

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CLINTON TOWNSHIP BOARD OF EDUCATION,

Respondent,

Docket No. CO-76-185-83

-and-

CLINTON TOWNSHIP EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

In the absence of exceptions filed by either party, the Commission adopts the findings of fact and conclusions of law contained within the Hearing Examiner's Recommended Report and Decision in an unfair practice proceeding. The Hearing Examiner found, and the Commission affirms, that the Board violated Subsection 5.4(a)(1) by threatening the then vice-president of the Association in relation to his exercise of rights under the Act and that the Board also violated Subsection 5.4(a)(5) by unilaterally reducing planning time for two teachers.

The Commission orders the Board to cease and desist from interfering with, restraining, or coercing employees in the exercise of rights guaranteed to them by the Act and from refusing to negotiate in good faith with the Association concerning terms and conditions of employment. Specifically, the Board is ordered to cease and desist from enforcing any current early dismissal schedule which has been promulgated that limits a teacher's preparation time without prior negotiations. It is affirmatively ordered that the Board negotiate with the Association in an attempt to make whole the two named teachers whose preparation periods were altered; and that the Board post appropriate notices supplied by the Commission and notify the Chairman of the steps taken to comply with the order. The Commission further orders that the remaining sections of the complaint be dismissed.

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Docket No. CO-76-185-83

CLINTON TOWNSHIP EDUCATION ASSO-
CIATION,

Charging Party.

Appearances:

For the Respondent, Metzler Associates
(Mr. Raymond A. Cassetta, Consultant)

For the Charging Party, New Jersey Education Association
(Mr. John A. Thornton, Jr., UniServ Representative)

DECISION AND ORDER

The Clinton Township Education Association (the "Association"), employee representative of the teachers employed by the Clinton Township Board of Education (the "Board"), filed an Unfair Practice Charge with the Public Employment Relations Commission (the "Commission") on January 16, 1976 alleging that the Board had committed an unfair practice within the meaning of the New Jersey Employer-Employee Relations Act, as amended, (the "Act"), N.J.S.A. 34:13A-1 et seq., ^{1/} by its coercive action against Joseph Lutsky,

1/ It is specifically alleged that the Board violated N.J.S.A. 34:13A-5.4 (a)(1) and (2). These subsections provide that an employer, its 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."

then President of the Association.

On April 5, 1976 the charge was amended to be more specific and to outline additional instances of the alleged violations. It appearing that the allegations of the charge, as amended, if true, might constitute an unfair practice within the meaning of the Act, a Complaint and Notice of Hearing was issued on April 20, 1976. By letter of May 3, 1976, the Association further amended the charge to allege that the Board had committed additional violations by its actions in failing to retain Suzanne Betz, a non-tenured music teacher, and in unilaterally changing terms and conditions of employment of Lutsky and one other teacher, Donna Zigmantanis by reducing their planning time periods on certain days.^{2/} Hearings were held before Edmund G. Gerber, Hearing Examiner of the Commission, on June 8, June 23, July 16, August 31, and September 1, 1976.^{3/}

^{2/} The letter amendment specifically alleged that the Board violated N.J.S.A. 34:13A-5.4(a)(3), (4), (5) and (7). These subsections provide that an employer, its representatives or agents are prohibited from: "(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. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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. (7) Violating any of the rules and regulations established by the Commission."

^{3/} All parties were given an opportunity to examine witnesses, to present evidence and to argue orally. All parties were given an opportunity to file post-hearing briefs, but only the Association chose to do so. Its brief was filed April 1, 1977.

On December 2, 1977, the Hearing Examiner issued his Recommended Report and Decision, H.E. No. 78-17, which Report included findings of fact and conclusions of law and a recommended order. The original of the Report was filed with the Commission and copies were served upon all parties. A copy is attached hereto and made a part hereof.

Neither party has filed exceptions to the Hearing Examiner's Recommended Report and Decision. See N.J.A.C. 19:14-7.3(b) which provides that any exception not specifically urged shall be deemed to have been waived.

Upon careful consideration of the entire record herein, the Commission adopts the findings of fact and conclusions of law rendered by the Hearing Examiner substantially for the reasons cited by him. Specifically, the record reveals that the evidence presented was not sufficient to indicate that the non-retention of Suzanne Betz was related to or motivated by the exercising of her rights under the Act. Furthermore, no evidence was offered to show that that dismissal constituted a violation of ~~other~~ sections of the Act. Additionally, the record indicates that the then vice-president of the Association, Thomas Vahalla, was threatened by his school principal in relation to his exercise of rights under the Act. Specifically, his job was threatened if he attempted, in his capacity as an officer of the Association, to represent a teacher in a grievance. This was in violation of N.J.S.A. 34:13A-5.4(a)(1).

The record further supports the finding that the evidence is not sufficient to support the charge of a violation of Subsections

(a)(1) and (a)(2) of the Act as to the Board's conduct toward Joseph Lutsky. Finally, the record indicates that the Board did unilaterally change the terms and conditions of employment of the two named teachers by unilaterally reducing their planning time periods on certain days in violation of N.J.S.A. 34:13A-5.4(a)(5).

ORDER

Accordingly, for the reasons set forth above, IT IS HEREBY ORDERED, that the Board shall:

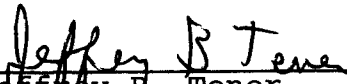
1. Cease and desist from
 - a. Interfering with, restraining or coercing employees in the exercise of rights guaranteed to them by the Act.
 - b. Refusing to negotiate in good faith with the Association concerning terms and conditions of employment of its employees.
 - c. Enforcing any current early dismissal schedule which has been promulgated that limits a teacher's preparation time without prior negotiations.
2. Take the following affirmative action
 - a. Negotiate with the Association concerning the alteration of the preparation periods of Lutsky and Zigmantanis in the 1975-1976 school year in an attempt to make these two teachers whole.
 - b. Post in all schools and locations where notices are normally given to employees copies of the attached notice marked "Appendix A". Copies of such notice, on forms provided by the Commission, shall, after being signed by the Respondent's representative, be posted by Respondent immediately upon receipt thereof

and maintained by it for a period of sixty (60) consecutive days thereafter. Reasonable steps shall be taken to insure that such notices are not altered, defaced or covered by any other material.

c. Notify the Chairman of the Commission, in writing, within twenty (20) days from the date of receipt of this Decision and Order what steps have been taken to comply herewith.

3. IT IS FURTHER ORDERED that the remaining sections of the Complaint be dismissed in accordance with the above discussion.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Forst and Parcells voted for this decision. Commissioner Hurwitz abstained; Commissioners Hartnett and Hipp were not present

DATED: Trenton, New Jersey
January 19, 1978
ISSUED: January 24, 1978

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 SHALL NOT interfere with, restrain or coerce employees in the exercise of rights guaranteed to them by the Act.

WE SHALL NOT refuse to negotiate in good faith with the Association concerning terms and conditions of employment of its employees.

WE WILL negotiate with the Association concerning the alteration of the preparation period of Joseph Lutsky and Donna Zigmantanis on early dismissal days.

CLINTON TOWNSHIP 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

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

In the Matter of

CLINTON TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-76-185-83

CLINTON TOWNSHIP EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Hearing Examiner has issued a Recommended Report and Decision in an unfair practice proceeding. The complaint alleged that the Board of Education committed a series of unfair practices. The Hearing Examiner found that the Board did commit an unfair practice when DeBias, a school principal, threatened Vahalla, a Clinton Education Association Vice President, with possible discharge if he attempted to intercede in his capacity as an Association officer in a dispute between DeBias and Betz, a non-tenured teacher.

At the end of the school year Betz was not renewed. The Association claimed that one of the motivating factors for Betz's non-renewal was her participation in protected activities. The Hearing Examiner found that Betz received poor evaluations prior to her participation in union activity and the decision to not renew Betz was made without regard to her Association activities. The Hearing Examiner also found that the Association failed to prove its allegations of continuing harassment of the Association officers by the Board as well as a charge that Association members were denied rights of representation at meetings with administrative personnel.

The Examiner did further find that the Board committed an additional unfair practice: The Board promulgated a teachers' schedule for early dismissal days in which two teachers were denied planning time periods. The Hearing Examiner found that planning time periods are mandatorily negotiable and when the Board altered such planning time periods without prior negotiations, as was the case here, it committed an unfair practice.

The Hearing Examiner recommended that the Commission order the Board to cease and desist from interfering with, restraining or coercing employees in the exercise of rights guaranteed to them by the Act, from refusing to negotiate in good faith with the Association concerning terms and conditions of employment of its employees; and from enforcing any current early dismissal schedule which has been promulgated that limits a teacher's preparation time without prior negotiations. Furthermore, the Hearing Examiner recommended that the Commission order the Board to negotiate with the Association concerning the alteration of the preparation periods of teachers Lutsky and Zigmantanis in the '75-76 school year in an attempt to make these two teachers whole.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

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Appearances:

For the Clinton Township Board of Education
Metzler Associates
(Raymond A. Cassetta, Consultant)

For the Clinton Township Education Association
New Jersey Education Association
(John A. Thornton, Jr., UniServ Representative)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

The Clinton Township Education Association (the "Association"), employee representative of the teachers employed by the Clinton Township Board of Education (the "Board"), filed an Unfair Practice Charge with the Public Employment Relations Commission (the "Commission") on January 16, 1976, alleging that the Board had committed an unfair practice within the meaning of the New Jersey Employer-Employee Relations Act (the "Act"), N.J.S.A. 34:13A-1 et seq., ^{1/} by its coercive action against Joseph Lutsky, then President of the Association.

On April 5, 1976 the charge was amended to be more specific and to outline additional instances of the alleged violations. It appearing that the allegations of the charge, if true, might constitute an unfair practice within the

^{1/} It is specifically alleged that the Board violated N.J.S.A. 34:13A-5.4(a)(1) and (2). These subsections provide that an employer, its 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."

meaning of the Act, a Complaint and Notice of Hearing was issued on April 29, 1976. By letter of May 3, 1976, the Association amended the charge to allege that the Board had committed additional violations by its actions in failing to retain Suzanne Betz, a non-tenure music teacher, and in changing terms and conditions of employment without negotiation. ^{2/} Hearings were held before the undersigned on June 8, June 23, July 16, August 31, and September 1, 1976. ^{3/}

The Association attempted to prove general, long, continuing harassment by school administrators of teachers active in the Association, such harassment culminating in the non-retention of one teacher and the interference with two Association officers in exercising their rights. The Association introduced the testimony of ten teachers, one of whom was no longer with the school system, in its effort to establish a pattern of behavior on the part of certain administrators which was violative of the Act.

The school district involved consists of three schools. Teachers from two schools -- Spruce Run and Round Valley -- testified as to pressure

^{2/} The letter amendment specifically alleged that the Board violated N.J.S.A. 34:13A-5.4(a)(3), (4), (5) and (7). These subsections provide that an employer, its representatives or agents are prohibited from:

"(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.

"(4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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.

"(7) Violating any of the rules and regulations established by the Commission."

^{3/} All parties were given an opportunity to examine witnesses, to present evidence and to argue orally. All parties were given an opportunity to file post-hearing briefs, but only the Association chose to do so. Its brief was filed April 1, 1977. Upon the entire record in this proceeding, I find that the Board is a public employer within the meaning of the Act and is subject to its provisions. An Unfair Practice Charge having been filed with the Commission alleging that the Board has engaged or is engaging in unfair practices within the meaning of the Act, a question concerning alleged violations of the Act exists and this matter is appropriately before the Commission for determination.

brought to bear on teachers who were active in the Association, but all of the specific allegations concern events in the Round Valley school. Only three teachers were identified by name in the charges as subjects of the alleged violations ^{4/} -- Suzanne Betz, a non-tenured music teacher who was not retained after the 1975-76 school year; Thomas Vahalla, a non-tenured teacher who was Vice President of the Association in 1975-76 and was elected President of the Association in 1976-77; and Joseph Lutsky, a tenured teacher who was President of the Association in 1974-75 and 1975-76.

Frank DeBias was the Principal of Round Valley during the period in question. He was unable to attend the initial hearing due to illness which had kept him from school for several weeks. Before the hearings were concluded on September 1, 1976, Mr. DeBias had retired; he never did appear to testify and no deposition was taken of him.

Anthony Pierro, who had been Assistant Principal under Principal DeBias since September, 1974, was made Acting Principal of Round Valley on July 1, 1976.

The alleged violations of §§ (a)(3) and (4) pertain to the non-retention of Suzanne Betz as a music teacher at Round Valley Middle School. The Association claims her non-retention was a direct result of her Association activities and her processing of a grievance.

Ms. Betz was new at Round Valley in 1974-75. She was evaluated by Principal DeBias during that year and all her evaluations were satisfactory. Assistant Principal Pierro evaluated her three times in 1975-76 and his evaluations were not favorable. Pierro testified that he was not at all pleased with her progress and, without telling him why, asked DeBias to observe Betz as well during the spring of 1976. The two administrators then discussed their observations and, according to Pierro, Pierro indicated he would probably not recommend Betz for re-employment and DeBias generally agreed with him.

The Association claims that since Betz was given satisfactory evaluations her first year and, without any significant change in her assignment these evaluations mysteriously changed for the worse during her second year when she became active in the Association, her non-retention can only be attributed to her Association activities. The undersigned cannot accept this contention.

^{4/} Although a fourth, Donna Zigmantanis, was a subject of one alleged unfair practice.

Betz had clashed verbally with DeBias in front of some of her students on January 29 over a schedule for the conduct of chorus rehearsals. Betz had filed a grievance ^{5/} with the school principal in February of 1976. This was the first time she was active in the Association. Yet her first evaluation for the academic year occurred in November before Betz's participation in the Association, and the November evaluation is clearly unsatisfactory. The second of the evaluations, which occurred on the same day as the filing of the grievance, stated that there was a definite improvement in her performance. The results of this improved evaluation were presented to Betz on February 20th, after Betz had already taken her grievance to the second step by filing it with the Superintendent of Schools. Her final evaluation in March was again poor, however.

The undersigned found Pierro to be a credible and forthright witness. His explanation of Betz's non-retention for poor teaching performance was entirely tenable. Further, Betz had testified that DeBias told her he over-evaluated her in her first teaching year. Given Betz's demeanor -- she was shy and retiring in the extreme -- I find it entirely possible that in order to bolster her self-assurance and self-image she was in fact consciously over-evaluated. No evidence offered by the Association, including Betz's own testimony, was sufficient to indicate that her non-retention was related to her processing of a grievance in particular, or her involvement with the Association in general.

It was apparent that Mr. DeBias was a high-strung and rather excitable individual and had he been the one who evaluated Betz, based upon his conduct at other times, a serious question would have arisen as to the underlying motivations for Betz's poor evaluation. But because of the chronology of events, i.e. Betz received a poor evaluation before she participated in any protected conduct, coupled with the credibility of Pierro, I am satisfied that the exercising of her rights was not one of the motivating factors in her dismissal. It must

^{5/} In the course of processing this grievance she had accused Pierro of wrongfully denying the existence of a schedule which she claimed to be following in the conduct of her rehearsals.

be remembered that the Board took this action on the recommendation of Pierro. Further, assuming the dismissal was inherently destructive of employee rights, I'm satisfied that her relatively minor involvement with the union balanced against the educational policies inherent in the Board's decision of not renewing an apparently unsatisfactory teacher will overcome any presumption raised by the inherently destructive test. See, In re City of Hackensack, H.E. No. 77-1, 2 NJPER 232 (1976), aff'd 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 ____ (1976), aff'd P.E.R.C. No. 77-36, 3 NJPER ____ (1977). ^{6/}

Two or three days after Betz had the argument with DeBias in January she approached Thomas Vahalla who, at the time, was Vice President of the Association. She asked his advice as to how she should proceed. Vahalla stated that he would go and speak to DeBias about the argument. DeBias in fact approached Vahalla and they spoke about the matter. DeBias stated this was an issue which concerned the principal-teacher evaluation relationship. He warned Vahalla not to become involved and reminded him of his non-tenured status. Although these remarks did not ultimately restrain Vahalla in the exercise of protected rights (In fact, he ran for, and was elected to, the presidency of the Association the following year.), nevertheless, this statement, coming as it did from the chief administrator of the school, certainly was coercive and the intent of the threat was to restrain Vahalla from representing Betz which clearly is a right guaranteed by the Act.

The unfair practice here does not arise from DeBias stating, in so many words, that the Association should not get involved in questions of teacher performance. DeBias had the right to express his opinion as to the propriety of Association involvement in the dispute regardless of whether that opinion is right or wrong. The unfair practice arises from the threats to Vahalla's job if he did attempt to represent Betz in his capacity as an officer of the Association. Accordingly, the threats were violative of § 5.4(a)(1) of the Act.

^{6/} No evidence was submitted to show that Betz's dismissal constituted a violation of § (a)(4) and accordingly this section of the complaint will be dismissed.

The original charge and the first amendment were largely centered around Joseph Lutsky, President of the Association from 1974-76. The initial complaint was that Mr. Lutsky, a tenured teacher, was being over-observed and over-evaluated. It was also claimed that he seemed to be under surveillance by the school administration and was being harassed and prevented from carrying out his duties as Association President.

Tenured teachers normally receive at least one written evaluation per year, although there may be more, and there are often several additional informal observations, usually not reduced to writing. Ample evidence was introduced, much of it documented, to indicate that Lutsky was evaluated more often during the 1975-76 school year than any other tenured teacher. His informal observations were, in many cases, written up, although this was not done with most other teachers. Pierro testified that the observations were written up at Lutsky's request.

This request was made in a formal written reply to his written evaluation for the preceding year. In that evaluation Lutsky was criticized for his teaching performance at times other than during the formal evaluation period. Lutsky had objected to such comments in a formal evaluation and had requested that observations be written up as they occur. As Lutsky maintains, the request was made with reference to all teachers. However, said request was not made in the context of Association business but rather in response to a personal evaluation.

When questioned as to the reason for the many observations and evaluations of Lutsky, Pierro cited poor teaching performance and produced evidence of complaints from ten parents or sets of parents who had requested that their children either be removed from Lutsky's class, or not placed with him the following year. Pierro testified that only one such request had been made regarding all of the other teachers in the school. The undersigned is satisfied that such complaints would be a valid basis for an increase in the number of evaluations and observations and, under the circumstances, the undersigned is satisfied that the Board's conduct by itself does not rise to the level of an unfair practice.

There were a number of other instances of alleged coercive conduct by DeBias; specifically, Lutsky was told an N.J.E.A. UniServ Representative must leave the building after the start of school. Also, Lutsky left some Association related papers on another teacher's desk during class time although neither teacher spoke. DeBias sent Lutsky a note that "Teacher Association business no matter how minor is not to be conducted at any time school is in session." Both of these incidents relate to the conduct of union business on school time, a subject of the collective negotiations contract. The contract states: "Association business may be conducted on school premises provided it does not interfere with the normally scheduled classes or assignments of a teacher." ^{7/} It is apparent that these incidents relate to an interpretation of a contract provision and DeBias was acting at least under color of right under the contract. These matters may be subjects for the grievance procedure (although apparently no such grievance was ever filed), but it certainly is not coercive for DeBias to attempt to enforce the contract as he understands it when such interpretation is not wholly unreasonable. Further, assuming arguendo such action was not contemplated by the contract and, further, that the action constitutes a unilateral change in working conditions under § (a)(5) of the Act, there was never a demand to negotiate made upon the Board. See, In the Matter of Sayreville Board of Education, H.E. No. 78-10, 3 NJPER ___ (currently pending before the Commission). Accordingly, there can be no violation of § (a)(5).

It was also alleged that DeBias reprimanded Lutsky for communicating with the Superintendent of Schools about Association business. Specifically, when a new grading procedure was instituted at the school Lutsky called the Superintendent of Schools and complained while school was in session. The following day DeBias sent Lutsky a letter.

"The communication between you and the superintendent, Mr. Patrick McGaheren, on Monday, November 17, 1975 at approximately 1:30 p.m. was most definitely not following the professional channels of communication as stated in the Round Valley Teacher's Handbook.

^{7/} Exhibit B-1, Art. V, Sec. 1.

"I suggest that you observe channels when discussing professional matters. The services of this office are available to any staff member at any time. Thank you."

Lutsky responded by letter to DeBias that he contacted the Superintendent in the capacity of Association President, not as a teacher. That is the entire incident and the undersigned fails to see how DeBias' letter restrained, coerced or interfered with Lutsky.

If one looks at the testimony of other Association activists regarding incidents with DeBias over the years, a disturbing pattern emerges and had there been timely separate unfair practice charges, perhaps an unfair practice would have been found. But none of these incidents is a subject of the instant action. Rather they were introduced to show a pattern of conduct. I am not sure that DeBias' excesses arose out of an antipathy for the Association per se but apparently he was overwrought and could not accept challenges to his actions brought by Association representatives. However, nothing introduced in Lutsky's testimony, who is the subject of the unfair practice charge, even in light of this pattern of conduct reveals an independent § (a)(1) or § (a)(3) violation. And in all fairness Lutsky was not an easy person to deal with. As an example, when Pierro gave him certain forms to complete which were unrelated to Association activities, Lutsky replied that the teachers were not obligated to complete them and thereupon tossed them into a wastebasket. Such irresponsible behavior certainly can only contribute to a difficult situation.

The Association also claimed it was an unfair practice for the Board to deny Lutsky presence in his capacity as President of the Association at a post-evaluation meeting between Pierro and Betz. After receiving a poor evaluation Betz asked Lutsky to sit in on the meeting between her and Pierro. Pierro would not allow Lutsky into the meeting. Lutsky left but returned shortly thereafter and told Pierro that if he was denied admission to this meeting that he would request that the meeting come to an end and Betz not meet in private with Pierro. Pierro acceded to Lutsky's request and Betz left the meeting with Lutsky.

In NLRB v. Weingarten, Inc., 420 U.S. 251, 88 LRRM 2689 (1975), the U.S. Supreme Court found that the language of § 7 of the National Labor Relations Act [which states that employees have the right to engage in "concerted activities for mutual protection"] grants to employees the right to have their own union representative at an employer's investigatory interview when an employee might reasonably believe that such an interview could result in disciplinary action against him (or her). If however the employer refuses to allow a representative at such a meeting, the employee has a right not to attend such meeting. The language of § 5.3 of the Act does not seem to grant any greater rights than § 7 of the NLRA,^{8/} and the actions of Pierro are in accord with the guidelines laid down by the Supreme Court (assuming it was an investigatory interview, the meeting did come to an end at Lutsky's request). The undersigned is satisfied that the Board did not commit an unfair practice by denying Lutsky's presence at the meeting in question.

Finally, the Association claims that the Board violated § (a)(5) of the Act by unilaterally changing the planning time periods for Lutsky and one other teacher, Donna Zigmantanis, on early dismissal days.^{9/} There were a total of five such days for the year.^{10/} The basic facts are not in dispute. Lutsky and Zigmantanis were science teachers and as such had four different classes for which they had to prepare during the day. As a consequence, they had two daily preparation periods while the rest of the staff had only one. Sometime in November of 1975 an early dismissal schedule was promulgated and Zigmantanis and Lutsky were designated as the teachers in charge on those days, effectively eliminating one of their planning periods. The undersigned is satisfied that planning periods directly affect the total number of hours worked by teachers

^{8/} Section 5.3 of the New Jersey Public Employer-Employee Relations Act states in part, "A majority representative of public employees in an appropriate unit shall be entitled to act for...and shall be responsible for representing the interests of all such employees..." If one may interpret this language in the broad manner of the Appellate Division in Red Bank Regional Education Association v. Red Bank Regional High School Board of Education, Appellate Division Docket No. A-3632-5 (July 13, 1977), a similar right would seem to exist in the Act. See also In re Dover Twp., P.E.R.C. No. 77-43, 3 NJPER (1977) where the Commission found that in the processing of a grievance, an individual had the right to be represented by the majority representative.

^{9/} The charge and its amendment are vague as to this allegation; however, no objections were raised to the litigation of this issue at the hearing.

^{10/} Six early dismissal days were scheduled. However, one of those days proved to be a snow day and there was no school.

during the day. The less preparation time a teacher has during the school day, the more time must be spent outside the school day in preparation. Since the total hours worked is clearly a term and condition of employment it follows that planning time is mandatorily negotiable. ^{11/} Accordingly, it was an unfair practice for the Board to unilaterally implement a change in the preparation periods of Lutsky and Zigmantanis. It is noted that there was no demand to negotiate per se, but the Association grieved this schedule change [and lost]. The undersigned is satisfied that the filing of the grievance placed the employer on notice that the Association objected to the conduct in question and, therefore, constituted a de facto demand for negotiations. ^{12/} Additionally, Zigmantanis asked twice for a discussion to take place about the schedule but she never received a response.

The record does not make clear what the schedules of Lutsky and Zigmantanis were on early dismissal days, nor can it be determined whether their schedules are different from the rest of the teachers. Similarly neither the total number of periods, nor their length, is established for the five days in question. Accordingly, it cannot be determined what harm, if any, was sustained by Lutsky and Zigmantanis. It would therefore seem appropriate that the question of damages in this matter be resolved by an order to negotiate in an attempt to make Lutsky and Zigmantanis whole.

It is therefore recommended that the Commission Order the Clinton Township Board of Education to

- (1) Cease and desist from
 - (a) Interfering with, restraining or coercing employees in the exercise of rights guaranteed to them by the Act.
 - (b) Refusing to negotiate in good faith with the Association concerning terms and conditions of employment of its employees.
 - (c) Enforcing any current early dismissal schedule which has been

^{11/} This should be distinguished from contact time - the number of minutes of classroom instruction per course per week - which is a permissive subject of negotiations. In the Matter of Stockton State College, P.E.R.C. No. 77-31, 3 NJPER 62 (1977).

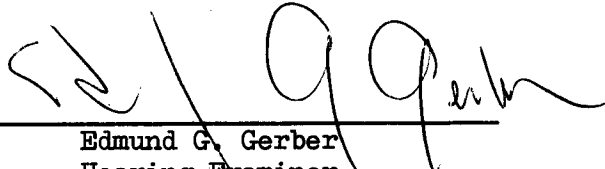
^{12/} Unlike Sayreville Board of Education, supra.

promulgated that limits a teacher's preparation time without prior negotiations.

(2) Take the following affirmative action

(a) Negotiate with the Association concerning the alteration of the preparation periods of Lutsky and Zigmantanis in the 1975-1976 school year in an attempt to make these two teachers whole.

(b) Post the attached Notice:


Edmund G. Gerber
Hearing Examiner

DATED: December 2, 1977
Trenton, New Jersey

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, the CLINTON TOWNSHIP BOARD OF EDUCATION, hereby notify our employees that

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

WE SHALL NOT refuse to negotiate in good faith with the Association concerning terms and conditions of employment of its employees.

WE WILL negotiate with the Association concerning the alteration of the preparation period of Joseph Lutsky and Donna Zigmantanis on early dismissal days.

(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