

P.E.R.C. NO. 97-44

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LAKWOOD BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-95-282

LAKWOOD EDUCATION ASSOCIATION/NJEA,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission holds that the Lakewood Board of Education violated the New Jersey Employer-Employee Relations Act when it refused to supply certain health benefits information to the Lakewood Education Association during successor contract negotiations.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Respondent, Richard K. Sacks, attorney

For the Charging Party, John Thornton, NJEA Field
Representative

DECISION

On February 21, 1995, the Lakewood Education Association filed an unfair practice charge against the Lakewood Board of Education. The charge alleges that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1) and (5),^{1/} by refusing to supply certain health benefits information to the Association during successor contract negotiations.

^{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. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

On May 1, 1995, a Complaint and Notice of Hearing issued. The Board filed an Answer contending that the Board had no obligation to provide the requested information because it was not relevant to the negotiations.

On May 19, 1995, a Commission designee granted the Association's request for interim relief and ordered the Board to provide the information. I.R. No. 95-22, 21 NJPER 233 (¶26149 1995) He found that there would be no meaningful progress in negotiations until the information was disclosed. Leave to appeal to the Appellate Division was denied. App. Div. Dkt. No. AN-1115-94T1 (7/10/95). The order was enforced, Law Div. Dkt. No. OCN-L-1436-95, and an appeal from the enforcement order was withdrawn, App. Div. Dkt. No. A-5590-95T1 (7/21/95).

On May 30, 1995, Hearing Examiner Edmund G. Gerber conducted a plenary hearing. The parties examined witnesses and introduced exhibits. They waived oral argument but filed post-hearing briefs.

On March 22, 1996, the Hearing Examiner issued his report and recommendations. H.E. No. 96-19, 22 NJPER 174 (¶27088 1996). He found that the dispute had been resolved and that the charge should be dismissed as moot.

On April 12, 1996, the Board filed exceptions. It maintains that the information requested in this case was not relevant to negotiations. It asserts that the issue is one of

public importance and that the matter should be remanded to the Hearing Examiner for a decision on the merits.

We have reviewed the record. The essential facts are undisputed. During successor contract negotiations, the parties were negotiating over changes in health benefits coverage. The Board refused the Association's request for information dealing with the termination cost of its current health benefits carrier and the savings generated by proposed changes in the health benefits program.

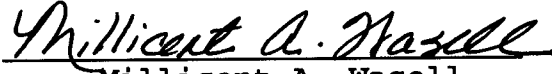
The Board argues that neither party intended to change health benefits carriers and therefore the cost to the district to terminate its agreement for health benefits was not relevant to the negotiations. The Board also argues that since employees were not being asked to pay any portion of the premium costs, the savings to the district arising from the proposed increase in deductibles had no bearing on its negotiations position.

Although the Hearing Examiner found that this matter is moot, the Board asks that the full Commission review its contentions. We will do so because this type of dispute is "capable of repetition yet evading review." In re Comprehensive Investigation of School Dist. of Newark, 276 N.J. Super. 354 (App. Div. 1994); see also Roe v. Wade, 410 U.S. 113, 125 (1973); Southern Pacific Technical Co. v. ICC, 219 U.S. 498, 515 (1911).

We disagree with the Board's restrictive view on the type of health benefits information it must provide to a union during

negotiations over changes in health benefits coverage. With health benefits coverage on the table, the cost to the Board of changing plans and the savings the Board would achieve if certain proposals were adopted was relevant to the Association in preparing responses and counterproposals on health benefits and other economic issues. We concur in our designee's determination that the Board was statutorily required to supply the information. See cases cited in I.R. No. 95-22. Accordingly, we hold that the refusal to supply that information violated subsections 5.4(a)(1) and (5). Because the information has been supplied and the contract settled, we simply issue this declaration and order no further relief.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Acting Chair

Acting Chair Wasell, Commissioners Buchanan, Finn, Klagholz and Ricci voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration. Commissioner Wenzler was not present.

DATED: October 31, 1996
Trenton, New Jersey
ISSUED: November 1, 1996

H.E. NO. 96-19

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For the Respondent,
Richard K. Sacks, attorney

For the Charging Party,
John Thornton, Field Rep.

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On February 21, 1995, the Lakewood Education Association/NJEA filed an unfair practice charge against the Lakewood Board of Education alleging that the Board engaged in an unfair practice within the meaning of N.J.S.A. 34:13A-5.4(a)(1) and (5).^{1/} The parties were engaged in negotiations for a successor

^{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. (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.

collective negotiations agreement to one which expired in June 1995. It was specifically alleged that during the course of negotiations, the Board of Education proposed numerous changes in its health benefit plan. The Association requested certain information with regards to the cost of the current Board of Education health plan and in particular, the cost of those portions directly related to the Board's proposals. The Board refused to produce the information requested. Specifically, the Board refused to answer two questions.

1. What savings does the Board of Education realize if the no-deductible proposals are enacted as presented?

2. What are the costs to the Board of Education to terminate the agreement with the present carrier?

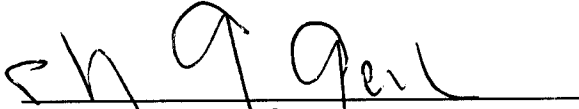
On May 3, 1995, the Association filed an order to show cause seeking an interim order compelling the Board to provide this information. The order was executed, and after a hearing was conducted on May 17, 1995, Lakewood Board of Education was ordered to provide the financial information requested. (I.R. No. 95-22, 21 NJPER 233 (126149 1995)).

The Board filed an appeal with the Appellate Division, Dkt. No. A-5590-94T1. That application was denied and the order was ultimately complied with by the Board.

It is apparent that this dispute is resolved and the charge is moot. The Commission will not exercise its judgment when a dispute is moot. Delran Tp. B/E, P.E.R.C. No. 95-17, 20 NJPER 379

(¶25191 1994); Rutgers University, P.E.R.C. No. 88-1, 13 NJPER 631 (¶18235 1985) aff'd App. Div. Dkt No. A-174-87T7 (11/23/88); Matawan Aberdeen Reg. Schl. Dist., P.E.R.C. No. 88-52, 14 NJPER 57 (¶19019 1987).

Accordingly, I recommend the Commission find the matter moot and dismiss the unfair practice charge.


Edmund G. Gerber
Hearing Examiner

Dated: March 22, 1996
Trenton, New Jersey