P.E.R.C. NO. 88-70

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MT. LAUREL TOWNSHIP
BOARD OF EDUCATION,

Respondent,

-and- Docket No. CI-87-30-96

WILLIAM GIBSON and MT. LAUREL
NON-TEACHING PROFESSIONAL ASSOCIATION,

Charging Parties.

SYNOPSIS

The Public Employment Relations Commission dismisses a complaint based on an unfair practice charge filed by William Gibson and Mt. Laurel Non-Teaching Professional Association against the Mt. Laurel Board of Education. The charge alleged the Board violated the New Jersey Employer-Employee Relations Act when it unilaterally reduced Gibson's salary by eliminating a stipend he had received in prior years. The Commission, in agreement with a Commission hearing examiner, finds that the stipend was not unilaterally eliminated; rather, it was eliminated pursuant to the parties' agreement.

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Charging Parties.

Appearances:

For the Respondent, Moss, Powers, Kugler & Lezenby, Esqs.
(William R. Powers, Jr., of counsel)

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

DECISION AND ORDER

On November 12 and December 22, 1986, William Gibson and the Mt. Laurel Non-Teaching Professional Association ("Association") filed an unfair practice charge and amended charge against the Mt. Laurel Township Board of Education ("Board"). The charge, as amended, alleges the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (3) and (5),[1/] when it unilaterally reduced Gibson's salary by eliminating a stipend he had received in prior years.

1/ These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (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

(footnote continued on next page)

On February 10, 1987, a Complaint and Notice of Hearing issued. On February 24, the Board filed its Answer. It admits that a stipend had been paid to Gibson in 1984-1985 and 1985-1986, but contends the parties' agreement to pay the stipend was limited to those years.

On April 16, 1987, Hearing Examiner Arnold H. Zudick conducted a hearing. The parties examined witnesses and introduced exhibits. They also filed post-hearing briefs.

On September 1, 1987, the Hearing Examiner recommended that the Complaint be dismissed. H.E. No. 88-12, 13 NJPER ___ (¶_____ 1987). He determined that the Board acted in accordance with its agreement with the Association: Gibson's stipend was for the first two years of the agreement for the purpose of enabling him to develop a computer program and the Association and Gibson agreed that no stipend would be paid after that period. He therefore was not entitled to an additional stipend for the third year; nor would negotiations be appropriate since the parties had already agreed that the stipend would be eliminated after the second year.

On September 16, 1987, the Association filed exceptions. It contends that the Board violated the Act when it "reduced" Gibson's salary without negotiations. It also contends that Gibson

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> 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."

continued to perform additional duties in 1986-1987 and therefore the Board was obligated to negotiate additional compensation for these duties. It asserts the Hearing Examiner's report is contradictory because he states that there was no agreement to pay Gibson a stipend for 1986-1987, but later stated that the parties agreed not to pay a stipend for 1986-1987.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 4-9) are accurate. We adopt and incorporate them here.

We also agree with his conclusions of law. The report is not contradictory. The Board acted in accordance with the collective negotiations agreement and its agreement to pay Gibson a two-year stipend for developing the computer program. The stipend was not unilaterally eliminated. Rather, it was eliminated pursuant to the parties' agreement. In the third year, Gibson was paid in accordance with the parties' collective negotiations agreement and, like all other unit members, was assigned work within his job description.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION.

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Smith and Wenzler voted in favor of this decision None opposed. Commissioners Bertolino and Reid abstained.

DATED: Trenton, New Jersey
January 21, 1988
ISSUED: January 22, 1988

H.E. NO. 88-12

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

In the Matter of

MT. LAUREL TOWNSHIP BOARD
OF EDUCATION,

Respondent,

-and- Docket No. CI-87-30-96

WILLIAM GIBSON and MT. LAUREL
NON-TEACHING PROFESSIONAL ASSOCIATION,

Charging Parties.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Mt. Laurel Township Board of Education did not violate the New Jersey Employer-Employee Relations Act when it did not pay employee Gibson a stipend for computer-related work for 1986-87. The Hearing Examiner found that the Board had negotiated over the payment of a stipend to Gibson which resulted in the payment of a stipend for the first two years of the parties' three-year agreement. The Board complied with the contract and was not required to pay a stipend in the final year of the agreement.

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. 88-12

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

In the Matter of

MT. LAUREL TOWNSHIP BOARD
OF EDUCATION,

Respondent,

-and-

Docket No. CI-87-30-96

WILLIAM GIBSON and MT. LAUREL
NON-TEACHING PROFESSIONAL ASSOCIATION,

Charging Parties.

Appearances:

For the Respondent
Moss, Powers, Kugler & Lezenby, Esqs.
(William R. Powers, Jr., Of Counsel)

For the Charging Parties
Robert M. Schwartz, Esq.

HEARING EXAMINER'S RECOMMENDED REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (Commission) on November 12, 1986 by William Gibson (Charging Party) and amended on December 22, 1986 to include the Mt. Laurel Non-Teaching Professional Association

(Charging Party or Association) as a Charging Party,[1/] alleging that the Mt. Laurel Township Board of Education (Board) violated subsections 5.4(a)(1), (3) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act).[2/] The Charging Party alleged that the Board violated the Act when it did not pay employee William Gibson a $4000 stipend for the 1986-87 academic year. The Charging Party explained that Gibson had received the stipend in previous years and it alleged that the

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1/ The December 22 amendment gave the name of the Association as Mt. Laurel Township Administrators Association. At the hearing on April 16, 1987, however, the Charging Party corrected the name to read Mt. Laurel Non-Teaching Professional Association (T3).

After making note of the amendment at the hearing I explained that this case was originally docketed as a "CI" (charge by individual) because it was filed as a charge by an individual. Once the Association became a co-charging party, it would have been more accurate to consider the charge as a "CO" (charge by labor organization)(T8-T9). Normally, individuals cannot assert §5.4(a)(5) violations of the Act because that right rests with a labor organization. See N.J. Turnpike Auth., P.E.R.C. No. 81-64, 6 NJPER 560 (¶11284 1980), aff'd App. Div. No. A-1263-80T3 (10/30/81). But here, since the Charging Party includes the Association, it is not inappropriate to allow the Charging Party to pursue the (a)(5) allegation despite the "CI" docketing.

2/ These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (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 of employees in that unit, or refusing to process grievances presented by the majority representative."

Board failed and refused to negotiate with the Association over whether the stipend should be discontinued. As a remedy the Charging Party sought the "continuation of the status quo as it existed prior to the 1986-87 school term."

A Complaint and Notice of Hearing was issued on February 10, 1987. The Board filed an Answer on February 24, 1987 (C-2, C-3a) denying having changed Gibson's terms and conditions of employment and raising certain affirmative defenses. The Board asserted that the parties had in fact negotiated over the stipend and that no stipend was provided for that year in the parties' collective agreement.

A hearing was held in this matter on April 16, 1987 in Trenton, New Jersey.[3/] Both parties filed post-hearing briefs, the last of which was received on July 17, 1987.

Upon the entire record I make the following:

Findings of Fact

1. The Board is a public employer within the meaning of the Act, and the Association is an employee representative within the meaning of the Act and is the majority representative of supervisors employed by the Board.

2. William Gibson is a public employee within the meaning of the Act and is employed by the Board.

3/ The transcript from that hearing will be referred to as "T."

3. The Board and Association are parties to a collective agreement (J-1, C-3b) effective from July 1984 through June 1987. That agreement was signed on October 23, 1984 and included a salary schedule (Schedule A), but did not include additional stipends for any unit members. There was no reopener clause included in the agreement. On December 21, 1984 the parties ratified an amendment (J-2) to Schedule A of J-1 providing for a stipend of $4000 to be paid to William Gibson during the 1984-85 academic year. Exhibit J-2 did not specify a reason for the stipend. On or about July 9, 1985 the parties again agreed to amend J-1 to provide a stipend of $4000 for Gibson for the 1985-86 academic year, listing the reason as "for the dual responsibility of mathematics/computer education." That amendment/agreement was attached to J-1 and entitled, "Appendix to Schedule 'A.'" There was no amendment or appendix to J-1 providing for a stipend for Gibson for the 1986-87 academic year.

4. The Board employs five supervisors generally covering the areas of language arts, science, reading, social studies and math (T87-T88). There are no separate job descriptions for each supervisor; rather, all supervisors are covered by the same job description (R-3, C-3c)(T53, T89). R-3 provides, for example, that supervisors are responsible for communicating with the professional staff, parents and the community; implementing and assessing educational programs and curriculum; implementing District policies: reviewing and ordering books and other educational materials; conducting classroom observations and recommending staffing changes;

and organizing, conducting and evaluating in-service and pre-service workshops involved in District staff development.

In addition to the above duties all supervisors are responsible for preparing a budget for their area of responsibility (T57), for training employees (T57-T58), and for evaluating textbooks using a lengthy textbook review process in selecting the textbooks for their areas of responsibility (T70-T71, T119).

Superintendent James Anzide testified that supervisors are not limited to a single subject matter (T89). Gibson, the math supervisor, has been responsible for the computer education program and videotaping (T57); the science supervisor is responsible for a family life program and a drug and alcohol program (T54, T55, T90); and the language arts supervisor, the reading supervisor, and the social studies supervisor all have additional programs (T56).

5. William Gibson has been the math supervisor for ten years. He testified that the computer education program began in the District in 1980, and he became the supervisor of that program beginning in the 1982-83 academic year (T14, T29). During the 1983-84 academic year Gibson's responsibilities were increasing more than other supervisors because of his responsibility to supervise computer education (T34). Thus, at the beginning of the 1984-85 academic year, Anzide requested the Board to add a stipend to Gibson's salary to compensate him for the extra work for starting, developing and implementing the program (T77-T78). In the past, none of the supervisors had been paid a stipend for additional work

(T77). The Board approved Anzide's request for a two-year stipend by authorizing the stipend for 1984-85 with the possibility of a second year (T79).

Anzide then informed Gibson of the Board's offer and that at most it was a two-year offer, and Gibson was pleased with the arrangement (T79). Anzide then contacted the Association and informed it of the one-year offer for Gibson with the possibility of a second year, and the Association agreed to the offer which led to J-2, the first amendment to the contract (T80, T95). Gibson testified that when the stipend was first offered to him and negotiated with the Association he understood that it was for a one to two-year period for setting up the computer program (T19, T66-T67).[4/]

In July 1985, after the completion of the 1984-85 academic year, the parties, pursuant to their earlier agreement, again amended J-1, this time to reflect a stipend for the 1985-86 academic

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4/ Gibson also testified that after the first year he understood the stipend to be on a year-to-year basis (T19, T67), but there was no foundation in fact for that understanding.

Gibson testified that he was told that the stipend was for one year with the possibility for a second year (T20, T67). He explained that he was also told that after the second year there were several options, but he testified that there was no agreement beyond the two-year arrangement (T67). Gibson's testimony that the parties had agreed to a one-year offer and a year-to-year basis thereafter was Gibson's own language and was a mischaracterization of the parties' actual two-year agreement. There was no agreement to consider the stipend on a year-to-year basis. There was only an agreement for a one to two-year stipend, and I find that there was no agreement for a stipend for 1986-87.

year. There was no agreement or amendment providing a stipend for 1986-87. In the spring of 1986 it became apparent to Gibson that he would not receive a stipend for 1986-87. Anzide testified, however, that the Board did not decide in the spring of 1986 not to offer Gibson a stipend for 1986-87, that decision was made back in 1984-85 (T95). I credit that remark.

On May 20, 1986 a meeting was held between Assistant Superintendent Manko and Gibson to discuss Gibson's computer-related duties for 1986-87 (T23). Gibson testified that Manko said that Gibson's computer duties would be scaled down (T24). When Gibson prepared a summary of that meeting (CP-2), however, it showed him still doing nearly all of the same computer duties. Gibson further testified that after the May 20th meeting Manko indicated that he would reduce his (Gibson's) computer duties related to repair and maintenance, and puchasing hardware and software (T25).

On May 21, 1986, Gibson filed a grievance (CP-1) against the Board for assigning him the computer duties without additional compensation for 1986-87.[5/] A grievance conference (Level I) was

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5/ CP-1 provides as follows:

> I am filing a grievance in accordance to Article III of the Agreement between the Mount Laurel Board of Education and the MLNTPA which is in effect on this date.
>
> I maintain that the district's plans of utilizing me in a dual capacity (Mathematics and Computer Education) beyond this contract year (June 30, 1986), without the additional

Footnote Continued on Next Page

held by Manko on May 30 denying the grievance. Manko explained that Gibson received a stipend for two years while the program was being developed and he indicated that his (Gibson's) computer duties would be scaled down thereafter. On June 2, 1986 Manko sent Gibson a written result of the May 30 conference (C-3d).[6/]

5/ Footnote Continued From Previous Page

compensation that I presently receive, are inequitable and unfair.

On May 20, I met informally with Mr. Manko to discuss this issue. This meeting was a result of my April 11th memo to Mr. Manko, his response to me dated My [sic] 12th, and my follow-up memo dated May 13th requesting additional information (memos are attachments #1, 2 and 3). When we spoke on May 20, Mr. Mano indicated that most of my Computer Education Responsibilities would continue into the next contract year "but on a scaled down effort," and that no stipend would be paid as in the past two years. I reviewed an outline of some of my Computer Education responsibilities item by item (see attachment #4) asking if I would still be responsible for each, and found his responses to support the position that my responsibilities would continue. I also feel that by the nature of the responsibilities and the inherent problems that will accompany them, a "scaling down" is not possible or realistic.

Therefore I request that this issue be handled as a formal grievance, and that every effort is made to resolve it prior to June 30th.

Thank you for you time in attending to this matter.

6/ C-3d provides as follows:

This communique is in response to our grievance conference (May 30) which was initiated by your memo dated May 21, 1986.

As I stated at our conference, compensation ($2,000 [sic] per year) for your work with the computer program was only

Footnote Continued on Next Page

On July 3, 1986 Anzide held a grievance conference with Gibson (Level II) regarding CP-1 and he too denied the grievance. Anzide repeated what Manko had already told him (Gibson): that the stipend was for two years only and that his (Gibson's) computer duties would be decreased. Anzide also outlined his (Gibson's) duties for 1986-87. On July 7, 1986 Anzide sent Gibson the written result of the July 3rd meeting (C-3e).[7/] On September 9, 1986 the

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6/ Footnote Continued From Previous Page

established for a two year period. This period was defined as the 1984-85 and 1985-86 (optional) school years. The compensation was awarded for the additional time needed in developing and implementing the computer curriculum (grades 3-8) and the staff development program.

As discussed at the May 20 and 30 meetings, your computer program efforts should be less since the curriculum and staff development program have been successfully implemented. I envision in my judgment a "scaling down" of your computer program responsibilities. In addition, the present supervisor model will be carefully studied for a more equitable distribution of assigned responsibilities among the supervisor corp.

If you have any questions regarding this memo, please don't hesitate to see me.

Thanking you in advance for your understanding.

7/ C-3e provides as follows:

On July 3, 1986, I met with you to respond to your request that your $4,000 annual stipend for supervising the computer program be continued into the 1986-87 school year.

As I indicated during our discussion, Mr. Manko clearly stated that the Board's intention was to provide you with a stipend for two years (1984-85 & 1985-86). The extra salary payment

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Board reviewed and denied Gibson's grievance (Level III). On September 10, 1986 it sent Gibson a letter (C-3f) explaining that there had been no agreement to provide a stipend in 1986-87, and that if Gibson's workload could not be performed during a normal

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7/ Footnote Continued From Previous Page

was to compensate you for the implementation of the district's computer program. This message was conveyed to you on several occasions.

Since the stipend will not be provided to you in 1986-87, Mr. Manko, your immediate supervisor, agreed to "scale down" your responsibilities in order to allow you to meet the requirements of the mathematics and computer programs.

During our meeting I clearly spelled-out what responsibilities would be assigned to you in 1986-87. They included the following:

1. Complete the summer curriculum revision project.

2. Carry-out the mathematics textbook adoption process.

3. Be available to assist the Middle School administration in the supervision of the 6, 7, & 8 grades mathematics program.

4. Train elementary principals to administer the mathematics testing program and coordinate the testing.

5. Continue to supervise the computer program. (If the computer program responsibilities demand more of your time than is available, prioritize the requirements and address the responsibilities to be designated by Paul Manko.)

Based on the above outline which "scales down" your responsibilities, it is reasonable to expect that your duties can be handled within the normal job hours of a supervisor.

work period, his workload would be adjusted.[8/]

6. Gibson testified that his computer duties were not actually reduced until October and November 1986 (T37-T39). He testified, however, that those reductions resulted in a decrease of nine to ten weeks of computer-related duties per year for 1986-87 (T37-T41, T50). He also testified that his math duties increased approximately 15 to 20 weeks for the 1986-87 academic year because of his involvement in the textbook adoption process for his department (T44-T50). He further testified that the textbook adoption responsibilities were applicable to all supervisors and were within the duties contained in his job description (T67, T71, T119-T121).

8/ C-3f provides as follows:

> On September 9, 1986, the Board of Education finished its review of your grievance which was presented on Tuesday, August 26, 1986. It was determined that the issues of a job title change and a direct reporting responsibility to the Superintendent were not appropriate items to be addressed by the Board of Education in conjunction with your grievance.
>
> The Board decided that it was stipulated in the MLNTPA Agreement, Appendix 2, Section A, that a stipend of $4,000 was for the 1985-86 school year for the dual responsibility of mathematics/computer education. There was no indication whatsoever that the stipend would be continued beyond the last school year.
>
> The Board of Education desires to have you carry out your mathematics and computer responsibilities as outlined in the Superintendent's response to your grievance. If the dual role creates a workload that can not be handled within the normal work period for a supervisor, you should meet with Paul Manko to appropriately adjust your responsibilities so that they can be accomplished within the assigned time frame for your dual role.

Analysis

The 5.4(a)(1) and (5) Allegation

The Charging Party alleged that the Board violated the Act by refusing to negotiate over its alleged unilateral decision to eliminate Gibson's stipend for 1986-87. The Charging Party asserted that the Board's decision to "eliminate the stipend" was based upon its (Board) belief that Gibson's computer workload had been or would be decreased in 1986, but the Charging Party argued that it (Association) was entitled to negotiate over the alleged decision to eliminate the stipend. The Charging Party also alleged that Gibson is entitled to additional compensation because of his dual role of supervisor of math and computer education.

The Charging Party's arguments lack merit. The Board did not unilaterally eliminate Gibson's stipend. I find that the Board and Association negotiated over Gibson's stipend and those negotiations resulted in a two-year stipend agreement for the first two years of a three-year collective agreement.

I agree with the Charging Party that it is well established that workload increases are mandatorily negotiable. See Burlington Cty. College Faculty Assn. v. Bd. of Trustees, 64 N.J. 10 (1973); Red Bank Bd. of Ed. v. Warrington, 138 N.J. Super. 564 (App. Div. 1976). To the extent that the Board created a new position by combining math supervision with supervision of computer education, it is also well established that public employers have the managerial prerogative to create new positions. Bergen Pines Cty.

Hosp., P.E.R.C. No. 87-25, 12 NJPER 753 (¶17283 1986), but the amount of compensation for the new position is mandatorily negotiable. Ramapo-Indian Hills Reg. H.S. Dist. Bd.Ed. v. Ramapo-Indian Hills Ed. Assn., 176 N.J. Super. 35 (App. Div. 1980). However, where, as here, the Board has already negotiated over workload and the compensation related thereto, the Association is not entitled to additional negotiations to improve upon its previous agreement.

The facts show that the Board and Association reached a three-year collective agreement in October 1984. That agreement did not provide for stipends for Gibson or any other supervisor despite the fact that Gibson was already supervising computer education and all other supervisors similarly performed some dual responsibilities. But when the Board realized that the computer education duties significantly increased Gibson's responsibilities it made a proposal to the Association in December 1984 to provide a stipend to Gibson for one year with an option for a stipend for the second year of the three-year collective agreement as reimbursement for those computer duties. There was no offer for a stipend for the third year of the contract because the Board expected the computer duties to diminish. The Board's intent was to provide Gibson a stipend for starting and implementing the computer education program which it believed would take two years. The Board then intended to -- and did in fact -- reduce Gibson's computer education duties. The Association agreed to the one to two-year stipend proposal for Gibson and did not negotiate any stipend for Gibson for the third

year of J-1, or a reopener over that question, even though it knew in 1984-85 that Gibson had been assigned the computer education duties.

In its post-hearing brief the Charging Party made it appear as if it were not aware until 1986 that the Board was not offering a stipend to Gibson for 1986-87 for his computer education responsibilities. That is an inaccurate reflection of the facts. The Association knew in late 1984, during the negotiations over the first stipend, J-2, that the Board was only offering the stipend for -- at most -- only the first two years of J-1. The Association accepted that offer and either did not seek a stipend for the third year, or failed to get the Board to agree to a third-year stipend, but in either case there was no amendment to J-1 for a stipend for the third year of the contract. There was no showing that the Association was prevented in 1984 from negotiating a stipend for 1986-87. Once it accepted the Board's offer of a stipend for computer duties for only the first two years of the three-year agreement, particularly in view of the fact that Gibson's computer duties were substantially reduced during the third year of J-1, the Association could not subsequently undo the agreement, or claim that the stipend also applied to the third year of the agreement.

In addition, the Association cannot obtain through an unfair practice charge what it failed to obtain through negotiations. The Association knew that all suprvisors performed additional duties, and knew prior to signing J-1 that Gibson's

duties had increased due to his assignment to supervise computer education, yet it apparently made no demand to negotiate a stipend for Gibson or any other supervisor during the negotiations for J-1. It was the Board that approached the Association with an offer to give Gibson a stipend, after negotiations for J-1 had been completed, and its offer was -- at most -- only for the first two years of the three-year agreement. The Association could have counteroffered for a three-year stipend, but it did not. It accepted the Board's offer to amend J-1 only for 1984-85 and 1985-86, and thereby released the Board of any further obligation to negotiate over an amendment to J-1 for a stipend for 1986-87 unless Gibson's 1986-87 computer duties were unilaterally increased that year. The facts show, of course, that Gibson's 1986-87 computer duties decreased, as promised by Manko and Anzide, thus there was no further requirement to negotiate.

The Association's argument that it was entitled to negotiate over additional compensation for Gibson in 1986-87 because of the increase in his math-related duties is equally without merit. First, the $4,000 stipend for Gibson in 1984-85 and 1985-86 was to pay him for developing and implementing the computer duties, not for performing math duties; thus, any alleged increase in Gibson's math workload would not automatically entitle him to $4000 since that payment was not negotiated for that work.

Second, the duty to engage in the textbook selection process was not a new duty for Gibson, nor was it a duty assigned

only to Gibson. The record shows conclusively that all supervisors are -- and have been -- required to engage in the textbook selection process when textbooks are replaced which is not a yearly occurrence. In fact, Gibson was not required to perform that duty in 1984-85 and 1985-86. But the duty to review textbooks is within the supervisor job description, it has been a preexisting duty, and the workload generated by that duty was included in -- or should have been included within the parties' contemplation when assessing the employees' workload during the negotiations for J-1. Thus, I find, as evidenced by J-1, that the parties have already negotiated over compensation for the workload of supervisors and that that workload included the requirement to engage in the textbook selection process as needed. Although Gibson's math workload actually increased in 1986-87 because of the need to engage in the textbook selection process that year, that particular work had been part of his workload for several years, it was not a new assignment, and the Association cannot renegotiate over the compensation for that workload during the life of J-1.

The Charging Party relied upon Sayreville Bd.Ed., P.E.R.C. No. 84-74, 10 NJPER 37 (¶15021 1983), to support its position, but that case is distinguishable from the instant matter. In Sayreville the board unilaterally assigned additional duties to guidance counselors. The Commission held that although the assignment was non-negotiable, the union had the right to negotiate over additional compensation. The Association argued that the Commission also held

that even if the counselors' other workload was decreased, the assignment was a change in workload and compensation was still negotiable.

The Association argued that Sayreville applied here because the Board's reduction of Gibson's 1986-87 computer duties does not obviate the Board's duty to negotiate over the "unilateral" determination to cease paying Gibson the stipend for that year, and that Gibson's overall workload actually increased due to the increase in his workload in the math area.

But Sayreville does not apply. In that case there was an assignment of new duties and no negotiations over compensation. Here the parties negotiated over compensation and agreed to provide such compensation through salary and through the payment of a stipend for two years of a three-year agreement. Here the only assignment of new duties -- making Gibson supervisor of computer education -- occurred prior to J-1 and the parties negotiated over a stipend for those duties and reached an agreement. The Board did not unilaterally decide to eliminate that stipend for 1986-87; it merely implemented J-1 as negotiated and amended which only required the payment of a stipend for that work for the first two years of the contract. A public employer meets its negotiations obligation when it acts pursuant to its collective agreement. Pascack Valley Bd.Ed., P.E.R.C. No. 81-61, 6 NJPER 554, 555 (¶11280 1980); Randolph Tp. Bd.Ed., P.E.R.C. No. 83-41, 8 NJPER 600 (¶13282 1982); Bound Brook Bd.Ed., P.E.R.C. No. 83-11, 8 NJPER 439 (¶13207 1982).

The Charging Parties' claim that Gibson should have continued to receive the stipend in 1986-87 because of his math textbook duties is without merit because that workload was not as a result of new duties; it resulted from completing duties which were not performed on a yearly basis. Since Gibson's math textbook duties existed prior to and throughout J-1, if the Association felt that those duties increased his workload beyond the terms of the collective agreement (that is, beyond the workload the parties had expected), it should have grieved the matter, or sought negotiations on that workload issue. The math workload duties should not be confused with the two-year stipend agreement for computer duties. The stipend was not negotiated as reimbursement for the math textbook duties; thus, Gibson is not entitled to the stipend for that work.

In sum, J-1 was a three-year agreement which provided a salary for Gibson's position. The Association had to be aware of Gibson's computer and textbook duties when it negotiated J-1, and the inference to be drawn therefrom was that it negotiated a salary to fit his expected workload. When it became apparent to the Board that the computer education duties would occupy a good deal of Gibson's work, the Board offered to pay Gibson a stipend for that work (not the math work) during the one to two-year development and implementation stage of the computer program. The Association accepted that offer and J-1 was amended to provide a stipend for Gibson in 1984-85 and 1985-86.

The Association had the opportunity to negotiate over a stipend for 1986-87 computer duties at the time it negotiated over and agreed upon the stipend for 1984-85 with the option for 1985-86. Since it did not manage through the negotiations process to have J-1 amended to provide a stipend for 1986-87, it could not come back later, mid-contract, and demand such negotiations.

Accordingly, I recommend that the §5.4(a)(1) and (5) allegations be dismissed.

The §5.4(a)(3) Allegation

The Charging Party did not present any evidence that the Board's decision not to pay Gibson a stipend for 1986-87 was based to any extent upon Gibson's or the Association's exercise of rights protected by the Act. Thus, I recommend that the §5.4(a)(3) allegation be dismissed.

Conclusion of Law

The Board did not violate N.J.S.A. 34:13A-5.4(a)(1), (3) or (5) by not paying or negotiating over the payment of a stipend to William Gibson for 1986-87.

Recommended Order

I recommend that the Commission ORDER that the Complaint be dismissed.

Arnold H. Zudick
Hearing Examiner

Dated: September 1, 1987
Trenton, New Jersey