

P.E.R.C. NO. 88-121

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

POINT PLEASANT BOROUGH
BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-87-114

POINT PLEASANT BOROUGH
ADMINISTRATORS ASSOCIATION,

Charging Party.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission, finds that the Point Pleasant Borough Board of Education violated the New Jersey Employer-Employee Relations Act when it unilaterally reduced supervisor Patricia Sabia's workyear from 11 to 10 months and unilaterally removed her from the Association's unit. A Hearing Examiner recommended this finding and the Chairman, in the absence of exceptions, adopts it.

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ADMINISTRATORS ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Novins, Farley, York, DeVincens &
Pentony, Esqs. (James P. Brady, of counsel)

For the Charging Party, New Jersey Principals & Supervisors
Association (Wayne J. Oppito, Esq.)

DECISION AND ORDER

On October 30, 1986, the Point Pleasant Borough
Administrators Association ("Association") filed an unfair practice
charge against the Point Pleasant Board of Education ("Board"). The
charge 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),(2),(5) and (7),^{1/} when it unilaterally reduced the work

^{1/} These subsections prohibit public employers, their
representatives or agents from: "(1) Interfering with,
restraining or coercing employees in the exercise of the

year of a supervisor from 11 to 10 months and removed that position from the Association's negotiations unit.

On May 5, 1987, the Director issued a Complaint and Notice of Hearing. On May 21, the Board filed its Answer. It denies violating the Act. It contends the full-time supervisor position was abolished and a part-time supervisor/teacher position was created.

On June 16, 1987, Hearing Examiner Susan Wood Osborn conducted a hearing. The parties examined witnesses and introduced exhibits. They also filed post-hearing briefs.

On February 11, 1988, the Hearing Examiner issued her report and recommended decision. H.E. No. 88-38, 14 NJPER 166 (¶19069 1988). She found that the Board violated subsections 5.4(a)(1) and (5) when it unilaterally reduced supervisor Patricia Sabia's workyear from 11 to 10 months and unilaterally removed her from the Association's unit. As a remedy, the Hearing Examiner recommended that the Board compensate Sabia for what she would have received had she worked for 11 months plus interest, negotiate with

1/ Footnote Continued From Previous Page

rights guaranteed to them by this act; (2) Dominating or interfering with the formation, existence or administration of any employee organization; (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, and (7) Violating any of the rules and regulations established by the commission."

the Association concerning Sabia's terms and conditions of employment and post a notice of the violation.

The Hearing Examiner informed the parties that exceptions were due on or before February 29, 1988. The Board requested and received one extension. On March 21, 1988, the Board advised the Commission that it had posted the recommended notice and would comply with the other aspects of the recommended remedy.

I have reviewed the record. The Hearing Examiner's findings of fact (pp. 3-8) are accurate. I adopt and incorporate them here. Under the circumstances of this case and acting pursuant to authority delegated to me by the full Commission, I also adopt the Hearing Examiner's conclusions of law. However, because a notice has already been posted, I need not order that portion of the remedy.

ORDER

The Point Pleasant Board of Education is ordered to:

A. Cease and desist from:

Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, and refusing to negotiate in good faith with the Administrators Association for employees, including the teacher/supervisor assigned as the basic skills coordinator, concerning terms and conditions of employment, including work year and compensation, by unilaterally removing employees from the unit and by altering the work year without negotiations with the Association.

B. Take the following affirmative action:

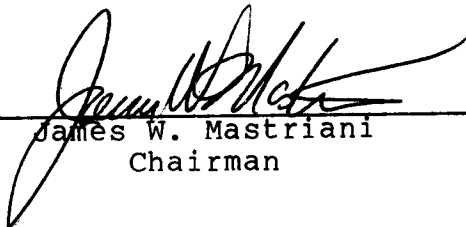
1. Immediately engage in good faith negotiations with the Association concerning terms and conditions of employment for Patricia Sabia, including work year and compensation.

2. Make Patricia Sabia whole by compensating her retroactively for the period she would have worked in the summer of 1987 had her work year not been unilaterally reduced, plus interest as provided for in R. 4:42-11.

3. Notify the Chairman of the Commission within twenty (20) days of receipt what steps have been taken to comply herewith.

The remaining allegations in the Complaint are dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

DATED: Trenton, New Jersey
May 5, 1988

H.E. NO. 88-38

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

In the Matter of

POINT PLEASANT BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-87-114

POINT PLEASANT BOROUGH
ADMINISTRATORS ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent Board violated §5.4(a)(5), and derivatively, (a)(1), of the New Jersey Employer-Employee Relations Act when it unilaterally removed the Basic Skills Coordinator from the administrators unit, placed her in a non-unit position, in a new title, teacher/supervisor, and reduced her work year from 11 months to 10 months. The Hearing Examiner finds that the employee continues to perform the same work as before the title change, and recommends that the Board be ordered to pay the employee for the extra month she would have worked had the Board not unilaterally changed the workyear.

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. 88-38

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

In the Matter of

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Novins, Farley, York, DeVincens & Pentony, Esqs.
(James P. Brady, of counsel)

For the Charging Party
New Jersey Principals & Supervisors Association
(Wayne J. Oppito, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

On October 30, 1986, the Point Pleasant Borough Administrators Association ("Association") filed an unfair practice charge with the Public Employment Relations Commission ("Commission") against the Point Pleasant Board of Education ("Board"). The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq.

("Act"), specifically subsections 5.4(a)(1), (2), (5), and (7),^{1/} when it reduced the "general supervisor's" the 11-month work year and removed the employees from the Association's unit without negotiations.

On May 5, 1987, the Director of Unfair Practices issued a Complaint and Notice of Hearing. The Board filed an Answer on May 21, 1987. The Board denies that it committed an unfair practice by changing the work year, or by removing the employees from the unit. It asserts that it abolished full-time, allegedly 10-month supervisor positions, and created four "part-time teacher/supervisor" positions, allegedly with an 11-month work year.

I conducted a hearing on June 16, 1987.^{2/} The parties examined witnesses, introduced exhibits and argued orally. At the hearing, the Association amended its charge to limit the allegations to only the basic skills supervisor. The parties filed post-hearing briefs by August 18, 1987.

Based upon the record in this matter, I find the following:

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; (2) Dominating or interfering with the formation, existence or administration of any employee organization; (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."

2/ The transcript of the June 16, 1987 hearing will be referred to as "T". Joint exhibits are designated as "J".

FINDINGS OF FACT

1. The Point Pleasant Borough Administrators' Association is the exclusive representative of a collective negotiations unit of administrators, including principals, vice-principals, directors, curriculum coordinators and curriculum supervisor (J-1; T22).

2. In the Fall of 1984, the Board created three "general supervisor" positions and a general supervisor of remedial reading/basic skills ("basic skills supervisor").^{3/}

The positions were posted on October 25, 1984 (J-2). The posting required the employee to hold a masters degree and a K-12 supervisor's certificate. The posting mandated that supervisors devote at least half of each working day to classroom observations, evaluations and suggestions for classroom teachers. Duties described by the posting included: review and update curriculum with the director; review and compile budgets; plan and assess instructional materials; evaluate and report on extra-curricular activities; assist in recruiting, interviewing, screening and recommending of qualified candidates for professional staff positions; establish goals for assigned departments; coordinate and supervise programs such as elementary remedial reading, home bound instruction; and plan and supervise alternate certification program and new teacher instructional orientation.

^{3/} Historically, the Board employed two other supervisors. Those positions were and still are part of this unit (T22-23).

The posting provides, "Supervisors may be assigned up to 40% of a teaching load as determined by the needs of the district" (J-2). It describes the work year as 11 months, from August 15 to July 15. It states, "[t]hese positions will be re-evaluated for continuance in June, 1986" (J-2).

3. Patricia Sabia, a teacher, applied for and was appointed to the basic skills supervisor position effective January 1, 1985. She was given an employment contract with the Board providing for a ten-month work year plus four additional work weeks in the summer. Department chairpersons (William Larkin, William Scarpitta and Leo Baranowski) were appointed to the other three general supervisor positions (J-3, J-4, J-12a).

4. In 1985, the Board recognized the inclusion of the general supervisors in the Association's unit.

5. On August 29, 1985, the parties signed a memorandum of agreement (J-14) to continue the 1984-86 contract, with modifications.^{4/} Item #3 of that agreement provides, "Additional funds for the following positions: 4 supervisors - 11 month = \$2,563 per employee" (J-14).

5. The 1986-87 collective agreement between the parties (J-1), signed March 24, 1986, covering this unit also included general supervisors and provided:

Supervisors: under the terms of their current contracts, which run from 9/1/85 to 6/30/86 plus

^{4/} Apparently, this memorandum provided increases for 1985-86.

one month's stipend for 1986 summer employment, their 1986 summer stipend is to be paid on the 1985-86 scale. Therefore, their salary increase is effective September 1, 1986 (J-15; J-1, p. 32).

6. On June 19, 1986 the Board abolished four general supervisor positions and simultaneously created "part-time teacher/supervisor" positions (J-7). The four supervisors did not apply for the new positions, but were notified that they were being appointed to them. The Board also notified Baronowski, Larkin and Scarpitta that they were being placed in the chairpersons unit represented by the Teachers Association, and were to resume their former (department chairperson) responsibilities in their respective departments in the high school. They were told to report to the high school principal (J-8, T38, T41).

7. On April 24, 1986, Sabia was notified that she would not be issued an employment contract for her present position (basic skills supervisor) for the 1986-87 school year because of "concerns expressed with the evaluation of the administrative and supervisors structure; and the budget defeat..."(J-6).

On July 1, 1986, the superintendent notified Sabia that "the full-time supervisor positions, other than elementary and middle school, were changed to part-time supervisors...effective for the school year September 1, 1986 to June 30, 1987." (J-9).

8. The teacher/supervisor job description (J-10) indicates that its salary and terms and conditions of employment are covered by the agreement with the Teachers Association. Teacher supervisors are required to either have a bachelor's degree with a major in an assigned

curricular area or a master's degree with a supervisor's certificate (J-10). According to the job description, teacher/supervisors conduct departmental meetings; assist in supervising substitutes; maintain an inventory of departmental supplies and materials; prepare preliminary departmental budget requests; recommend teacher assignments to principals and consult on changes and problems; make classroom evaluations as primary evaluator for high school teachers and as secondary evaluator for elementary and intermediate levels; assist the principal in interpreting student grading and promotional policies; meet with administration and other supervisors to promote interdisciplinary programs; assist in identifying and utilizing community resources for the department programs; work with administrative staff to develop and implement functions of certain programs; check lesson plans for completeness; prepare and review proficiencies; analyze test results; review instructional material and submit recommendations to the principal and assist the principal in recruiting, screening and recommending employment of department personnel (J-10).

9. As basic skills supervisor, Sabia supervised the basic skills/compensatory education program in kindergarten through twelfth grade and the reading programs in seventh and eighth grades and advised elementary reading teachers (J-5, T44-45). Sabia reported to the curriculum supervisor and worked out of the administration building (T46). After she was reassigned as a teacher/supervisor, Sabia was moved to Ocean Road Elementary School. While the other

teacher/supervisors report to the high school principal, Sabia continues to be supervised by the curriculum coordinator (T46).

10. As basic skills supervisor, Sabia was responsible for her program at the high school, the middle school, and the two elementary schools. While still a basis skills supervisor, she was also assigned to develop the kindergarten and pre-kindergarten programs. As teacher/supervisor Sabia has become more involved in the development of the kindergarten and remedial reading programs. Unlike the other teacher/supervisors, Sabia continues to have district-wide responsibilities.

11. Sabia (and apparently the other general supervisors) did not have teaching responsibilities as general supervisors (T51). When the other general supervisors were returned to their previous department chairperson positions, they resumed a teaching load. It was not until November, 1986, that Sabia was assigned to assist another teacher to teach a small group^{5/} of fourth-grade students remedial math at an elementary school from 8:25 a.m. to 8:45 a.m. She assists with this class on the average four days a week, and only if her other responsibilities do not conflict (T52-53).

12. As basic skills supervisor in the 1985-86 school year, Sabia was the primary evaluator for seventh and eighth grade reading teachers. Now she is their secondary evaluator (T55-56). She continues to be the primary evaluator of basic skills teachers at the

5/ At the time of the hearing, this group consisted of 2 students.

elementary school and the high school. She also observes the basic skills teachers, completes their personal improvement plan, and reviews individual student improvement plans (T73). She now prepares the budget requests for the basic skills program (T66). Sabia regularly consults with elementary school teachers (T98) and determines student eligibility for the remedial program, she acts as a liason with parents and principals, and determines student completion of programs. She conducts intervention meetings with the teacher, the principal and the english coordinator to formulate plans for teachers to solve student problems. She also administers the MBS test for certain students (T60). Sabia holds meetings among the basic skills teachers (T64) and supervises and assists substitute teachers. The superintendent has asked Sabia for recommendations about teacher assignments to the basic skills program (T66).

13. General supervisors had a ten-month contract plus a ten percent stipend for one-month in the summer (J-1; J-12). The teacher/supervisor position has a ten-month work year, plus six days (J-10; T34).^{6/}

ANALYSIS

The Association argues that Sabia's new position as teacher/supervisor is virtually the same as her previous position, basic skills supervisor. It charges that the Board's unilateral removal of Sabia from the administrators unit and the change in Sabia's

^{6/} The Board presented no witnesses, so the testimony of the Association witnesses stands unrefuted.

work year--from 11 months to 10 months--without negotiations, is a violation of the Board's duty to negotiate. It relies upon Piscataway Tp. Bd. of Ed. v. Piscataway Tp. Principals Ass'n., 164 N.J. Super. 98 (App. Div. 1978), which holds that a change in the length of an employee's work year is mandatorily negotiable with the majority representative. The Association also cites Hackettstown Bd. of Ed., App. Div. Dkt. No. A-385-80T3 (1/18/82) aff'g. P.E.R.C. No. 80-139, 6 NJPER 263 (¶11124 1980), in which the court found that abolishing a 12-month position and re-creating the same position as a ten-month position amounts to the same thing as Piscataway: a negotiable change in the length of the work year.

The Board argues that it exercised its managerial right to abolish Sabia's former position and assigned her to the new position of teacher/supervisor, a non-unit position.

It is well established that public employers have the right to abolish and create positions and to transfer, assign and reassign employees in order to meet operational needs. Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Ass'n., 78 N.J. 144 (1978); Ramapo-Indian Hills Ed. Ass'n. v. Ramapo-Indian Hills Reg. H.S. Dist. Bd. of Ed., 276 N.J. Super 35 (App. Div. 1980) (Ramapo); Maywood Bd of Ed., 168 N.J. Super 45, certif. den. 81 N.J. 292 (1974), Piscataway Tp. Bd. of Ed., P.E.R.C. No. 88-42, 13 NJPER 823 (¶18317 1987); Trenton Bd. of Ed., P.E.R.C. No. P.E.R.C. No. 88-16, 13 NJPER 714 (¶18266 1987); Bergen Pines Cty. Hosp., P.E.R.C. No. 87-25, 12 NJPER 753 (¶17283 1986). However, it is important not to confuse the public employer's right to

create new positions and determine the appropriate job duties with the majority representative's right to negotiate over work year changes with the employer. In Ramapo, the court held that management has the right to unilaterally create a new position and establish the duties which the employee serving in the title will perform. However, an employer is not free to unilaterally change the salary or work year of a position included in the unit where it merely designates a different title for what is the same job. In such cases the employer retains its statutory mandate to negotiate prior to implementing the change. Deptford Bd. of Ed., P.E.R.C. No. 81-78, 7 NJPER 35 (¶12015 1980), aff'd., App. Div., Dkt. No. A-1818-80T1 (5/24/82); Hackettstown.

Thus, the Board had the managerial right to abolish Sabia's former position and to assign her to a new position. The parties here disagree about whether the position is really a "new" position or whether the position is virtually the same except for the work year. If the position is the same, with a reduced work year, then the Board violated the Act by unilaterally removing the employee from the Association's unit and altering the work year.

Here, the Board abolished the full-time position of supervisor of basic skills and assigned Sabia to one of the four part-time teacher/supervisor positions in June, 1986. I reject the Board's argument, that the nature of Sabia's job is different from the previous position. Unlike the other three teacher/supervisors, whose primary responsibilities are teaching, Sabia's primary responsibility is to coordinate, administer and supervise the basic skills program. While

the other three teacher/supervisors are limited one department in the high school, Sabia's responsibilities for the supervision and development of the basic skills program continues to be district-wide, and she continues to report to the curriculum coordinator. Although she is no longer responsible for the primary evaluation of the seventh and eighth grade, but is now a secondary evaluator--she has "input" into their personnel improvement plans. She continues to be the primary evaluator for the elementary school basic skill teachers.

She continues to have responsibility for coordinating the kindergarten and pre-kindergarten reading program.

Although the terms of the teacher/supervisor job description no longer require those employees to possess a supervisors certificate, possession of the certificate continues to be an alternative requirement.

Although she assists another teacher teach 20 minutes a day, this teaching assignment is minimal and came only after the charge was filed. Moreover, she could have been required by the terms of her previous job description to teach up to 40 percent of her work day.

Based upon the foregoing, I find that Sabia continues to function as the basic skills coordinator, and that her current position is the same job as her previous position.

Therefore, I find that the Board violated (a)(5) and derivately, (a)(1) of the Act when it unilaterally changed Sabia's work year from 11 months to 10 months.

The Board unilaterally removed Sabia from the administrators' unit, and assumed that the new title belonged in the Teachers' Association. An employer acts at its peril of committing an unfair practice if its assessment concerning the exclusion of employees from the unit proves incorrect. Passaic County Reg. H.S. Dist. #1 Bd. of Ed., P.E.R.C. No. 77-19, 3 NJPER 34 (1976); Westfield Bd. of Ed., P.E.R.C. No. 88-3, 13 NJPER 635 (¶18237 1987); City of Newark, H.E. No. 88-3, 13 NJPER 621 (¶18233 1987), adopted P.E.R.C. No. 88-24, 13 NJPER 727 (¶18274 1987). Here, I find that the Board violated §5.4(a)(5) and derivately, §5.4(a)(1) of the Act by unilaterally reducing the work year, effective September 1, 1986, without negotiations with the Association.

RECOMMENDATION

I recommend that the Commission find that the Point Pleasant Board of Education failed to negotiate in good faith in violation of 5.4(a)(5) and derivately, (a)(1) of the Act by unilaterally removing Patricia Sabia from the Association's unit, and by reducing Sabia's work year from 11 months to 10 months without negotiations with the Association.

No facts were alleged or proven to demonstrate that the Board violated 5.4(a)(5) or 5.4(a)(7) of the Act. Therefore, I recommend that the Commission dismiss the allegations of §5.4(a)(2) and §5.4(a)(7) of the Act.

RECOMMENDED ORDER

I recommend that the Commission ORDER:

A. That the Board cease:

Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, and refusing to negotiate in good faith with the Administrators Association for employees, including the teacher/supervisor assigned as the basic skills coordinator, concerning terms and conditions of employment, including work year and compensation, by unilaterally removing employees from the unit and by altering the work year without negotiations with the Association.

B. Take the following affirmative action:

1. Immediately engage in good faith negotiations with the Association concerning terms and conditions of employment for Patricia Sabia, including work year and compensation.

2. Make Patricia Sabia whole by compensating her retroactively for the period she would have worked in the Summer of 1987, had her work year not been unilaterally reduced, plus interest as provided for in R. 4:42-11.

3. Post the attached Notices to Employees, marked as Appendix "A", in all places where notices to employees are customarily posted. Copies of such notice, on forms to be provided by the

Commission, shall be posted immediately upon receipt thereof, and after being signed by the Board's authorized representative, shall be maintained for at least sixty (60) days. Reasonable steps shall be taken by the Board to insure that such notices are not altered, defaced or covered by other materials.

4. Notify the Chairman of the Commission within twenty (20) days of receipt what steps have been taken to comply herewith.

Susan W. Osborn

Susan Wood Osborn
Hearing Examiner

Dated: February 11, 1988
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 WILL NOT interfere with, restrain or coerce our employees in the exercise of their rights guaranteed to them by the Act, and

WE WILL NOT refuse or fail to negotiate in good faith with the Administrators Association concerning terms and conditions of employment of employees, and particularly by failing and refusing to negotiate concerning removal of employees from the administrators unit and concerning the length of the work year.

WE WILL make Patricia Sabia whole by compensating her retroactively for the period she would have worked in the Summer of 1987, had her work not been unilaterally reduced, plus interest.

WE WILL immediately negotiate terms and conditions of employment with the the Administrators Association concerning the length of Sabia's work year.

Docket No. CO-H-87-114

POINT PLEASANT BOROUGH 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 the Public Employment Relations Commission, 495 West State St., CN 429, Trenton, NJ 08625 (609) 984-7372.