

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF THE
TOWNSHIP OF CHERRY HILL,

Respondent,

-and-

Docket No. CO-79-166-15

CHERRY HILL EDUCATION
ASSOCIATION,

Charging Party.

SYNOPSIS

In the absence of exceptions, the Commission adopts the recommended findings of fact and conclusions of law and order in an unfair practice proceeding. The Commission agrees with the Hearing Examiner's conclusion that the Board of Education of the Township of Cherry Hill did not violate N.J.S.A. 34:13A-5.4(a)(1) or (a)(5) when it unilaterally and without negotiations eliminated certain of the department chairperson positions in the school district and distributed the supervisory functions of the individuals holding those positions to administrative personnel who were not in the unit represented by the Cherry Hill Education Association. It was held that the actions taken by the Board were part of a restructuring of the supervisory duties to the administrative positions and as such these actions did not involve terms and conditions of employment within the meaning of the New Jersey Employer-Employee Relations Act. The Board's actions were taken for educational policy reasons and not to reduce its employment costs or for other considerations relevant to the employees' terms and conditions of employment.

P.E.R.C. NO. 81-90

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Appearances:

For the Respondent, Davis & Reberkenny, Esqs.
(Kenneth D. Roth, Esq.)

For the Charging Party, Selikoff & Cohen, P.A.
(Joel S. Selikoff, Esq.)

DECISION AND ORDER

On December 29, 1978, the Cherry Hill Education Association (the "Association") filed an Unfair Practice Charge with the Public Employment Relations Commission alleging that the Board of Education of the Township of Cherry Hill (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"). It was specifically alleged that on or about September 1, 1978, the Board, without negotiations, assigned certain work which had been performed by department chairpersons, who are members of the unit represented by the Association, to employees of the administrative staff and secretaries, both of whom are not members of the unit

represented by the Association. On January 17, 1979, the instant unfair practice charge was amended to further allege that on September 1, 1978, the Board, again without negotiations, abolished the position of audio-visual aide co-ordinator, a position within the unit represented by the Association, and assigned the duties of that position to individuals outside the unit. The actions of the Board set forth in the original charge and in the amended charge were all alleged to be violations of subsections 5.4(a)(1) and (5) of the Act.^{1/}

It appearing that the allegations of the charge, if true, might constitute unfair practices within the meaning of the Act, the Director of Unfair Practices issued a Complaint and Notice of Hearing on September 17, 1979. Subsequently, the parties agreed upon an extensive stipulation of facts to take the place of a full plenary hearing. The stipulations were finally agreed upon and executed on May 16, 1980 and were approved by the Hearing Examiner as a substitute for the development of a factual record at a plenary hearing. See N.J.A.C. 19:14-6.3 (a)(9). Extensive briefs were submitted by both parties to the Hearing Examiner.

^{1/} These subsections prohibit employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act; (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

On October 30, 1980, Hearing Examiner Edmund G. Gerber issued a comprehensive Recommended Report and Decision, which Report included findings of fact based upon the stipulated record, conclusions of law and a recommended order. The original of the report was filed with the Commission and copies were served on all parties. A copy of that Recommended Report and Decision is attached hereto and made a part hereof.

In his report the Hearing Examiner recommended the dismissal of all charges against the Board of Education of the Township of Cherry Hill in this matter. It was the Hearing Examiner's conclusion that in each instance the reassignment of the work from employees within the negotiations unit to employees outside the unit was part of a general restructuring of the supervisory responsibilities associated with those positions, and was done for predominantly educational policy reasons rather than economic or other reasons related to the employees' working conditions.^{2/} As such, the Hearing Examiner concluded that the relevant Commission decision was In re Point Pleasant Borough Board of Education, P.E.R.C. NO. 80-145, 6 NJPER 299 (¶11142 1980) and not Rutgers, The State University v. Local 1761, AFSCME Council 52, P.E.R.C. NO. 79-52, 5 NJPER 186 (¶10103 1979), mot. for recons. denied, P.E.R.C. NO. 79-92, 5 NJPER 230 (¶10127 1979), aff'd App. Div. Docket No. A-3651-78 (1980).

^{2/} The stipulations do indicate that several chairperson positions were eliminated, however, none of the teachers who held these positions were laid off. All these teachers assumed other positions within the unit.

With respect to the abolition of the audio-visual co-ordinator position the Hearing Examiner found, and we agree, that the Board's actions were part of a restructuring of that position rather than a simple reassignment of the same duties to non-unit personnel. The stipulations establish that the professional duties previously associated with that position were eliminated or greatly reduced and that the remaining duties consisted of essentially the day to day custodial care of the equipment. The consultation and training of both teachers and students, along with assistance in curriculum planning and classroom instruction has been curtailed by the Board. Therefore, the Board apparently concluded that a professional individual was no longer needed in this position and that the position could therefore be abolished. The remaining duties were transferred to a non-professional employee, which employee would not be a member of the unit represented by the Association.

Given these findings of fact and conclusions, the Hearing Examiner found that the Board had not violated N.J.S.A. 34:13A-5.4(a)(1) or (a)(5) in that there was no duty to negotiate with respect to these actions. He therefore recommended the dismissal of all charges. Neither party has filed exceptions to the Hearing Examiner's Recommended Report and Decision. See N.J.A.C. 19:14-7.2.

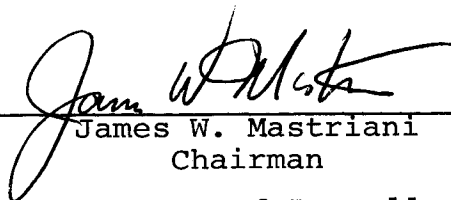
Upon careful consideration of the entire record herein and in the absence of exceptions to the Hearing Examiner's

Recommended Report and Decision ^{3/} the Commission adopts the findings of facts and conclusions of law rendered by the Hearing Examiner substantially for the reasons cited by him. We agree with the Hearing Examiner that there is a distinction between the assignment of work previously done by unit members to non-unit members when that decision is motivated by economic or other similar considerations related to the employees' terms and conditions of employment as opposed to a true restructuring of the positions which involves policy determinations by the employer as to the delivery of its governmental services. We find, on the facts of this case, that the Board did not violate N.J.S.A. 34:13A-5.4(a)(1) or (a)(5).

ORDER

IT IS HEREBY ORDERED that the unfair practice complaint against the Board of Education of the Township of Cherry Hill be dismissed in its entirety.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hartnett and Parcels voted in favor of this decision. None opposed. Commissioners Hipp and Newbaker abstained. Commissioner Graves was not present.

DATED: Trenton, New Jersey
January 20, 1981
ISSUED: January 21, 1981

^{3/} N.J.A.C. 19:14-7.3(b) provides in part that: "Any exception which is not specifically urged shall be deemed to have been waived."

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Docket No. CO-79-166-15

CHERRY HILL EDUCATION
ASSOCIATION,

SYNOPSIS

A Hearing Examiner recommends to the Public Employment Relations Commission that they find that the Board of Education of the Township of Cherry Hill did not commit an unfair practice when it unilaterally and without negotiations eliminated certain of the department chairperson positions in the school district and distributed the work of those department chairpersons to administrative personnel who were not in the unit represented by the Cherry Hill Education Association. It was held that the actions taken by the Board constituted a reorganization of departmental structure and the reassignment of supervisory duties. Such actions are not terms and conditions of employment within the New Jersey Employer-Employee Relations Act.

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:

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(Kenneth D. Roth, Esq.)

For the Charging Party, Selikoff & Cohen P.A.
(Joel S. Selikoff, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

On December 29, 1978, the Cherry Hill Education Association (the Association or Charging Party) filed an Unfair Practice Charge with the Public Employment Relations Commission (Commission) alleging that the Board of Education of the Township of Cherry Hill (Board or Respondent) 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. (Act). It was specifically alleged that on or about September 1, 1978, the Respondent, without negotiations removed work formerly performed by department chairman in the unit represented by the Charging Party and assigned the work to members of the administration and secretaries who are outside the

unit as well as to other unit members. It was claimed that these acts violated §5.4(a)(1) and (5) of the Act. ^{1/} On January 17, 1979, the charge was amended to further allege that on September 1, 1978, the Respondent removed the position of audio-visual aide co-ordinator, a position within the unit represented by the Charging Party and assigned the duties of that position to individuals who are outside that unit, also in violation of §5.4(a)(1) and (5) of the Act.

It appears that the allegations of the charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on September 17, 1979. On May 16, 1980, pursuant to N.J.A.C. 19:14-6.3(a)(9) the parties voluntarily entered into a stipulations of fact.

Briefs were submitted by both parties. The final supplement to the Respondent's brief was received by September 30, 1980.

The Respondent has urged that the complaint in this matter is out of time and should be dismissed. Section 5.4(c) of the Act provides "no complaint shall issue based upon any unfair practice occurring more than six months prior to the filing of the charge." The Respondent argues that the operative event giving rise to the complaint was not on September 1, 1978, as alleged in the Association's charge. Between October 5, 1977 and March 17, 1978, several meetings were held with the Association at which time the elimination

^{1/} These subsections prohibit employers, their representatives or agents from "(1) interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act; (5) refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

of positions in the district was discussed and on April 25, 1978, the President of the Association demanded negotiations on the changes in terms and conditions of employment of members of the unit as a result of the elimination of Department Chairperson positions. The demand for negotiations was renewed on May 19, 1978. The Board never negotiated. This second demand was made some 7-1/2 months prior to the filing of a charge.

The Respondent does concede that the decision to abolish the positions was effective on or about September 1, 1978, at the start of the school year. It further concedes that if the effective date of the abolishment of this position is the operative date for the commencement of the running of the six-month period, the charge is timely.

The Commission has held in Jamesburg Board of Education and Jamesburg Education Association, P.E.R.C. No. 80-56, 5 NJPER 496, 497 (¶10253, 1979) and Warren Hills Board of Education and Warren Hills Education Association, P.E.R.C. No. 78-69, 4 NJPER 187 (¶4094, 1978) that "the operative event is not the decision but rather the implementation." The unfair practice is refusing to negotiate before implementation. No wrong occurs unless and until implementation occurs. If no wrong has occurred, the six-month period cannot have commenced. It therefore follows that the operative event here is September 1, 1978, the start of the 1978-1979 school year. Accordingly the action is not barred by the six-month limitation provision of the Act.

The parties stipulated that the positions of Chairperson of Physical Education at the Heritage and Brainard Schools, of Chairpersons of Related Acts at the Beck and Brainard Schools, of Director of Guidance at the Heritage, Beck and Brainard Schools and Audio-Visual Aide Co-ordinator at the Beck School were all eliminated. None of the teachers who held these positions were let go. They all assumed regular teaching duties.

The Respondent has argued that the elimination of these positions was a reduction in force (RIF) and accordingly, pursuant to Maywood Board of Education v. Maywood Education Association, 168 N.J. Super. 45 (App. Div. 1979) cert. den. 81 N.J. 292 (1979) the impact of the elimination of the position is not negotiable.

The Board also cites N.J.S.A. 18A:28-9 in support of their argument:

"Nothing in this title or any other law relating to tenure of service shall be held to limit the right of any board of education to reduce the number of teaching-staff members, employed in the district whenever, in the judgment of the board, it is advisable to abolish any such positions for reasons of economy or because of reduction in the number of pupils or of change in the administrative or supervisory organization of the district or for other good cause upon compliance with the provisions of this article." N.J.S.A. 18A:28-9.

A careful reading of the statute discloses that the instant situation is not a RIF. The statute relates to "tenure of service" and to reducing "the number of teaching-staff members employed in the district." Here no one was let go. Rather there was a reassignment of duties. See Piscataway Township Board of Education and Piscataway Township Education Association, P.E.R.C. No. 78-81, 4 NJPER 246 (¶4124,

1978). ^{2/}

As a general rule, reassignment of work from employees within a negotiations unit to employees outside the unit is a mandatory subject of negotiations. Rutgers, The State University v. Local 1761, AFSCME Council No. 52, P.E.R.C. No. 79-52, 5 NJPER 186 (¶10103, 1979), not for recon., P.E.R.C. No. 79-92, 5 NJPER 230 (¶10127, 1979), affmd App. Div. Docket No. A-3651-78 (July 1, 1980). As stated in Rutgers "when the same amount of work is being performed and the employer is merely revamping personnel assignments, then the logic behind permitting reduction in force does not apply and there must be negotiations."

As the Respondent correctly argues, there are a number of exceptions to this rule.

"It is well established that decisions concerning (1) reorganizing the departmental structure; (2) restructuring particular programs; and (3) reassigning supervisory duties from one group of employees to another are major educational policy matters beyond the scope of negotiations." Point Pleasant Borough Board of Education and Point Pleasant Borough Teachers Association, P.E.R.C. No. 80-145, 6 NJPER (¶ , 1980).

Here, all of the work done by the chairpersons (scheduling and conducting departmental meetings, evaluation and observations of teachers within the respective departments, budget preparation, scheduling and control of substitutes etc.) was transferred to the principal, vice principal and assistant principal. ^{3/}

^{2/} See also Victor Catano v. Board of Education of Woodbridge 1971 SLD 448 (Comm'r of Education), aff'd 1972 SLD 665 (State Board of Education).

^{3/} The duties formerly performed by the Chairperson of Related Arts at the Brainard School was assumed by the Co-ordinator of Student Affairs, a non-unit administrative position.

The elimination of these positions constitute a reorganization of departmental structure and a reassigning of supervisory duties from one group of employees to another and such transfers are non-negotiable.

Some of the work formerly done by the guidance counsellors and chairpersons is now being done by unit member guidance counsellors and non-unit secretaries -- as the Charging Party has conceded, the decision to eliminate a position and redistribute duties previously assigned to that position among other unit members is a non-negotiable managerial prerogative. East Orange Board of Education and East Orange Education Association, P.E.R.C. No. 79-62, 5 NJPER 122 (¶10071, 1979). Therefore the transfer of work from the Guidance Counsellor Chairperson to other guidance counsellors is non-negotiable.

The transfer of Guidance Counsellor Chairperson work to non-unit secretaries consists basically of ministerial duties such as "the processing of materials for each marking period." The shifting of this work to non-unit secretarial employees is only incidental to the shifting of supervisory functions, and therefore not negotiable. Board of Education of Woodstown-Pilesgrove Regional School District v. Woodstown-Pilesgrove Regional Education Association, 81 N.J. 582 (1980).

The abolition of the position of Audio-Visual Co-ordinator creates different problems.

The Audio-Visual Co-ordinator job description calls for a teacher with a minimum of three years of classroom experience and

a Masters Degree in Educational Media and extensive experience. The job description requires certification as an educational media specialist but the position itself is not a supervisory one. Pursuant to Rutgers, supra, one must look at the amount and type of work done before and after the transfer to determine if there was a genuine restructuring of the program or if there merely was a transfer of work to non-unit personnel. Here, the essential day-to-day care of audio-visual equipment and materials is still being done. However, no one now performs those tasks in the job description requiring a high level of professionalism. That is, the consultation and training of both teachers and students. These duties went beyond equipment and materials and included areas such as curriculum planning and classroom instruction.

The elimination of professional duties indicate that the Board's action was more than a transfer of work to non-unit personnel. Eliminating, or greatly reducing, professional duties, changed the nature of the work. It is apparent that there was a genuine restructuring of the program and the actions of the Board were not negotiable.

* * * * *


Based on the foregoing, the Hearing Examiner makes the following:

Conclusions of Law

The Respondent did not violate N.J.S.A. 34:13A-5.4(a) (1) and (5).

Recommended Order

It is hereby ORDERED that the Complaint be dismissed in its entirety.



Edmund G. Gerber
Hearing Examiner

DATED: October 30, 1980
Trenton, New Jersey