, P.E.R.C. No. 76-10, 1 NJPER 58 (1975); In re Bd. of Ed. of East Windsor, E.D. No. 76-6, 1 NJPER 59 (1975). Certainly, the parties grievance procedure is not an appropriate one for the invocation of the deferral policy.

The Alleged Violation of N.J.S.A. 34:13A-5.4(a)(5) and (6)

In November 1972, the then President of the Association, Grace Reynolds, approached the then School Superintendent, Mr. Meskill, and discussed the possibility of setting up a unified classification system for all secretaries employed by the Board. Mr. Meskill agreed and a committee of administrative personnel was established. A draft of a classification proposal was drawn up by this committee. The Association created their own proposal and, ultimately, the parties met together and worked out a classification system and salary scale. Association witnesses testified that these meetings were negotiation sessions. Four grades were established with a job description for each grade, and, after each employee's duties and responsibilities were compared to the job descriptions, each employee was placed in the appropriate grade level and step within grade. This information in turn was compiled in schedule form.

It is noted that some seven employees listed on the schedule have since left the employ of the Board. Every person hired to replace these seven employees was classified at the identical grade of their predecessor. 5/ Apparently, all persons were listed on this schedule with reference to job function. This listing of names and grades and step levels was labeled Schedule D and attached to the Addendum 6/ to the 1972-74 contract.

The current Board Superintendent of Schools, Milton Hughes, testified that Schedule D was not part of the contract and he maintained that it was affixed to the contract only for bookkeeping purposes. He further testified that the parties never negotiated over Schedule D, rather there were, in his words, only permissive discussions. Mr. Hughes admits that he was not on the administrative committee which established Schedule D and not a party to these talks. It is noted, however, the Addendum in which Schedule D appears, was signed by the President of the Board and contains a provision that,

> "Effective with the signing of this Addendum by both parties, the members of the Association shall be classified into the grades and steps as set forth on Schedule D attached hereto and made a part hereof."

5/ Transcript, Volume II, page 81, line 19.

6/ Pursuant to a re-opener provision in the 1972-74 contract, the parties negotiated this Addendum to the contract.

In light of the clear and unequivocal nature of the Addendum, I cannot credit the testimony of Superintendent Hughes 7/ and do find that Schedule D was a part of the 1972-74 contract. 8/

Hughes' testimony concerning Schedule C is similarly unconvincing. He admits that the vacation days listed in Schedule C were negotiated between the parties. Yet he maintained that Schedule C was not a part of the contract -- although the Addendum clearly states that Schedule C shall be incorporated into the contract. In a similar fashion, I find that Schedule C was part of the 1972-74 contract.

Since these items were in fact in the prior contract, if the Memorandum of Understanding signed by the parties November 3, 1974 was binding, it follows that the Board's proposed contract was not in accord with the negotiated agreement, for the Memorandum expressly provided that all items existing in the [1972-74] contract shall remain the same. But the Board's proposed contract for 1974-75 contained neither Schedule C or D.

The Board argues the Memorandum of Understanding was not binding on two counts.

1. Since the Memorandum was never ratified by the full Board it was not binding. The Board did not introduce evidence that any of its negotiators expressly stated that their actions were subject to ratification by the entire Board. Rather, it is argued that as a matter of past practice, any agreement negotiated and entered into was subject to ratification. This could be inferred by the actions of the Association which submitted the agreement to its members for ratification.

2. Board negotiators could bind the Board only if their authority is granted by means of an official act in conformance with N.J.S.A. 18-A:10.6. This statute delineates the manner in which actions may be legally taken by a school board: that is, by resolution of the board. It is maintained that the Board never passed such a resolution.

In support of the latter argument, the Board cites Stonehurst at

7/ See testimony of Hughes, Volume II, pages 64-70.

8/ The parties did not raise the issue, so therefore the undersigned will not consider whether or not the negotiations concerning the classification of secretaries were a legal subject for negotiations in a pre-Chapter 123 contract.

Freehold v. Township Committee, Township of Freehold, 139 N.J. Super 311 (Law Div. 1976). In Stonehurst, a majority of a municipal committee directed its counsel to prepare and enter into a consent judgment. Subsequently, the membership of the Township committee changed and relief from the consent judgment was successfully obtained. The court's ruling turned on the lack of an ordinance or resolution authorizing the municipal attorney to consent to judgment. The court stated, however, that the attorney's action had a presumption of validity to all actions taken by the attorney for the Township -- it had to be shown that the Township acted outside of its authority. Assuming, similarly, even if Stonehurst applies to the actions of a school board vis-a-vis negotiations, the Board here had to affirmatively prove that its negotiators acted outside of their authority. A review of the testimony concerning the signing of the agreement is therefore in order. The Association members were participating in a job action or strike. Negotiations were being conducted in the Board offices with the assistance of a PERC Mediator. Marie Panos, an N.J.E.A. Negotiator Consultant and negotiator for the Association, testified that on the night the agreement was signed, the PERC Mediator, the attorney for the Board and the Board President came into the caucus room of the Association and presented the Board's proposal. This proposal was accepted by the Association and was embodied in the Agreement. She testified that when this occurred the entire Board of Education was present in another room in the same building. "The Board might not have been present at the moment the offer was made to the Association," according to Panos, "but people were coming in and out the building all day and they were there a half-hour to an hour before the offer was made." 8/ Joan House, President of the Association, also testified that a majority of the Board members were present in the building. It was Panos' understanding that the Board negotiations had the authority to bind the Board.

Hughes testified that the negotiators had no authority to bind the Board, but no additional testimony or evidence was offered by the Board to bolster this one bald statement, and Hughes himself stated that "he was present at various times during the negotiation process, but was not privileged to all discussions that took place during the negotiation process". 9/

8/ Volume 2, page 152, line 24.

9/ Volume 1, page 71, line 3.

The presence of the Board when the agreement was signed almost creates a presumption that the Board itself rather than its negotiators proffered their offer. In any event, Hughes' testimony does not overcome the presumption of the legitimacy [10] of the Board's action.

The Board's other defense -- the acceptance of the agreement was subject to ratification -- is governed by a series of Commission decisions. In re Bergenfield, P.E.R.C. No. 90, 1 NJPER 44; In re Hoboken, P.E.R.C. No. 77-5, 2 NJPER 267 -- Appeal pending App. Div. Docket No. A-4624-75 and in In re East Brunswick, P.E.R.C. No. 77-6, 2 NJPER 279, Motion for reconsideration denied, P.E.R.C. 76-26, ___ NJPER ____ (1976), Appeal pending App. Div. Docket No. A-3018-75.

The facts in Bergenfield are similar to those in the instant case. In both cases a majority of the members of the boards of education were present the day the respective Memoranda were signed and said Memoranda did not contain conditions precedent, i.e., statements that the Memoranda were subject to ratification, nor was one contractually imposed. The Commission held in Bergenfield that the Education Association was entitled to rely upon the apparent authority of the Board's negotiators, as agents, to bind the Board to a contract by means of a Memorandum in the absence of express qualifying condition. There, as here, there were no express qualifying conditions.

Neither past practice [11] nor reliance on some allegedly inferred but never expressed understanding [12] can constitute express qualifying conditions. Accordingly, in refusing to sign a contract in conformity with the Memorandum of November 4, 1974, the Board has refused to reduce a negotiated agreement to writing and has violated N.J.S.A. 34:13A-5.4 (a) (6). In refusing to honor said Agreement after the conclusion of negotiations, the

---

10/ Therefore, no determination has to be made as to whether or not Stonehurst, supra, is applicable to the actions of a school board in collective negotiations.

11/ It is noted that the atmosphere of the negotiations in years past was very different from the strike situation in which this contract was signed. Accordingly, past practice would be a suspect standard in any case.

12/ To this end, if there were no express qualifying conditions in the Agreement and the Association membership failed to ratify the contract, the Association might still be held to be bound to the Memorandum of Understanding.

Board has failed to negotiate in good faith and accordingly, has violated N.J.S.A. 34:13A-5.4(a)(5).

The Alleged Violation of N.J.S.A. 34:13A-5.4(a)(2) and (3)

As stated above, the three women who did not participate in the strike, Manetti, Palumbo and Pignatore, received salary increases effectively .5% higher than the salaries of all other members in the unit were to receive under the contract. The Board argues that it was their inherent and exclusive managerial prerogative to grant promotions to the three women and there was no need to negotiate this matter. The Board introduced two witnesses who were qualified as experts in the fields of business administration and management who testified that an employer should be free to promote and transfer its employees if it is to maximize efficient operation. In support of its arguments, the Board introduced evidence that the workloads of the three women increased, and, therefore, they all deserved promotions. Further, the supervisors of each of the three women testified that each of them independently recommended to the Superintendent of Schools that their respective secretaries be reclassified.

I am satisifed that each of the three requests made by the supervisors was authentic and spontaneous. However, all of these requests were made to the Boards' Superintendent in October 1973, when the women were originally classified under Schedule D.

As stated above, the salaries for the positions of these women were discussed during the negotiation which led to the formulation of Schedule D. The Association maintained that the duties of Pignatore and Palumbo should qualify them for grades 4 [the highest grade] and 3 respectively. The administration argued that it would be more appropriate to place the women in grades 3 and 2. Ultimately, the administration prevailed and the women were placed in the lower grades. The parties did not recall if there was a dispute concerning Manetti's classification.

All three supervisors testified that their requests for reclassification were prompted because of the belief that these women were misclassified in the October 1973 Addendum to the 1972-74 contract. It was not until

November of 1974, [13] over a year after the requests for reclassification and within a month of the strike, that the women's salaries were increased. None of the supervisors were contacted by anyone from the administration concerning this reclassification. The workloads of the women did increase from October 1973 to November 1974, but so did the workloads of other unit members. Apparently, only Manetti had an increase in the amount of work she had to perform which was heavier than her co-workers'. But, again, her supervisor Assistant Superintendent Korey recommended that she be reclassified in October of 1973 and that was the only time Korey spoke to Hughes about a raise for her. When asked why Superintendent Hughes took until November 1974 to act upon the recommendation, he answered, "I think you would have to get that information from him. I could not respond to that." [14]

The Board cites Dunellen Bd. of Ed. v. Dunellen Education Assn., 64 N.J. 17 (1973) as giving authority to its contention that it has a managerial prerogative to grant promotions. The Commission, has, in fact, ruled that setting qualifications or prerequisites for promotion is an employer prerogative. [15] In re Rutgers, the State University, P.E.R.C. No. 76-13, 2 NJPER 13 (1976); In re City of Trenton, P.E.R.C. No.76-10, 1 NJPER 58 (1975); In re Borough of Roselle, P.E.R.C. No. 76-29, 2 NJPER 142 (1976); In re Plainfield PBA Local #19, P.E.R.C No. 76-42, 2 NJPER (1976).

However, all of these cases, including Dunellen, deal only with the issue of negotiability of promotion. None of them are concerned with discriminatory action for the purposes of discouraging the exercise of protected rights. Here, the timing of the salary increases make the employers' stated reason for granting the increase highly questionable.

Although no specific evidence of intent to discourage protected

---

13/ The specific date of the reclassifications were never established at the hearing. All three supervisors testified the reclassifications were in November or December and Assistant Superintendent Korey believes, at least his secretary was reclassified in November.

14/ Volume 2, pages 119-120. See also testimony of Sparta, Volume 2, page 146 and Law to Volume 2, pages 109-116.

15/ As opposed to procedure for promotions which are mandatorily negotiable.

rights was produced at the hearing, the Commission has, in In re Haddonfield Bd. of Ed., P.E.R.C. No. 77-36, 2 NJPER , created a twofold test for discrimination cases. This test holds that an employer's conduct would be a violation of the act even if it was in part motivated by an intent to discourage the exercise of protected rights. Further, if said conduct is inherently destructive of employee rights, the existence of such motivation as one of the factors in the employer's decision may be presumed and need not be proved. In In re N.J. College of Medicine and Dentistry, P.E.R.C. No. 76-46, 2 NJPER 219, the Commission ruled that such a presumption would normally be rebuttable by evidence of legitimate and substantial business justification for the employers' conduct. 16/

The evidence presented by the Board for justification of their conduct in the instant matter is neither sufficiently legitimate nor substantial to rebut a presumption of the existence of an intent to discourage protected rights. But, was such conduct inherently destructive of their employees protected rights?

One might make the following argument: Since it is illegal for

16/ The U.S. Supreme Court considered the rebuttable nature of said presumption in establishing the same test for the private sector. NLRB v. Great Dane Trailers, Inc., 388 U.S. 26 (1967) at page 34:

> "First, it can reasonable be concluded that the employer's discriminatory conduct was 'inherenetly destructive' of important employee rights, no proof of an anti-union motivation is needed and the Board can find an unfair labor practice even if the employer introduces evidence that the conduct was motivated by business considerations. Second, if the adverse effect of the discriminatory conduct on employee rights is 'comparatively slight,' an anti-union motivation must be proved to sustain the charge if the employer has come forward with evidence of legitimate and substantial business justifications for the conduct. Thus...once it has been proved that the employer engaged in discriminatory conduct which could have adversely affected employee rights to some extent, the burden is upon the employer to establish that it was motivated by legitimate objectives since proof of motivation is most accessible to him."

public employees to engage in a strike [see Bd. of Ed. of Union Beach v. NJEA 53 N.J. 29, 38 (1968)] striking could not be a protected right under the Act and, therefore, it would not be an unfair practice to discourage striking. Granting pay increments to those who did not strike in order to discourage striking would, therefore, not be an unfair practice [or so the argument would go]. The ramifications of the Board's actions go beyond the discouragement of striking, however. In the instant matter, the Association represented the three women in the negotiations which led to Schedule D and argued unsuccessfully for the reclassification of at least two of them. Only when the women appeared to have split from the Association were they reclassified. This disparity of treatment -- the women apparently deserved the higher classifications [17] yet they could not get them through the Association -- clearly discouraged employees in the exercise of their legitimate right of representation. [18] The net effect of the Board's action is to encourage employees to deal with the Board directly and by-pass their designated representative, the Association, who pursuant to §5.3 of the Act "shall be the exclusive representative for collective negotiations concerning the terms and conditions of employment of the employees" in a given unit.

Therefore, the Board's conduct in granting salary increases to the three women is destructive of its employee's rights to representation by the Association as the exclusive representative for collective negotiations.

In no way is this decision intended to justify striking on the part of public employees, nor does it intend to condemn those who decline to participate in such activity.

However, even though members of an employee association might commit illegal acts, an employer may not act in a way which infringes on employees' protected rights. [19] No right arises in one party to commit reciprocal violations of the law. If the Board felt they were harmed by the Association's

17/ As witnessed by the testimony of their superiors.

18/ While there is no evidence that a dispute arose in the negotiations concerning Manetti's salary, the concept remains the same. The Association did negotiate for all these positions and the Board's unilateral reclassification of Manetti, tended to undermine the Association's ability to negotiate.

19/ See NLRB v. Insurance Agents International Union, 361 U.S. 477 (1960).

strike, they certainly could seek a remedy in the proper forum. [20] To this end the existence of the strike is simply not relevant here in the finding of a violation of §5.4(a)(3).

Accordingly, I find the Board has violated §5.4(a)(3) of the Act. Having found that the Board discriminated as to a condition of employment to to discourage employees the exercise of their guaranteed rights, it follows that the Board's actions had the effect of restraining employees in the exercise of their rights in violation of §5.4(a)(1).

No evidence of a §5.4(a)(2) violation was introduced by the Association and their allegation that the Board dominated or interfered with the Association is dismissed. [21]

ORDER

Order concerning violation of the Act for the reasons set forth above, IT IS HEREBY ORDERED the Respondent, Long Branch Board of Education, shall:

A. Cease and desist from:

1. Failing to formally execute and implement in its entirety, upon request, the collective negotiation agreement [including Schedules C and D as of the October 1973 Addendum to the Collective Negotiations Agreement] that was agreed upon by the duly authorized negotiating team of Association of Long Branch Educational Secretaries and Clerks, Inc. and the Long Branch Board of Education on November 3, 1974.

2. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act.

3. Discriminating in regard to any term or condition of employment to discourage employees in the exercise of the rights guaranteed to them by the Act.

B. Take the following affirmative action:

1. Formally execute and implement in its entirety, upon request, the collective negotiation agreement [including Schedules C and D as of the October 1973 Addendum to the Collective Negotiations Agreement] that

---

20/ It is noted that the Board did institute court proceedings against the Association and/or its members.

21/ For a discussion of the standing of a §8(a)(2) violation of the National Labor Relations Act, see Duquesne University, 198 NLRB 891, 81 LRRM 1091 (1972).

was agreed upon by the duly authorized negotiating team of Association of Long Branch Educational Secretaries and Clerks, Inc. and the Long Branch Board of Education on November 3, 1974.

2. Upon the execution and implementation of the aforesaid agreement, give retroactive effect to the provision thereof, where appropriate.

3. Suspend the reclassifications and salary increases of Manetti, Palumbo and Pignatore which occurred in November and/or December 1974 and negotiate said reclassifications and salary increases with the Association. 22/

4. Upon the execution and implementation of the aforesaid agreement, give retroactive effect to the provisions thereof where appropriate.

5. Post at its central offices in Long Branch New Jersey, copies of the attached notice marked "Attachment II". Copies of said notice, on forms provided by the Commission shall, after being signed by Respondent's representative, be posted by the Respondent immediately upon receipt thereof, and maintained by it for a period of at least sixty (60) consecutive days thereafter in conspicuous places where notices to its employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that such notices are not altered, defaced or covered by any other material.

6. Notify the Director of Unfair Practice Proceedings, in writing, within 20 days from the date of the Commission decision what steps have been taken to comply herewith.

IT IS FURTHER ORDERED that the particular section of the complaint that alleges that the Respondent engaged in violations arising under N.J.S.A. 34:13A(a)(2) be dismissed. Further, the complaint of the Long Branch Board of Education [Docket No. CE-76-26-40] is dismissed in its entirety.

Edmund G. Gerber
Hearing Examiner

DATED: February 7, 1977
Trenton, New Jersey

22/ These suspensions are not retroactive.

ATTACHMENT I

Memorandum of Understanding between the Long Branch Board of Education and the Association of Long Branch Educational Secretaries and Clerks

1. All 10 month secretaries and clerks shall enjoy two vacation days per school year. These days are to be taken when schools are closed to students. The particular days for each 10 month employee shall be agreed upon by the employee, immediate supervisor and Superintendent.

2. During the 1974-75 school year there will be one additional holiday for both ten and 12 month employees. During the 1975-76 school year there will be one more additional holiday over those during the 1974-75 year. The particular holidays will be agreed upon between the parties and will be a part of the contract.

3. Guides for the 1974-75 year and the 1975-76 year shall be developed by the parties, which guides shall reflect a 10% increase for 1974-75 and and additional 10% increase for 1975-75, both increases to include increment.

4. Previously agreed to clarification of existing vacation policy shall be incorporated into the contract.

5. All other items in the existing contract shall remain the same except for items 1-4 herein.

s/ Anthony C. Migliacci
Signed 11/3/74
Board of Educ.

11/3/74 s/ Joan E. House
Assoc.

ATTACHMENT II

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:

1. WE WILL NOT interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed to them by the Act.

2. WE WILL NOT discriminate in regard to any term or condition of employment to discourage employees in the exercise of the rights guaranteed to them by the Act.

3. WE WILL NOT refuse to negotiate in good faith with the Association of Long Branch Education Secretaries and Clerks, Inc. concerning the terms and conditions of employment of the employees represented by the said Association.

4. WE WILL NOT refuse to reduce agreements negotiated with said Association to writing and sign such agreements.

5. WE WILL formally execute, upon request, the collective negotiations agreement that was agreed upon by the duly authorized negotiating teams of the Association of Long Branch Education Secretaries and Clerks, Inc. and the Long Branch Board of Education, and give retroactive effect to such agreement where appropriate.

LONG BRANCH 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, P.O. Box 2209, Trenton, New Jersey 08625 Telephone (609) 292-6780