P.E.R.C. NO. 81-101

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEPTUNE TOWNSHIP BOARD
OF EDUCATION,

Respondent,

-and- Docket No. CO-80-176-38

NEPTUNE TOWNSHIP PRINCIPALS'
ASSOCIATION,

Charging Party.

SYNOPSIS

In an unfair practice proceeding, the Commission affirms, on different grounds, the recommendation of a Commission Hearing Examiner that the Neptune Board of Education did not violate N.J.S.A. 34:13A-5.4(a)(5), when it unilaterally suspended a Board policy relating to the attendance of principals and vice-principals at state and national educational conventions at Board expense. Contrary to the conclusion of the Hearing Examiner, the Commission finds that the Board policy in question relates to a mandatorily negotiable term and condition of employment. The Commission agrees, however, with the Hearing Examiner's conclusion that the Board's actions herein were consistent with its negotiated agreement with the Neptune Township Principals' Association.

The Commission also determines, contrary to a finding made by the Hearing Examiner, that the charge in this case was not filed with the six months limitation period contained in N.J.S.A. 34:13A-5.4(c).

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NEPTUNE TOWNSHIP PRINCIPALS' ASSOCIATION,

Charging Party.

Appearances:
For the Respondent, Laird, Wilson & MacDonald, Esqs. (Andrew J. Wilson, Esq.)

For the Charging Party, Robert M. Schwartz, Esq.

DECISION AND ORDER

An Unfair Practice Charge was filed with the Public Employment Relations Commission on December 20, 1979, and amended on January 4, 1980, by the Neptune Township Principals' Association (the "Charging Party" or the "Association") alleging that the Neptune Township Board of Education (the "Respondent" or the "Board") had 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. (the "Act"), in that the Respondent, contrary to a "continuation of benefits" provision in the parties' collective negotiations agreement unilaterally changed its policy with respect to "travel and conventions" without negotiations with the Charging Party, all of which was alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(5) of the Act.[1/]

1/ This subsection prohibits public employers, their representatives or agents from: "(5) Refusing to negotiate in good (Continued)

It appearing that the allegations of the Unfair Practice Charge, as amended, if true, might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on October 20, 1980. Pursuant to the Complaint and Notice of Hearing, a hearing was held on December 16, 1980 in Newark, New Jersey before Hearing Examiner Alan R. Howe, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally.

Following the submission of post-hearing briefs, the Hearing Examiner issued his Recommended Report and Decision, H.E. No. 81-25, on January 22, 1981, a copy of which is annexed hereto and made a part hereof. Timely exceptions to the Report were filed by both the Board and the Association and the matter is now properly before the Commission for determination.

In his Report, the Hearing Examiner concluded that the Board had not violated the Act when it suspended, without negotiations with the Association, a policy which provided that up to eight (four elementary and four secondary) principals or vice-principals per year could attend state and national conventions at Board expense. He concluded that the policy did not relate to a mandatorily negotiable term and condition of employment and that the action of the Board was within its authority under the terms of its collective negotiations agreement and applicable Board policy to which the agreement referred. The Association excepts

1/ (Continued)
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."

to both of these determinations by the Hearing Examiner. The Board, while urging we adopt the findings and conclusions of the Hearing Examiner, also argues that the charge in this case was not filed within the six-months limitation period contained in N.J.S.A. 34:13A-5.4(c), a contention rejected by the Hearing Examiner. Neither party challenges the Hearing Examiner's findings of fact, which we find are supported by substantial evidence and are hereby adopted.

Turning to the arguments advanced in the parties' exceptions. We agree with the Association that paid leave to attend annual conventions is a term and condition of employment,[2/] and specifically reject that conclusion of law by the Hearing Examiner. However, we nonetheless find that the Hearing Examiner's recommended dismissal of the Association's charge was correct.

Initially, we agree that a conjunctive reading of the agreement and the relevant sections of Board policies Nos. 428 and 433 supports the Hearing Examiner's conclusion that the action taken by the Board was within its reserved (as opposed to inherent) rights and was consistent with its negotiated agreement.[3/]

Additionally, we believe there may be some merit to the Board's contention that the unfair practice charge should be deemed time-barred. The instant charge was filed with the Commission on December 20, 1979. The Board adopted a resolution suspending its convention policy on May 21, 1979 and a letter from the superintendent to the Association was sent out the next day. Additionally,

2/ Cf. In re Belvidere Bd. of Ed., P.E.R.C. No. 78-5, 3 NJPER 226 (1977). See also Borough of Glassboro v. P.B.A. Local 178, 149 N.J. Super. 259 (App. Div. 1977).

3/ Additionally, the Association's own witness testified the Association was unsuccessful in getting during negotiations specific language into the agreement concerning conventions which would have guaranteed a convention per year per unit member.

the record contains correspondence from the Association to the Superintendent which establishes that the Association was aware of the Board's intention to change the policy well before the Board adopted its May 21, 1979 resolution. On March 30, 1979, the President of the Association wrote to the superintendent stating that the Board's already announced policy of no convention leave for the 1979-1980 school year was a change in working conditions and a violation of the contract and set forth the Association's intention to file grievances if unit members were denied convention leave.

We believe the May 21, 1980 resolution was the operative event herein. Since the charge seeks to remedy an alleged unilateral change in terms and conditions of employment which occurred one day short of seven months prior to the filing of the charge we agree with the Board that the six-months limitations period has not been met in this case.

ORDER

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

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

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

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

H. E. No. 81-25

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

In the Matter of

NEPTUNE TOWNSHIP BOARD OF EDUCATION,

Respondent,

- and -

Docket No. CO-80-176-38

NEPTUNE TOWNSHIP PRINCIPALS' ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commision find that the Board did not violate Subsection 5.4 (a)(5) of the New Jersey Employer-Employee Relations Act when without negotiations with the Association it unilaterally adopted a resolution on May 21, 1979, which held in abeyance for the 1979-80 school year Policy No. 433--Travel and Convention--"...due to budgetary restraints." The Hearing Examiner found that the Board was exercising an inherent managerial prerogative when it adopted the May 21, 1979 resolution.

The Hearing Examiner rejected the Association's contention that a provision in the collective negotiations agreements pertaining to the continuation of current benefits, including Board of Education Policy, meant that the Board was without power to suspend Travel and Convention Policy for the 1979-80 school year. The Hearing Examiner pointed to an earlier Board Policy wherein the Board had reserved on an annual basis the right to amend, revise or abrogate Travel and Convention Policy.

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. 81-25

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NEPTUNE TOWNSHIP PRINCIPALS' ASSOCIATION,

Charging Party.

Appearances:

For the Neptune Township Board of Education
Laird, Wilson and MacDonald, Esqs.
(Andrew J. Wilson, Esq.)

For the Neptune Township Principals' Association
Robert M. Schwartz, Esq.

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on December 20, 1979, and amended on January 4, 1980, by the Neptune Township Principals' Association (hereinafter the "Charging Party" or the "Association") alleging that the Neptune Township Board of Education (hereinafter the "Respondent" or the "Board") had 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, contrary to a "continuation of benefits" provision in the parties' collective negotiations agreement, which specifically refers to Board Policy, unilaterally changed its Policy with respect to "travel and conventions" without negotiations with the Charging Party, all

of which was alleged to be a violation of N.J.S.A.34:13A-5.4 (a)(5) 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 October 20, 1980. Pursuant to the Complaint and Notice of Hearing, a hearing was held on December 16, 1980 in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence 2/ and argue orally. Oral argument was waived and the parties filed post-hearing briefs by January 20, 1981.

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 briefs 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 Neptune Township Board of Education is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. The Neptune Township Principals' Association is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

1/ This Subsection prohibits public employers, their representatives or agents from:

"(5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

2/ The Respondent did not make a motion to dismiss and elected to rest at the conclusion of the Charging Party's case without calling any witnesses but did offer one exhibit (R-1).

3. The parties have had a collective negotiations relationship since 1975 and the collective negotiations agreement herein involved was effective during the term July 1, 1977 through June 30, 1980 (J-1).

4. Article IV of the agreement, "Current Benefits," provides, as follows: "The parties agree to continue benefits not contained in this agreement but presently being received under Board of Education Policy." (J-1, p.3).

5. The Board adopted Policy No. 428, "Guide For the Administration of Administrators' Salaries" on May 31, 1961, revising it on April 28, 1975 and on August 29, 1978, which provides in paragraph 1 (e), as follows:

> "Prevailing economic conditions and the financial ability of the School District of Neptune Township must annually be the basis for determining the degree to which this policy can be placed into operation. This Salary Policy may be changed, amended, revised, or abrogated by the Board of Education at any time, within the confines of legislative enactments."

Paragraph 7 of Policy No. 428 pertains to "Attendance at Conventions and/or Workshops" and provides only that reference be made to "Travel and Convention Policy." (See R-1, pp. 1, 4).

6. The Board adopted Policy No. 433, "Travel and Convention", on July 31, 1974, revising it on December 15, 1977 and on August 29, 1978, which provides in paragraph 8, as follows:

> "Four secondary principals and/or vice principals and four elementary principals shall be permitted to attend (conventions) annually. No more than two principals will be permitted to attend the same convention within the same year. Attendance shall be determined by submitting the request, in writing, at the beginning of the school year. All expenses are subject to review and approval in accordance with the Board's policy for travel expenses." (J-2, p.2).

7. In the negotiations for the agreement herein involved (J-1), the Association tried unsuccessfully to include specifically within the said agreement Board Policy No. 433, supra, with respect to "Travel and Convention."

8. Beginning in 1972-73 four administrators now within the collective negotiations unit 3/ were permitted to attend conventions. However, the Board in 1973-74 permitted only two elementary school principals to attend their convention. In 1974-75 six administrators were permitted to attend conventions, four from the elementary school(s) and two from the high school. In 1976-77, 4/ the number of administrators permitted to attend conventions was increased by agreement from four to eight. This agreement was continued for 1977-78 and 1978-79 when, in each school year, eight administrators were permitted to attend conventions. In 1979-80 no administrators were permitted to attend conventions, as a result of a change of Board Policy, infra, which is the subject of the instant unfair practice proceeding.

9. On May 21, 1979 the Board adopted a resolution, which provided: "That the Board hereby adopts existing policy for use with the exception of Policy No. 433--Travel and Convention Policy (Personnel), which shall be held in abeyance due to budgetary restraints." (J-3).

10. Under date of May 22, 1979 the Superintendent, Victor J. W. Christie, advised Daniel Edelson, a Vice-Principal at the high school and a negotiator for the Association, of the Board's action of May 21, 1979 (J-3, supra), stating, in part, as follows:

> "I would like to point out that this Policy (Travel and Convention) has not been abolished, but is being held in abeyance for the next year of operation. In addition, it does not affect our attendance at workshops and other study experiences which may occur during the school year. It pertains specifically to those state and national conventions which are of extensive duration." (CP-4).

3/ Article I, "Recognition Clause," of J-1 includes within it all full-time Principals, Vice-Principals, Assistant Principals and the Administrator in Charge of Athletics and Co-Curricular Activities (J-1, p.1)

4/ There was no evidence adduced as to what happened in 1975-76.

11. Under date of August 6, 1979, Edelson wrote to Christie, in which he requested permission to attend a convention in March-April 1980, citing Policy No. 433 (J-2) and Article IV of the collective negotiations agreement (J-1), supra. (See CP-1).

12. By letter dated September 5, 1979 Christie refused Edelson's request of August 6, 1979, citing the Board's resolution of May 21, 1979 (J-3, supra). (See CP-2). 5/

THE ISSUE

Did the Respondent Board violate Subsection (a)(5) of the Act when without negotiations with the Association it unilaterally adopted a resolution on May 21, 1979, which held in abeyance for the 1979-80 school year Policy No. 433--Travel and Convention--"...due to budgetary restraints?"

DISCUSSION AND ANALYSIS

The Respondent Board Did Not Violate Subsection (a)(5) Of The Act When Without Negotiations With The Association It Unilaterally Adopted The Resolution Of May 21, 1979

The New Jersey Supreme Court has recognized the inherent conflict between the "terms and conditions of employment" of public employees under Section 5.3 of the Act and the managerial prerogatives of public employers. Thus, the Court said in State v. State Supervisory Employees Association, 78 N.J. 54 (1978) that the only terms and conditions of employment that may be negotiated are those "...which intimately and directly affect the work and welfare of public employees and on which negotiated agreement would not significantly interfere with the exercise of inherent management prerogatives pertaining to the determination of governmental policy..." (78 N.J. at 67). See also, Bd. of Ed. of the Woodstown-Pilesgrove Regional School District v. Woods-

5/ Thereafter the Association pursued the Grievance Procedure in Article III of the collective negotiations agreement (J-1), which does not provide for binding arbitration (see CP-6). The next step taken by the Association was the filing of the instant Unfair Practice Charge on December 20, 1979.

town-Pilesgrove Regional Education Association, 81 N.J. 582, 591 (1980).

The Hearing Examiner, following the mandate of the Supreme Court in Woodstown-Pilesgrove, supra, that there be a "...weighing or balancing..." in determining whether a term and condition of employment is negotiable, herein finds and concludes that the adoption by the Board of the May 21, 1979 resolution (J-3) was the legitimate exercise of a managerial prerogative and, therefore, was not negotiable. This conclusion is made notwithstanding the provision in Article IV of the collective negotiations agreement (J-1) regarding the continuation of benefits "...presently being received under Board of Education Policy." Board Policy herein includes not only No.433--Travel and Convention (J-2), but also, No. 428--Guide For the Administration of Administrators' Salaries (R-1).

An examination of Policy No. 428 discloses that it is the source of the benefit of attending conventions (see para. 7). Of great significance is paragraph 1.(e), which clearly recognized that "Prevailing economic conditions and the financial ability of the School District...must annually be the basis for determining the degree to which this policy can be placed into operation..." The same paragraph invests in the Board the authority to amend, revise or abrogate "This Salary Policy."

Thus, if one begins with Policy No. 428 in the analysis of the instant unfair practice case, it appears inescapable that the Board has expressly reserved the right to take the action that it took on May 21, 1979 when it held Policy No. 433--Travel and Convention "..in abeyance due to budgetary restraints." The Superintendent immediately explained to the Association that the Policy was in abeyance for the 1979-80 school year only and that the travel and convention policy "has not been abolished." (See CP-4).

Finally, it is noted by the Hearing Examiner that the Association might have subpoenaed, or otherwise produced at the hearing, the budgets of the Board for several years past, including 1979-80, in an attempt to show that the financial condition of the Board was no different in 1979-80 then it was in immediate prior years. This might have afforded a basis for finding that the Board was acting in bad faith when it suspended Policy No. 433 for the 1979-80 school year. However, this was not done by the Association and the Hearing Examiner cannot speculate as to what the Board's financial condition was in 1979-80 as compared to prior years.

No basis for a violation of Subsection (a)(5) of the Act by the Board having been established, the Hearing Examiner must recommend dismissal of the Unfair Practice Charge. 6/

* * * *

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

CONCLUSIONS OF LAW

The Respondent Board did not violate N.J.S.A. 34:13A-5.4(a)(5) when without negotiations with the Association it unilaterally adopted the May 21, 1979 resolution (J-3, supra).

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER that the Complaint be dismissed in its entireity.

Alan R. Howe
Hearing Examiner

DATED: January 22, 1981
Trenton, New Jersey

6/ The Hearing Examiner does not accept the Board's contention that the instant Unfair Practice Charge was time-barred under Section 5.4 (c) of the Act. From the standpoint of measuring time, the Hearing Examiner is of the view that the operative event was not the adoption by the Board of its resolution of May 21, 1979, but rather the request of Edelson on August 6, 1979 for permission to attend a convention in March-April 1980 (CP-1. Thus, the Charge having been filed on December 20 1979, it was well within the six-month period.