

P.E.R.C. NO. 89-1

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOUTH ORANGE-MAPLEWOOD
BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-88-89

SOUTH ORANGE-MAPLEWOOD
EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the South Orange-Maplewood Board of Education violated the New Jersey Employer-Employee Relations Act when it unilaterally reclassified upward the salary grades of three secretarial positions.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOUTH ORANGE-MAPLEWOOD
BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-88-89

SOUTH ORANGE-MAPLEWOOD
EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Greenwood, Young, Tarshis, Dimiero &
Sayovitz, P.A. (Monica E. Olszewski, of counsel)

For the Charging Party, Oxfeld, Cohen, Blunda, Friedman,
LeVine & Brooks, Esqs. (Sanford R. Oxfeld, of counsel)

DECISION AND ORDER

On September 28, 1987, the South-Orange Maplewood Education Association ("Association") filed an unfair practice charge against the South Orange-Maplewood 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., specifically subsections 5.4(a)(1), (3) and (5),^{1/} when it unilaterally reclassified upward

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

the salary grades of three secretarial positions and when it did not negotiate over the grades for two other posted secretarial positions.

On December 21, 1987, a Complaint and Notice of Hearing issued. The Board filed an Answer claiming that it had a managerial prerogative to reclassify the grades.

On March 8, 1988, Hearing Examiner Ira W. Mintz conducted a hearing. The parties filed post-hearing briefs by May 10 and the Association filed a supplemental brief on remedial issues on June 2.

On June 9, 1988, the Hearing Examiner issued his report. H.E. No. 88-61, 14 NJPER ____ (¶ ____ 1988). He concluded that the Board violated subsections 5.4(a)(1) and (5), but not 5.4(a)(3), when it unilaterally moved up the salary grades of three secretarial positions without changing any duties. As a remedy, he recommended the Board return the three titles to their previous grade. He rejected the Association's contention that other positions should be reclassified upward. Finally, the Hearing Examiner recommended dismissal of the Complaint's other allegations since they were not litigated at the hearing.

1/ Footnote Continued From Previous Page

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."

The parties have filed exceptions. The Board contends that it has a managerial prerogative to reclassify the grades; the Association waived the right to negotiate; its actions were isolated and did not rise to the level of an unfair practice, and the recommended remedy is too harsh. The Association contends that the proper remedy should be upgrading other secretarial titles.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 2-5) are thorough and accurate. We incorporate them.

The Board had a duty to negotiate with the Association before it reclassified the secretarial positions from S-4 to S-5 on the salary guide. The amount of pay for each position is at the heart of collective negotiations. Lullo v. IAFF, 55 N.J. 409 (1970); Belleville Ed. Ass'n v. Belleville Bd. of Ed., 209 N.J. Super. 83 (App. Div. 1986); UMDNJ and AAUP, P.E.R.C. No. 85-106, 11 NJPER 290 (¶16105 1985), recon. den. P.E.R.C. No. 86-7, 11 NJPER 452 (¶16158 1985), aff'd App. Div. Dkt. No. A-11-85T7 (4/14/86); East Brunswick Tp., P.E.R.C. No. 86-41, 12 NJPER 785 (¶17299 1985); No. Brunswick Tp. Bd. of Ed., P.E.R.C. No. 86-29, 11 NJPER 583 (¶16203 1985); Trenton Housing Auth., P.E.R.C. No. 82-49, 7 NJPER 677 (¶12305 1981). No job descriptions or duties changed; the only new development since 1983 was the employer's belief that these positions were now worth more money. Finding a prerogative would enable the employer to control each employee's salary by

reclassifying the position for salary guide purposes without changing any duties.^{2/}

The Association did not waive its right to negotiate over these salary grade classifications. When the joint reclassification committee disbanded in 1983, the Association wrote administrators that reclassification requests would be handled through the negotiations committee. In early 1987, the Association declined to reconvene the joint reclassification committee, stating instead that if the Association's own reclassification committee supported a request, it would inform the Association's grievance and/or negotiations chairperson and work with them to make the change. The Assistant Superintendent agreed to this procedure.^{3/} These circumstances do not specifically and unequivocally establish a commitment to use the grievance procedure or a waiver of the Association's right to negotiate over salary grade reclassifications. Red Bank Reg. Ed. Ass'n v. Red Bank Reg. H.S. Bd. of Ed., 78 N.J. 122, 140 (1978). The procedure contemplated

^{2/} In Essex Cty. College, H.E. No. 87-14, 12 NJPER 658 (¶17248 1986), the Hearing Examiner found that the employer had a managerial prerogative and a contractual right to reclassify positions, but not to set salaries for any new grades. The Association urged adoption of that finding and we did so without discussing it further. P.E.R.C. No. 87-17, 12 NJPER 736 (¶17275 1986). To the extent Essex suggests reclassifications for salary purposes only are non-negotiable, we overrule it.

^{3/} The statement further noted that the current classifications had been agreed to in June 1983, after nearly 18 months of work by a secretaries' committee and negotiations, and that the Association did not see a need to review them now.

that requests would be made to the Association which would then determine whether to pursue negotiations or a grievance. The Board did not discuss the salary grade reclassifications with the Association so it cannot rely on this procedure as a waiver of its negotiations obligation. Further, this procedure was probably meant to apply to requests initiated by individual employees, not to allow unilateral actions by the employer.

The Board also asserts that the unilateral wage adjustments were too isolated and minor to be an unfair practice. For the reasons given by the Hearing Examiner (pp. 6-7), we disagree. We accordingly hold that the Board violated subsections 5.4(a)(1) and (5) when it reclassified the salary grades of the three secretarial positions. We dismiss the Complaint's other allegations.

We now turn to the remedy. We reject the Association's request that we upgrade the salary grade classification of all other secretarial positions. Such an unprecedented remedy would impermissibly rewrite the parties' contract. H.K. Porter & Co. v. NLRB, 397 U.S. 99 (1970). We also reject the Board's assertion that the recommended remedy is too harsh. The order does not impose any back pay liability or other retroactive relief. It simply restores the status quo so the parties can negotiate prospectively over what salary grade classifications are appropriate for these positions.^{4/} We enter this order.

^{4/} Since we have overruled Essex, we will not order a posting.

ORDER

The South Orange-Maplewood Board of Education is ordered to:

A. Cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., particularly by unilaterally reclassifying upward the salary grades of three secretarial positions.

2. Refusing to negotiate in good faith with the South Orange-Maplewood Education Association concerning terms and conditions of employment of Association unit members, particularly by unilaterally reclassifying upward the salary grades of three secretarial positions.

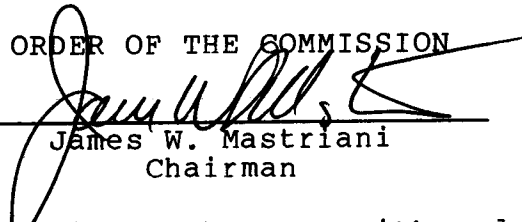
B. Take this action:

1. Prospectively return to grade S-4, the secretary to the principal, CHS/Office Manager; the office manager, secretary to director of special education department; and the secretary to the assistant superintendent, secondary and elementary education.

2. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply herewith.

The remaining allegations of the Complaint are dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Smith and Wenzler voted in favor of this decision. None opposed. Commissioner Bertolino abstained. Commissioner Reid was not present.

DATED: Trenton, New Jersey
July 15, 1988
ISSUED: July 18, 1988

H.E. NO. 88-61

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

In the Matter of

SOUTH ORANGE-MAPLEWOOD
BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-88-89

SOUTH ORANGE-MAPLEWOOD
EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the South Orange-Maplewood Board of Education violated subsection 5.4(a)(5) and, derivatively, (a)(1) of the New Jersey Employer-Employee Relations Act by unilaterally reclassifying upward three secretarial titles represented by the South Orange-Maplewood Education Association. The Hearing Examiner also recommends that the Commission dismiss a subsection 5.4(a)(3) allegation of illegal motive for the upgrade and an allegation relating to an alleged failure to negotiate the job graders for two other secretaries.

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. 88-61

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

In the Matter of

SOUTH ORANGE-MAPLEWOOD
BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-88-89

SOUTH ORANGE-MAPLEWOOD
EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Greenwood, Young, Tarshis, Dimiero &
Sayovitz, P.A. (Monica E. Olszewski, of counsel)

For the Charging Party, Oxfeld, Cohen, Blunda, Friedman,
LeVine & Brooks, Esqs. (Sanford R. Oxfeld, of counsel)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

On September 28, 1987, the South Orange-Maplewood Education Association ("Association") filed an unfair practice charge against the South Orange-Maplewood 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), (3) and (5),^{1/} when it unilaterally reclassified upward

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with,

Footnote Continued on Next Page

three secretaries and failed to negotiate the job grades for two other secretaries.

On October 6, 1987, the Board denied the allegations claiming a managerial prerogative.

On December 21, 1987, a Complaint and Notice of Hearing issued. The Board's October 6 statement was treated as its Answer (C-2).

On March 8, 1988, I conducted a hearing. The parties waived oral argument, but filed post-hearing briefs by May 10. On June 2, the Association file a supplemental letter regarding remedy. Upon the entire record, I make the following:

FINDINGS OF FACT

1. The Association is the majority representative of the Board's teachers and support personnel, including secretaries. The parties entered into a collective negotiations agreement effective from July 1, 1986 to June 30, 1988. The agreement's salary guide for secretaries has ten steps (A through J) for five grades (S-1 through S-5).

1/ Footnote Continued From Previous Page

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."

2. Secretarial positions are ranked by responsibility from S-1 through S-5. S-1 requires routine mechanical skills. S-2 requires some degree of independent responsibility. S-3 requires special skills. S-4 requires a high degree of independent responsibility; responsibility for people; district-wide responsibility, and policy awareness. S-5 requires district-wide responsibility, policy awareness, decision making, and responsibility for people and authority (R-1).

3. Before 1983, there was a joint reclassification committee of secretaries and administrators co-chaired by the director of personnel and the president of the Secretaries' Association. The committee considered reclassification requests and made non-binding recommendations to the superintendent who then made recommendations to the Board.

In 1983, the superintendent suggested that, since each reclassification affected all positions, the Association should develop an overall reclassification proposal for elementary secretaries. It did and the Board adopted it. The parties then agreed to disband the joint committee. The Association sent a letter to administrators and secretaries stating that the joint committee had disbanded (T18-T20) and that future reclassifications would be negotiated (CP-7). The Association maintained its own secretaries' reclassification committee to review the appropriateness of reclassification requests. In early 1987, after a secretary requested reclassification, the Association issued a

statement reiterating that reclassifications would go through the grievance or negotiations chairperson (CP-1). Assistant Superintendent Myron Blasi agreed to that procedure (T22). No titles had been reclassified in recent years without either an Association or joint committee request.

5. Before July 1987, there were two S-5 secretarial positions. In July 1987, the Board reclassified three additional positions to S-5: the secretary to the principal, CHS/Office Manager (CP-2); the office manager, secretary to director of special education department (CP-3); and the secretary to the assistant superintendent, secondary and elementary education (CP-5). Because the positions were filled, the Board did not post them. The Board did not discuss or negotiate the reclassifications with the Association (T28-T29). The upgrades were not motivated by a contemporaneous changes in duties (T86). Job descriptions for all three upgraded titles had not changed since 1983. The administration, however, felt that the three positions satisfied the S-5 criteria (T56).

In 1983, the secretary to the principal/office manager title was created by combining two S-4 positions. When S-4 positions had been combined in the past, the new title remained S-4. After this combination, there was some increase in the amount of work for that secretary (T92). When certain public relations and scholarship fund duties had been assigned to that position, the parties negotiated a stipend (T72). When the Board upgraded that

title to S-5, it eliminated the stipend without negotiations (T73). No duties were added after the stipend was negotiated (T73).

6. After the reclassification, another S-4 secretary filed a grievance claiming that her position also should have been reclassified to S-5. An arbitrator ruled that the Board did not violate the just cause clause of the contract by not upgrading that secretary. The arbitrator concluded the job was properly classified at S-4 (R-2).

ANALYSIS

Compensation is negotiable. In Lullo v. Int'l Ass'n of Fire Fighters, 55 N.J. 409 (1970), the Court emphasized the legislative command and public policies requiring collective negotiations over compensation. It rejected a claim that employers should be free to increase individual employee compensation unilaterally, stating:

It has been said that advantages to an employee through an individual contract "may prove as disruptive of industrial peace as disadvantages." Individually negotiated agreements constitute "a fruitful way of interfering with organization and choice of representatives; increased compensation, if individually deserved, is often earned at the cost of breaking down some other standard thought to be for the welfare of the group, and always creates the suspicion of being paid at the long-range expense of the group as a whole." J.I. Case Co. v. N.L.R.B.,...321 U.S. [332] at 338-339...N.L.R.B. v. Allis-Chalmers Mfg. Co.,...388 U.S. [175] at 180-181 (1967).... [Id. at 428]

Placement on a salary guide is also negotiable. Belleville Ed. Ass'n v. Belleville Bd. of Ed., 209 N.J. Super. 93, 98 (App.

Div. 1986). "[A]greements as to terms and conditions of employment should be and are collective, not individual. Strong legislative policy favors collective negotiations." Id. at 97; see also North Brunswick Tp. Bd. of Ed., P.E.R.C. No. 86-29, 11 NJPER 583 (¶16203 1985)(no managerial prerogative to unilaterally set compensation).

The Board concedes that compensation is negotiable, but argues it negotiated a "step system together with grading according to the complexity of the position." Specific salaries were negotiated for each "S" level. The Association, however, did not waive its right to negotiate which title would be placed in each grade. Before 1983, the agreed-upon procedure was a joint committee that made recommendations to the Board. Since 1983, the Association has articulated a procedure requiring negotiations or a grievance. The Board knew and accepted that procedure^{2/}

The Board defends that the "wage adjustments" were "isolated" and therefore did not rise to the level of an unfair practice, citing NLRB v. Superior Fireproof Door & Sash Co., 289 F.2d 713, 47 LRRM 2816 (2d Cir. 1961), rehearing den. 289 F.2d 713, 48 LRRM 2026 (2d Cir. 1961). The Court in Superior addressed whether certain unilateral increases combined with other conduct

^{2/} In Essex Cty. College, H.E. No. 87-14, 12 NJPER 658 (¶17248 1986), the parties had agreed there would be a reclassification study with union participation based on a college developed point system. That was not unlike the pre-1983 practice here. The Hearing Examiner found that the college had a prerogative to reclassify, but not to set salaries for a new grade. The Association urged adoption of that finding and the Commission did so without discussion. P.E.R.C. No. 87-17, 12 NJPER 736 (¶17275 1986).

occurring during a certification year were sufficient to require bargaining after the year. It did not find the increases lawful. Here, there were unilateral wage increases in the thousands of dollars. Such conduct circumvents the majority representative and is therefore repugnant to the Act. Lullo.

The Board also defends that it was not motivated by anti-union animus. Unlawful unilateral changes need not be predicated on anti-union motivation. I have not found illegal motive, merely that the Board changed salaries without negotiations.

Accordingly, I find that the Board violated subsection 5.4(a)(5) and, derivatively, (a)(1) when it unilaterally increased the salaries of three unit employees. Because there was no illegal motive, I recommend dismissal of the subsection 5.4(a)(3) allegation. Because the Association did not litigate the claim relating to negotiations as to job grades for two posted positions, I recommend its dismissal.

REMEDY

I requested the parties brief the issue of remedy. The Board urges that if a violation is found, an order to cease and desist and to negotiate reclassifications prospectively would be most appropriate. It claims the absence of hostility should be considered in rejecting across-the-board increases and/or back pay. The Association claims that retroactive rescission of the salary increases would penalize innocent third parties, and that the

appropriate remedy would be to have all other unit members reclassified upward one grade. If such a remedy is rejected, however, it seeks rescission of the increase prospectively.

I reject the Association's proposal for across-the-board increases. Rather than restore the status quo, it would unduly punish the Board for its actions.

When there has been a unilateral grant of a benefit, rescission should not be ordered without a request. Otherwise, the charging party might be blamed for a reduction in benefits when the employer was the wrongdoer^{3/}. Great Western Broadcasting Corp., 139 NLRB No. 11, 51 LRRM 1266 (1962); Cascade Employers Ass'n, 126 NLRB No. 118, 45 LRRM 1426 (1960); see also Hunterdon Cty. and CWA, P.E.R.C. No. 87-35, 12 NJPER 768 (¶17293 1987) and P.E.R.C. No. 87-150, 13 NJPER 506 (¶18188 1987), aff'd App. Div. Dkt. No. A-5558-86T8 (3/21/88), app. to S. Ct. Dkt. No. 28,806 (violation to unilaterally rescind unilaterally granted benefit). Here, as in East Brunswick Tp., H.E. No. 86-7, 11 NJPER 568 (¶16198 1983) adopted P.E.R.C. No. 86-41, 12 NJPER 785 (¶17299 1985), the charging party has requested a prospective rescission of the unlawful increase. Accordingly, I recommend the Commission order the Board to return prospectively the three secretarial titles to grade S-4.

^{3/} Rescission does not punish innocent third parties, but merely returns them to the salaries they should have been receiving absent the Board's unlawful conduct. Prospective rescission preserves a portion of the windfall by not requiring repayment of gains already received.

RECOMMENDED ORDER

I recommend that the South Orange-Maplewood Board of Education:

A. Cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., particularly by unilaterally reclassifying upward three secretaries.

2. Refusing to negotiate in good faith with the South Orange-Maplewood Education Association concerning terms and conditions of employment of Association unit members, particularly by unilaterally reclassifying upward three secretaries.


B. Take the following affirmative action:

1. Prospectively return to grade S-4, the secretary to the principal, CHS/Office Manager; the office manager, secretary to director of special education department; and the secretary to the assistant superintendent, secondary and elementary education.

2. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." 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 Respondent's authorized representative, shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

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

I recommend the remaining allegations in the Complaint be dismissed.



Ira W. Mintz
Hearing Examiner

DATED: June 9, 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 the rights guaranteed them by the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., particularly by unilaterally reclassifying upward three secretaries.

WE WILL NOT refuse to negotiate in good faith with the South Orange-Maplewood Education Association concerning terms and conditions of employment of Association unit members, particularly by unilaterally reclassifying upward three secretaries.

WE WILL prospectively return to grade S-4, the secretary to the principal, CHS/Office Manager; the office manager, secretary to director of special education department; and the secretary to the assistant superintendent, secondary and elementary education.

Docket No. CO-H-88-89

SOUTH ORANGE-MAPLEWOOD 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.