

H.E. NO. 2002-16

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

In the Matter of

SPRINGFIELD TOWNSHIP BOARD
OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-2001-218

SPRINGFIELD TOWNSHIP EDUCATION
ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that a public employer has refused to implement a negotiated agreement executed by its lead negotiator. Under the circumstances of the case, the majority representative negotiations team reasonably inferred the employer team's binding authority. The Hearing Examiner also finds that the teams agreed on salary guides; that representatives executed an agreement that was clear on its face, providing for annual percentage increases, plus increments; and that the agreement was not undermined by "mutual mistake."

The Hearing Examiner recommends that the employer violated 5.4a(5) and (1) of the Act.

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Appearances:

For the Respondent, Parker, McCay & Criscuolo, attorneys
(Russell Weiss, Jr., of counsel)

For the Charging Party, Selikoff & Cohen, attorneys
(Steven R. Cohen, of counsel)

**HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION**

On February 9, 2001, the Springfield Township Education Association (Association) filed an unfair practice charge against the Springfield Township Board of Education (Board). The charge alleges that on or about January 16, 2001, the Board voted "not to honor" a written successor collective agreement it had entered with the Association on or about October 25, 2000. The charge specifically alleges that Board Vice-President John Petrino agreed to a "contract settlement" with Association President Andrea Batchler on behalf of certificated personnel for the period of September 1, 2001 through June 30, 2004. The charge further alleges that nothing in the October 25, 2000 agreement indicates

that the negotiators "were not cloaked with authority to enter a final and binding successor agreement" and that the document was intended to be a "tentative agreement," subject to ratification by the principals. The Board's actions allegedly violate 5.4a(1), (5) and (6)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

On June 6, 2001, a Complaint and Notice of Hearing issued.

On October 9, 2001, the Board filed a letter requesting that its earlier-filed statement of position serve as the Answer to the Complaint. The Board denies that it delegated its authority to "finalize" an agreement to its negotiators and that its negotiations representatives had apparent authority to enter a binding agreement. It contends that the long-standing practice of the parties was to reach a tentative agreement, subject to ratification by the principals. The Board contends that the October 25, 2000, agreement is "tentative" and does not represent the actual agreement reached by the parties, which in fact was "4.0% including the cost of increment." Accordingly, the October

^{1/} These provisions 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. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

25 document is "the product of mutual mistake and cannot be enforced because there was no meeting of the minds as to its terms." Finally, the Board asserts that various provisions of the collective agreement show that negotiations representatives do not have authority to bind the principals and that the Board retained the right to ratify any agreement reached by its negotiators. It denies violating the Act.

On December 5, 2001 and January 9, 2002, I conducted a hearing at which the parties examined witnesses and presented exhibits. Post-hearing briefs were filed by March 18, 2002; reply briefs were filed by March 28.

Based on the entire record, I make the following:

FINDINGS OF FACT

1. The Springfield Township Board of Education and the Springfield Township Education Association signed a collective agreement covering certificated personnel, extending from September 1, 1998 through June 30, 2001 (R-1).^{2/}

Article II ("Negotiation Procedure") provides in pertinent parts:

A. GENERAL

The parties agree to enter into collective negotiations over a successor Agreement in accordance with Chapter 124, Public Law 1974. Any agreement so negotiated shall apply to all teachers, be reduced to writing, be signed by the

^{2/} "R" represents exhibits submitted on behalf of the Respondent; "CP" represents exhibits submitted on behalf of the Charging Party.

Board and the Association, and be adopted by both parties.

- (1) Representatives of the Board and the Association's Negotiating Committee shall meet at the discretion of either parties. All meetings between the parties shall be scheduled at the convenience of both parties.
- (2) Should a mutually acceptable amendment to this Agreement be negotiated by the parties, it must be adopted by the Board and the Association.

...

C. NEGOTIATING COMMITTEES

Neither party in any negotiations shall have any control over the selection of the negotiating representatives of the other party. The parties mutually pledge that their representatives shall be clothed with all necessary power and authority to make proposals, consider proposals, and make counter-proposals in the course of negotiations. The parties agree to bring no more than (5) representatives to the negotiations table at any one session.

Article XVI ("Rights of the Board of Education") states:

In recognition of the fact that the laws of the [S]tate vest responsibility in the Board for the quality of education in and the efficient and economical operation of the school district, it is herein agreed that except as specifically and directly modified by express language in a specific provision of this contract, the Board retains all rights and powers that it has, or may hereafter be granted by law.

Attached to the agreement is an alphabetical listing of all "teachers," their respective "steps," the educational degree(s) plus credits and the number of years they had held such degrees and credits. Also attached are salary guides for each year of the agreement, referencing salaries at each step with attendant educational degrees and credits (R-1).

2. On or about November 24, 1998, Board Vice-President and lead negotiator John Petrino and three other Board negotiators and Association President Andrea Batchler, and three other Association negotiators, including Cathryn Browning, signed a "Memorandum of Agreement" for the term 1998-2001 (R-2; 1T20; 1T65). The largely handwritten document states at the outset that "the parties agree to the following terms for a new agreement, subject to ratification." The second enumerated paragraph lists three constant percentage increases for each year of the three-year term and provides: "Increases are inclusive of increments and longevity movement. Salary guides to be developed mutually" (R-2). On cross-examination, Batchler acknowledged that "inclusive of increments" means that a unit member's raise "was included" in the percentage increases listed (1T177).^{3/} Both parties had employed professional negotiators; the Board hired Garry Whalen (2T7; 2T8).

3. The Association also represents a unit of support staff. Negotiations for the current support staff agreement began in or around January 2000 and an agreement was signed in or before September 2000 (1T83-1T84). Petrino and Batchler were lead negotiators for the Board and the Association, respectively, and both parties again employed professional negotiators (1T85; 2T7; 2T8).

^{3/} "1T" refers to the transcript for the December 5, 2001 hearing date; "2T" refers to the transcript for the January 9, 2002 hearing date.

In or around September 2000, Petrino and Batchler agreed that the costs of hiring professional negotiators were high and perhaps, an unnecessary expense (1T85; 2T10). Batchler believed that "the [contract] language was basically as good as it was going to get. And we just felt that, 'let's just make it as easy as possible on ourselves and go for just the percentage'" (1T85). Petrino believed that the Board "might have a little bit more play because we wouldn't be putting out [professional negotiator's] fees like that" (2T10). A neighboring township had settled an agreement ". . . without sitting down with professional negotiators. . . . We decided we would try to sit down in an informal basis with the teachers . . . and see what they were looking at for the upcoming contract" (2T10; 2T12). The two teams had a "good rapport" (1T21).

Petrino and Batchler discussed the upcoming negotiations and agreed to meet "to get an idea as to what was going on" (2T12; 2T16). Batchler decided not to inform the membership of the discussions; "[W]e wanted it to be . . . just between us." (1T87). Petrino had been a Board member since 1995 and had "chaired" the Board negotiating "committee" through the negotiations for the 1998-2001 certificated staff agreement and the 1999-2002 support staff agreement (2T7). King became a Board member in April 1999, and was "involved" in the support staff negotiations on behalf of the Board from November 1999 to June 2000. King conceded:

We had a professional negotiator and I was part of the negotiating team and we would basically just follow the professional negotiator into the room and they would go back and forth with the

teachers' negotiator [Batchler] and we would go back and discuss things and they would try and come up with strategies or whatever along the way.

[2T53]

King's testimony indicates that he and perhaps, Petrino were not the primary negotiators on behalf of the Board. Batchler had been Association president since 1997 and was its vice president from about 1991-1997. She had "went through" the negotiations for three previous agreements, including the two immediately preceding the disputed agreement (opposite Petrino) (1T20).

4. On or about September 17, 2000, Petrino reported to the Board in an executive session that he and fellow Board member/negotiator Ralph King intended to meet "informally with Association President Batchler and one or two of her members . . ." to see what the teachers are looking for" (2T16; 2T43; 2T57). He specifically advised that they intended to meet without professional negotiators (2T56; 2T57). Board member John Linton asked Petrino if an agreement at their meeting would bind the Board, to which Petrino answered, "We have to come back to you to approve whatever we agree to" (2T17; 2T57).

Association representatives were not invited to attend and did not attend the September 17 meeting. Nothing in the record suggests that they could have attended. Neither Petrino nor King communicated or summarized the executive session discussions to any Association representative (2T44; 2T87).

On or about September 26, Board Secretary and Business Administrator Barbara Harris gave Petrino and Batchler (perhaps upon the Association president's request) her compilation of "2000-2001 teacher payroll information," a list of all 32 teachers, their salaries, education levels and step(s) on salary guide (R-4; 1T184; 1T186). The document also sets forth a gross salary total of \$1,356,730 and an average salary of \$47,438 (R-4).

5. On October 10, 2000, Board members/negotiators Petrino and King met with Association president and principal negotiator Batchler and with Association member Browning (1T87; 2T17-2T18). They met at 6:30 p.m. in the school library. The meeting lasted about 25 minutes (2T18). On an unspecified date before the meeting, Petrino and Batchler had "talked about a percentage [wage increase];" and "4% was thrown out" (1T89).

At the meeting, Petrino asked Batchler, "What are the teachers looking for?" She replied that "the teachers wanted everyone to get the same percentage" (2T18-2T19). Petrino said: "That sounds good." In the past, teachers had received differing percentage increases, depending upon their placement on the guide (2T19). Petrino asked: "How much money?" After some dickering, Batchler and Petrino agreed upon a four per cent wage increase, "across the board" (2T19; 2T59; 1T124). They also agreed not to change any "language" in the successor agreement (1T90; 2T19; 2T60). I infer that excepting salaries, Batchler and Petrino agreed not to alter in the successor any provisions of the 1998-2001 collective agreement.

Batchler testified that they also agreed that "no steps [were to be] added" and that, "[I]t was indicated that you would move to your next step because you're in another year of your teaching" (1T24; 1T90; 1T103). She also testified that she said in the meeting that "You move to your next step" (1T92).

Petrino and King did not specifically deny Batchler's testimony. I credit it. King testified that neither he nor Browning was "involved" in the discussion and that they "just kind of sat next to each other" (2T59). I credit King's testimony. At the end of the meeting, Batchler and King mentioned salary guides. King said to Batchler, "I'll get the numbers together and we'll talk" (1T26; 2T20; 2T61).

On direct examination, Petrino testified that he and Batchler ". . . ended up with a 4% [wage increase]." He then testified:

I said, 'It sounds reasonable to me.' I say, you know, 'Go back to the Board with it.' Before I left I said: 'I want to get this straight.' I said: 'It's 4% across the board, everybody gets 4%?' Andrea said: 'Yes, it's 4%.'
[2T19]

On cross-examination, Petrino was asked about his conversation with Batchler at the October 10 meeting. The transcript provides:

Q: You say that you told Ms. Batchler and Ms. Browning that you were going to take the agreement back to the Board, right?

A: I--I cannot give you the correct verbiage.

Q: Was that the essence of it?

A: The essence? I would say, yes.
[2T44]

Petrino's imprecision on cross-examination undercuts his direct examination testimony, which, in its own context sounds tentative, at least compared to his remarks about wanting to "get straight" his understanding of the 4% wage increase. King did not corroborate Petrino's testimony, and did not testify that Petrino said that the "agreement" would have to be "taken back" to the Board. I credit Petrino's testimony because it is indirectly corroborated by negotiator Batchler's October 17 e-mail message (see finding no. 6).

Batchler testified that they also agreed that "no steps" were to be added to the guide and that the term of the agreement was three years (1T24; 1T28). Neither Petrino nor King rebutted Batchler's testimony; I credit it. Finally, Batchler testified that there was "discussion" about "salaries going off guide," that unit members exceeding step 19 would receive ". . . 4% because they can't move" (1T92; 1T97). In the absence of any rebuttal testimony, I again credit Batchler's testimony.

For her part, Batchler believed at the meeting's end that they had a "deal" (1T104). She testified "there was no language in a tentative agreement"; that she believed that "John [Petrino] and Ralph [King] both represented the Board, just like I represented our Association and I knew what was going to make the deal" (1T104-1T105). She believed "that Petrino knew what he could do" (1T106).

6. At 12:37 a.m. on October 17, 2000, Batchler e-mailed a message to Petrino (R-8). I infer that the message was delivered to a processor or terminal to which Petrino had access. The message read:

I won't be at the meeting tomorrow [i.e., today, October 17] due to a previous engagement. . . . Please let me know asap whether the Board is going to accept your proposal to offer us the four per cent for the next three years. I will then present our proposal to our Association on the 24th of October.
[R-8]

Nothing in the record suggests that Batchler learned about the presentation to the Board from any source other than Petrino's remark at the October 10 meeting that he would take the proposal "back to the Board" (see finding no. 5). Batchler believed that both parties were undertaking separate courses for obtaining consent or acceptance by their principals of the "proposal" ("four per cent for the next three years") which had been agreed-upon in the October 10 meeting. Batchler wrote that her course was to present the proposal to the membership on October 24.

7. On October 17, Petrino informed the Board in an executive (not public) session that "we have an agreed-upon raise of 4%" (2T21). He also advised of "recent settlements in surrounding districts," including, Chesterfield, Evesham and two others, all of which reported increases of about 4% in each year of the four three-year agreements (2T21; R-6). Petrino advised of the agreement not to change any "language" and that the increases were "across-the-board," totalling between \$52,000 and \$54,000 in the

first year (2T21; 2T60; R-6). King attended the meeting and specifically heard Petrino say that "it was going to come up to fifty-some thousand dollars" (2T60). The Board members' response, in Petrino's paraphrase, was: "Okay, fine, it sounds good to us" (2T21).

Board Secretary and Business Administrator Barbara Harris recorded the minutes of the October 17 meeting (1T184; 1T192; R-6). She testified that in her sixteen years in the position, she never released "executive minutes" to the Association (1T193). She specifically conceded that her October 17 notes were not shown to the Association (1T208). I credit her admission. Nor did she attend the October 10 meeting among the four negotiators (1T194; 1T230). Harris wrote in the minutes: "Petrino and King met with teachers and achieved a tentative agreement - no change in contract and 4, 4, 4" (R-6; 1T198). Asked on cross-examination if "tentative agreement" was spoken by Petrino, Harris replied: "[Those words are] probably my words" (1T209; 1T210). Asked to recall Petrino's remark, Harris testified:

I can't give you exact wording, but there was - always been something, 'That sounds good, come back to us when you have more information' or whatever - those kinds of conversations took place. But I can't give you exact wording.
[1T202]

Harris conceded that "tentative agreement" was probably her description of Petrino's remarks; it was consistent with the ratification process of previous collective negotiations, about which she probably recorded notes in past executive sessions. Her

recollection, "That sounds good . . ." is more likely to have been a fellow Board member's response to Petrino's remarks than a paraphrase of his remarks. I find that Harris inferred, rather than recollected, Petrino's comments to the Board. Her recollection indicates that the Board was approving and monitoring its team's efforts.

8. On October 18, 2000, Batchler received a four-page salary guide, pursuant to her request of an NJEA Uni-Serv representative (1T28; 1T31; CP-1). The guides, prepared by an NJEA economist, set forth certificated staff salaries at 19 steps and 5 educational levels in the current year (2000-2001) and in each of the three years (2001-2002, 2002-2003 and 2003-2004) of the disputed successor agreement (CP-1). The guides reported wage increases of four per cent plus increment, comporting with Batchler's understanding of the terms negotiated on October 10 (1T33).

9. On October 19, 2000, King sent a short e-mail reply to Batchler's October 17 message and a copy to Petrino (see finding no. 6). The message concerned the "Board meeting" and reported: "Sounds good for the contract" (R-8).

10. Sometime before October 21, King asked Petrino for his permission to "prepare a guide" (2T22). Petrino replied: "As long as you know how to do it and how to make the figures work" (2T22). King worked on the guides on both Saturday and Sunday, October 21 and 22 (2T66). On October 21, Batchler e-mailed this message to King:

I would like to get the figures from you tomorrow so I can copy all the salary amounts down for the members. It makes things easier to vote on when they can see what the proposal cost out to be. . . .
[R-8]

On October 22, Batchler and King had several telephone conversations about the guides (1T34; 2T67). They together reviewed the salaries of at least six named unit members over the next 3 years (2001-2004), including two or more "off-guide" teachers, who were to receive a "straight 4 per cent" increase in each contractual year (1T148; 2T79). In all instances, the parties were "on the same page"; that is, except for rounding cents to the closest dollar, the salaries King reported matched those Batchler had received from the NJEA (1T41; 2T68). King admitted that ". . . eventually all the figures were in agreement with those [Batchler] prepared" (2T68; 2T80). King used the base salaries, added the percentage increases and advanced the unit members to their next steps (1T34).

Earlier in the day, King spoke with Petrino. King said he had prepared the guides. Petrino asked if they were calculated at 4 per cent. King told Petrino that the increase (in the first year, probably) was "80-some thousand dollars" (2T22; 2T68). Petrino said: "Ralph, that's high - the figure should be between \$52,000 and \$54,000" (2T22). King said: "I probably did the totalling wrong" (2T68). Petrino spoke with King at some undisclosed later time that day and King said that the increases equal 4 per cent. Petrino asked: "Are you sure?" King replied: "Yes" (2T46).

At about 10:15 p.m., King and Batchler had their final phone conversation of the day. King said he had spoken with Petrino (1T43-1T44). Batchler testified that King "told me he [had] shared this information with John on the salary guides" (1T44). King admitted that Batchler asked him if Petrino was "on board" with the guides he was preparing and that his answer was: "Yes, but he hasn't seen them" (2T67). King knew on Sunday night that Batchler "had figures prepared on cards to give to union members" (2T69).

Batchler testified:

And I said more than one time, 'You're sure, Ralph?' He said: 'We're positive.' I said: 'We're going to go to the Association. I'm going to the Association on Tuesday.' And he said: 'Go do it.'
[1T44]

King did not deny or rebut Batchler's testimony. I credit it. I also find that King did not convey in any manner to Batchler the discrepant calculations (\$52,000 versus \$80,000) he and Petrino discussed earlier in the day.

11. On Monday morning, October 23, 2000, King placed a hard copy of the salary guides he had prepared over the weekend in Batchler's school mailbox, together with its source computer disk (2T69; 1T45; CP-2; CP-3). Except for rounding cents to the closest dollar, the guides generated by King matched those generated by the NJEA, which Batchler had received on October 18 (CP-1; CP-3). Batchler printed out the contents of the disk King had deposited for her and she again confirmed that King's guides matched the NJEA guides (1T41).

12. At about 8 a.m. on October 24, Batchler convened a meeting with her certificated Association members at the school, and distributed note cards to each attendee, setting forth his or her projected salaries in each year of the successor agreement (1T45; 1T107; 1T127). She asked the group: "Does anyone want me to take this deal?" They said: "Yes, we want the deal" (1T46-1T47). Batchler believed that the Association had "reached a deal" (1T108). The meeting was adjourned at about 8:50 a.m. (2T96). Batchler taught a class shortly after the meeting ended (2T96).

On cross-examination, Batchler denied that she had taken the agreement back to the membership for "ratification" (1T106). She testified: "I took the salary figure that Ralph [King] prepared and wrote them down. And I said, 'Do we have a deal?'" (1T106). Alternatively asked if the membership's "affirmation" was not really a ratification, Batchler answered: "Well, I knew prior to that meeting what our people were looking for. So, I felt that once they said to take the deal, that it was a done deal" (1T107). Asked yet again if the membership's statement, "It's a deal" was a ratification of the agreement she had reached, Batchler testified: "Well, yes. Well, we reached a deal. We didn't feel that, you know, when you use the word 'ratify' in a sense of just presented what we had. Do you want the deal?" (1T108). She acknowledged that upon the membership's approval, the Association could go forward with the deal (1T109). In light of the fact that salary was the only issue in these negotiations, and notwithstanding Batchler's

equivocations about the word "ratification," I find that the Association membership's "affirmation" on Tuesday morning, October 24, was a ratification vote.^{4/}

Soon after the morning Association meeting, Batchler authored and typed or ordered typed a document (1T120; 1T127; 1T129). She testified about her motive for creating it: "I felt that we took the deal after our meeting [that morning] and I wanted to have something in writing stating that we accepted that deal" (1T120). I credit her testimony. She placed the unsigned document in her school mailbox so that she could easily locate it in the event that she saw Petrino in the building (1T129; 1T131). In large print, the document states:

The Springfield Township Board of Education and the Springfield Township Education Association have reached a contract settlement. This contract will begin September 1, 2001 thru June 30, 2004. The settlement will be a 4% (plus increment) each year across the board. No steps will be added. All existing language in the previous contract will remain.

John Petrino
BOE, V.P.
[CP-4]

Andrea Batchler
STEA, President

^{4/} "Ratification" is defined in a "broad sense" as: "the confirmation of a previous act done either by the party himself or by another; confirmation of a voidable act." Black's Law Dictionary, (4th ed. 1968). "Express ratifications are those made in express and direct terms of assent; implied ratifications are such as the law presumes from the acts of the principal." Id. at 1428.

13. Sometime in the mid-morning of October 24 or 25, Batchler walked by Superintendent Helena Kosoff's office, the door to which was swung open, permitting the Association president to observe John Petrino seated opposite the Superintendent's desk (1T131). Batchler promptly saw or located Browning elsewhere in the building and told her negotiations team member to accompany her. While Browning observed, Batchler removed the printed, unexecuted agreement from her school mailbox, and walked back to the Superintendent's office where Kosoff and Petrino were discussing their separate arrangements to attend the School Boards annual convention in Atlantic City, scheduled for Wednesday through Friday, October 25-27 (1T131; 1T170-1T171; 1T178; 2T95). Batchler "poked her head" into the office and said, "John, I have a paper that I would like you to sign" (1T131). Kosoff did not regard the intrusion as rude or significant (1T171; 1T177).

Kosoff and Petrino testified that Batchler presented the disputed agreement to him on October 24 (1T170-1T171; 2T23). Batchler and Browning testified that she sought Petrino's signature in the Superintendent's office on October 25 (1T127; 2T95). One or the other date does not matter much, though I am persuaded that the date was October 24, sometime before noon and after the Association meeting at which the membership "took the deal." I rely principally on Kosoff's testimony that she was a hotel guest in Atlantic City on at least Tuesday and Wednesday nights and attended a convention meeting on Wednesday morning (1T180-1T181). Her testimony was not

shaken on cross-examination (1T181-1T182). I find that Kosoff was not in her office on Wednesday, October 25. Batchler testified that she had the document "typed up right after the Association meeting" (my emphasis), thereby (fortuitously) enabling her to present it to Petrino later that (Tuesday) morning (1T129). (Browning's testimony that Batchler taught a class immediately following the Association meeting does not preclude the possibilities that the Association president drafted the agreement and delegated the typing or printing of it before her class started and saw Petrino after her class ended). Batchler's 6 p.m. e-mail message that day (October 24) to Petrino is consistent with an earlier presentment. I infer that her e-mailed exclamatory sentiment - "We all should feel very good about this settlement!" implies a sense of relief and finality, which she was unlikely to have felt before the document was signed (see 1T120; 1T121; 1T125; 1T126; and finding no. 15). (Note that "settlement" was also written in the document Petrino signed).

Batchler gave Petrino the unsigned document for his signature. He asked: "Is it everything that we agreed to, 4 per cent across the Board?" (1T49; 2T26). Batchler answered, "Yes." Batchler and Browning testified that Petrino said that he did not have a pen (1T48; 2T95). Petrino did not specifically recall saying that he did not have a pen. I credit the Association witnesses' testimony. Batchler walked out of the Superintendent's office, promptly located and picked up a pen and presented it to Petrino (1T48-1T49). Petrino signed the document (CP-4; 2T24). He

admitted: "I looked at it, did not thoroughly read it - it was my mistake. I basically looked, saw the 'four per cent,' saw the year[s], and signed it" (2T24). No evidence suggests that Petrino was rushed to read or sign the agreement or under a duress.

Petrino could not recall if Batchler had signed the document before he signed; he conceded, "[I]t's possible she did" (2T50). Batchler's signature is on the document, in the designated space, along with the hand-written date, "10/25/00" (CP-4).

Batchler could not recall if she signed the agreement in Petrino's presence, though she remembered signing with the same pen she had given to Petrino (1T55). She then testified:

I know that I would never have written the date unless I was signing it on that date. I am a creature of habit. So I know that I must have signed it after he signed it.
[1T55]

Petrino did not specifically rebut or deny her testimony. I find that Batchler signed and dated the document on October 25, one day after Petrino signed it in the Superintendent's office. Finally, Batchler testified that she was "sure that she would have given [Petrino] a copy of [the fully executed agreement]" (1T132). I find that Batchler's testimony connotes her honest intention, even if she did not give Petrino a fully executed copy of the agreement on October 25, before his evening departure for Atlantic City.

14. On cross-examination, Batchler was asked, given the Association membership's "affirmation" (ratification), why ". . . would it be any different for the Board's side?" (1T109). Batchler testified:

I just felt that based on getting those salary guides, it was just all done differently. We always have ratified in the past when we had a memorandum drawn up and had people in on it. This was done differently.

I never would have went in front of 32 people and told them we had a deal, if we didn't have a deal.

I spoke to Ralph [King] Sunday night five, six, seven times. I said, 'You're sure we're on the same page', because I did not want to go to my members if this is not a done deal. And he said: 'Go for it.'

Now, I'm not that type of person. And to me, we had a deal.

[1T109-1T110]

I credit Batchler's professed state of mind.

15. On October 24, at about 6 p.m., Batchler e-mailed a message to Petrino and King. It stated:

Well, we did it! We ratified our contract and the teachers were pleased that this was not a long and ugly negotiations. Thank you for all the time and effort that you both gave. The Association was shocked that we settled before they knew that we were meeting. I never told anyone besides the team that we started talking. We all should feel very good about this settlement! Talk to you soon.

[R-8]

I infer that "we," as Batchler wrote, referred to the negotiations teams and not to herself and her membership. I also infer that she inartfully or inaccurately wrote "ratified," when she intended to mean "signed" or "executed," and wrote "settled" to describe her view of the circumstance of both teams having agreed upon the guides, followed by King's confirmation/urging on October 22 that she present the guides to the Association on the 24th of October

(see finding no. 10). Finally, I infer that Petrino and/or King received and read Batchler's e-mail message.

16. On the evening of Wednesday, October 25, 2000, Petrino drove his vehicle to Atlantic City to attend the annual School Boards convention, which began that morning (2T28). Petrino met professional negotiator Whalen at the convention and apprised him of the Board's "agreement" with the Association (2T28). Whalen asked if the agreement really totalled four per cent - "It's not going to cost you more money in steps?" (2T28). Petrino testified that he answered: "No, it was an across-the-board raise." I find that Petrino was immediately concerned about the "money in the steps," even as he denied the possibility to Whalen. I also find that Petrino's reply to Whalen was consistent with his testimony at hearing, insofar as he repeatedly and implicitly defined "across-the-board" as meaning "inclusive of increment." Whalen asked him about the "memo." Petrino did not have a copy with him (2T28).

On Thursday, October 26, Petrino drove home from Atlantic City. He called Batchler at school on his car phone and left a message on her voice mail. Batchler soon returned his call (2T29). Petrino asked her: "On the contract, this 4 per cent, there is no other increase other than 4 per cent?" Batchler replied: "John, there is step movement, there is the increase in the step." Petrino said: "No, Andrea. It was supposed to be 4 per cent across-the-board - everybody got 4 per cent - that's the only

[reason] why this thing was agreed-upon so quickly." He also mentioned to Batchler that "he was talking to some people from school boards and they questioned what he did" (2T29; 1T137). Petrino's early departure from the convention and his cellular phone call to Batchler belie his purported and assured response to Whalen the previous night.

When Petrino arrived home, he phoned King and asked him to bring to his house "any documentation." Petrino reviewed the guides and said: "This is wrong. This is more than 4 per cent" (2T36; 2T71). Their review of the guides showed that the wage increases were 6.2 per cent, 6.2 per cent and 6.4 per cent in each successive year of the successor agreement (2T84; R-9). King admitted in testimony that he "made a mistake"; the he "showed movement of people amongst the steps and there shouldn't have been movement" (2T85).

16. On January 16, 2001, the Board voted on a recommendation to approve the "negotiated Springfield Township Education Association and Springfield Township Board of Education Teacher contract for 2001-2004" (CP-5). Petrino and King motioned and seconded the "Motion for Approval." Of the 9 roll-call votes, 3 were "aye" (including Petrino and King), 3 were "nay," and 3 "abstained." (The 3 abstentions were cast by Board members who purportedly were "related to members of the support staff at the school," thus provoking concern by the "ethics committee" and counsel). The motion was "not approved" (CP-5).

On January 23, Board President Paul Tootell distributed a memorandum to Association members regarding "contract negotiations." In a pertinent part, Tootell wrote:

It was the Board's intent to try and settle the upcoming contract quickly and without involving a professional negotiator. My understanding is the STEA had the same intent. That which occurred next was a true case of misinterpretation by the lead negotiators for both sides. This misinterpretation was unfortunately identified after your ratification vote. The Board's negotiating team tried to communicate to your team that an error had been made. The STEA negotiating team was not willing to consider this a miscommunication and believes they have a binding contract. No individual Board member has the authority to approve a contract, nor does an individual STEA member. Asking the Board to support a contract that was something different than we were originally told by our negotiating team is not ethically right. . . . It is my recommendation that the Board and the STEA begin negotiations immediately. We have time to settle this contract prior to July 2001.

[R-3]

ANALYSIS

The Act authorizes a public employer to reach a binding agreement on terms and conditions of employment. The employer may delegate to one or more representatives the authority both to negotiate and agree to a contract. N.J.S.A. 34:13A-5.3 provides, in part:

. . . [T]he majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances, disciplinary disputes, and other terms and conditions of employment. . . .

When an agreement is reached on the terms and conditions of employment, it shall be embodied in

writing and signed by the authorized representatives of the public employer and the majority representative.

This portion of the Act contemplates that a governing body may be bound at the negotiations table through the actions of its representatives. A public employer also may and commonly does, reserve the right to ratify a memorandum of agreement. See Borough of Tenafly, P.E.R.C. No. 98-129, 24 NJPER 230 (¶29109 1998).

N.J.S.A. 34:13A-5.4a(5) makes it an unfair practice for an employer, its representatives, or agents not to negotiate in good faith with a majority representative. N.J.S.A. 34:13A-5.4a(6) makes it an unfair practice for an employer, its representatives, or agents not to sign a negotiated agreement.

In Bergenfield Bd. of Ed., P.E.R.C. No. 90, 1 NJPER 44 (1975), the Commission held that the employer violated its duty to negotiate in good faith and to sign a negotiated agreement. The agreement was reached by the employer's authorized negotiations representatives, including two of the five board of education members, and the employer had not expressly stipulated that the agreement was subject to ratification. The Commission concluded that a party is entitled to rely upon the apparent authority of the other parties' negotiators, in the absence of express qualifying conditions. In light of section 5.3's express recognition that an employer's authorized representatives may commit an employer to sign a negotiated agreement, the Commission has also rejected arguments that a public employer cannot be deemed to have bound itself to a

memorandum of agreement absent a formal vote. See Long Beach Tp., P.E.R.C. No. 88-102, 14 NJPER 329, 330 (¶19122 1988); East Brunswick Bd. of Ed., P.E.R.C. No. 77-6, 2 NJPER 279, 281 (1976).

The Board contends that "there is no basis upon which to conclude that the Board team had apparent authority to bind it." It specifically argues that "the absence of a statement by an agent limiting its authority does not, in itself, establish apparent authority to bind the principal" (brief at p. 12).

In Black Horse Pike Reg. Sch. Dist. Bd. of Ed., P.E.R.C. No. 78-83, 4 NJPER 249 (¶4126 1978), the Commission synthesized its earlier Bergenfield and East Brunswick decisions. It wrote:

In order for collective negotiations to be effective and productive, it is essential that each participant know with certainty the extent of the opposing team's authority. A party must be able to rely on the statements and general conduct of the other side's representatives during the negotiations process. Accordingly, [we], in applying the criteria established in the Bergenfield and East Brunswick decisions, will consider only whether, during the course of the particular negotiations in dispute, there was an absence of oral or written qualifying statements or general conduct by negotiating representatives from which binding authority on the part of the negotiating teams to conclude an agreement could reasonably be inferred. To consider the additional factor of past history of ratification would only cause confusion and disruption to the negotiations process. A party would be uncertain whether to rely on the practice of ratification in previous negotiations or the current representations of binding authority by the negotiating representatives.

[4 NJPER 250]

In Black Horse Pike, the Commission specifically found evidence of "oral qualifying statements made during the course

negotiations" which "either did or should have made the [opposing team] aware of the requirement that any proposed agreement required ratification of the [principal, whose negotiations team "made the oral qualifying statements"] Id. at 250. The negotiations teams had established "basic procedural ground rules," one of which was ratification, evidenced by a negotiator's written notation at a meeting, "We explain that we represent Association - will need to bring back contract to them." The Commission also found that another member of the Association team said several times that he had to "sell the contract." The Commission held: "[I]n the context of labor negotiations, the phrase to "sell the contract" is a term of art with a clear meaning: that the contract is subject to ratification by the representative's principals who will have to be persuaded as to its acceptability." Id. at 4 NJPER 250.

The Commission also specifically noted that the Association representative (who said that he would have to "sell the contract") was a "labor relations professional and previously dealt with the Board's representatives, all of whom were experienced negotiators."

The Commission found:

In the context of this situation, it was reasonable for this professional to use this term and expect that the Board's negotiators would understand his statement. If they did not, the burden was on them to question its meaning or significance. From their silence, the Association's representative was reasonable in concluding that he had been understood. The Association, therefore, complied with the requirements of Bergenfield and East Brunswick, by making an oral qualifying statement regarding the need to ratify the proposed agreement. Thus,

the Board will be held to have had constructive knowledge of the reserved right to a ratification vote by the full Association membership.
[Black Horse Pike at 4 NJPER 250]

The Springfield Board and the Association were motivated not to employ professional negotiators, as they had done in their two preceding, separate and successive certificated and support staff negotiations. Eliminating this professional assistance (and leadership, according to negotiator King), left the teams without extensive negotiations experience. Batchler had participated in one other negotiations, providing her that much more experience than Petrino and King. Deferring to "good rapport" and without articulating ground rules as a condition for their progress, Association and Board lead negotiators Batchler and Petrino, together with their respective and relatively inexperienced team members Browning and King, met only once, on October 10, 2000. In about 30 minutes, they concurred on a four per cent wage increase - "across-the-board" - for a three-year term; agreed not to change "language" (memorialized in the predecessor agreement); and not to "add steps." I have also found that Batchler said and Petrino did not object to "movement to the next step" and to "straight" four percent increases for unit members who "can't move" [i.e., anyone surpassing step 19].

Near the meeting's end, Petrino advised Batchler that he was "going back to the Board" with the proposal, particularly confirming aloud that, "it's four per cent across-the-board, everybody gets four per cent." Batchler agreed. I infer from

Petrino's willingness to "go back to the Board," that no unresolved negotiable matter awaited the teams' further attention (except for the guides).

Applying the criteria set forth in Black Horse Pike, I find that "going back to the Board" was an "oral qualifying statement," which made the Association team aware that the tentative agreement required Board approval but not necessarily ratification in a strictly legal sense of the word; that is, a roll call vote at an open public meeting. In the absence of procedural ground rules at what was mutually intended to be negotiations confined to salaries, and in the absence of any writing memorializing the parties' concurrence, I find that it was unreasonable for Petrino (not a professional negotiator and relatively inexperienced) to have posited the concept of formal ratification in the phrase, "go back to the Board." (Petrino's exchange with Board member Linton on September 17 referenced "approval" but not ratification, specifically. One would have to infer the latter). Assuming that formal ratification was posited in his remark, I find that it was not reasonable for Petrino to have expected Batchler (also not a professional negotiator and slightly more experienced) to infer that concept from his words. Nor would it be reasonable to place a burden on Batchler to have inquired further about Petrino's meaning at their one and only session.

In her midnight, October 17 e-mail message to Petrino, Batchler asked to be informed ". . . whether the Board is going

accept your proposal to offer us the four per cent for the next three years." Again, "acceptance" may or may not have included a formal ratification; Batchler was not seeking to define for the Board its mechanism for achieving it. Her inquiry sought the Board's "acceptance" reflected back as an offer.

In "Offer and Acceptance, and Some of the Resulting Legal Relations," Corbin wrote:

An offer is . . . an act whereby one person confers upon another the power to create contractual relations between them. . . . The act of the offeror operates to create in the offeree a power . . . thereafter the voluntary act of the offeree alone will operate to create the new relations called a contract. . . . What kind of act creates a power of acceptance and is therefore an offer? It must be an expression of will or intention. It must be an act that leads the offeree reasonably to believe that a power to create a contract is conferred upon him. . . . It is on this ground that we must exclude invitations to deal or acts of mere preliminary negotiation and acts evidently done in jest or without jest or without intent to create legal relations. All these are acts that do not lead others reasonably to believe that they are empowered to 'close the contract.'
[Corbin, 26 Yale L.J. 169, 181-182 (1917)]

See also Restatement 2nd Offer Defined §24. Batchler's e-mail message also defined her Association's means for accepting an offer - she would present the proposal to "our Association on the 24th of October." In other words, she advised Petrino that her membership would vote to ratify on October 24.

The minutes of the October 17 executive session Board meeting reveals (what had not been revealed to the Association team) that Petrino intended for the "agreed upon raise of four per cent"

to include increments, evidenced by his projected cost in the first year of \$52,000 to \$54,000. I have found that team and Board member King heard that estimate and the Board's response, "Okay, it sounds good to us."

On October 19, King e-mailed to Batchler a reply to her October 17 e-mailed request. King wrote: "Sounds good for the contract." Borrowing Corbin's phrasing, I do not believe that King's message was an "offer" - it is too tentatively worded to establish an "expression of will or intention" from which Batchler could reasonably believe that "a power to create a contract was conferred upon" her membership. The Board negotiations team again did not convey to the Association team the means by which it intended to "create legal relations." In keeping with Petrino's broadly phrased need to solicit the Board's approval for the proposed "four per cent" per year, King's reply was commensurately nonspecific but approving.

The parties separately constructed salary guides for the successor term. In a series of phone conversations over the weekend of October 21 and 22, 2000, Batchler and King agreed to all dollar amounts and distributions to unit members over the entire three-year term. No unresolved negotiable item(s) remained. Batchler questioned King at least twice about his confidence in his guides and each time he assured her. She also asked if Petrino was "on board" with the guides and King confirmed his team member's assent. King even supported Batchler's interest in presenting the guides to

her membership for its approval. On Monday morning, October 23, King delivered to Batchler a hard copy of the guides, which matched those generated by the NJEA and delivered to Batchler on October 18.

Considering Petrino's and King's various, successive and uniformly consistent representations to Batchler through October 23, I find that she reasonably believed that the Board had "approved" the complete terms of the successor agreement. An important component of that reasonableness was the Board team's failure to articulate the requirement of a formal Board member roll-call ratification vote at an open public meeting. Although Batchler may not have specifically known what Board action would "seal the deal," she reasonably believed that the Board was agreeable to wage increases of four per cent plus increment in each year of the successor term. Nothing she heard or read and nothing she should have heard or read suggested otherwise.

The Commission is reluctant to set aside an agreement which is clear on its face. A party seeking such relief must establish by "clear, satisfactory, specific and convincing evidence that the written agreement does not accurately reflect what the parties intended." Paterson Bd. of Ed., P.E.R.C. No. 90-42, 15 NJPER 688, 691 (¶20279 1989); Hillside Bd. of Ed., P.E.R.C. No. 89-57, 15 NJPER 13, 14 (¶20004 1988). "While the Commission has recognized that harmonious labor relations would not be served by enforcing contract language that conflicts with both parties' intent, it has warned that a party may not be excused from the unintended consequences of

a negotiated agreement. A party cannot expect relief merely because it did not realize the consequences of its assent" (emphasis supplied) Paterson Bd. of Ed. at 15 NJPER 691.

The executed "contract settlement" is clear on its face. It simply and directly provides what the Association claims and what it negotiated. I do not believe that parol evidence is admissible to vary its terms. Casriel v. King, 2 N.J. 45 (1949); Garden State Plaza Corp. v. S.S. Kresge Co. 78 N.J. Super 485 (App. Div. 1963), certif. den., 40 N.J. 226 (1963); cf. Long Branch Bd. of Ed., P.E.R.C. No. 86-97, 12 NJPER 204 (¶17080 1986).

The Board contends that the parties had not reached "an undisputed, mutual settlement agreement"; that the "mistakes" in the agreement signed by Board negotiator Petrino were "Batchler's fault, not [his]"; that "both Board negotiators made it known very quickly after [the document] was signed that there was an error in it"; that during the single, one-half hour negotiations session, no discussion ensued about "adding an increment to an overall salary guide increase of 4 per cent"; and that the October 17 Board minutes show that the "Board understood that the tentative settlement reached on October [10] would yield a salary cost 4% higher in each year than the prior year."

In Bonoco Petrol, Inc. v. Epstein, 115 N.J. 599, 608 (1989) our Supreme Court reaffirmed that "the doctrine of mutual mistake applies when a mistake was mutual in that both parties were laboring under the same misapprehension as to a particular, essential fact"

(emphasis supplied). The Court also cited sections 152 and 155 of the Second Restatement of Contracts, which "explicitly provide" that the parties must share the erroneous assumption.

Only the Board misapprehended the negotiated wage increases in the "contract settlement." Whether confusing the concept of "across the board" with "inclusive of increment"; or ignoring a known \$30,000 discrepancy in the cost of the first year of a successor agreement; or producing guides reflecting increases of four per cent plus increment and believing that the error was arithmetic and not formulaic; or signing a "contract settlement" memorializing increases incongruously depicted to the entire Board, the Board team's unilateral and sequential mistakes inured to the Association's benefit. The Association team consistently negotiated for a wage increase of four per cent plus increment in each year of the successor agreement and the accuracy of its calculations was confirmed by the Board's own guides. It was not mistaken.

Accordingly, I recommend that the Board violated 5.4a(5) and a(1) of the Act by refusing to implement the agreement its agents negotiated and then signed on or about October 24, 2000. I recommend that the 5.4a(6) allegation be dismissed.

RECOMMENDED ORDER

I recommend that the Springfield Board of Education:

A. Cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of rights guaranteed to them by the Act,

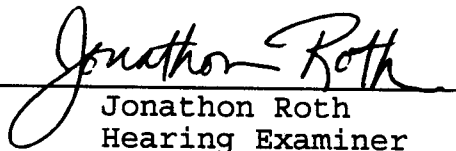
particularly by refusing to implement an agreement signed by its negotiations representative and the Springfield Education Association president on October 24 and 25, 2000, respectively.

B. Take the following affirmative action:

1. Implement the agreement signed by its negotiations representative and the Springfield Education Association president on October 24 and 25, 2000, respectively. Amounts to be paid were memorialized in guides prepared separately by the parties on or before October 23, 2000.

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 shall, after being signed by the Respondent's authorized representative, be posted immediately and 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. Within twenty (20) days of receipt of this decision, notify the Chair of the Commission of the steps the Respondent has taken to comply with this order.


Jonathon Roth
Hearing Examiner

DATED: June 5, 2002
Trenton, New Jersey



RECOMMENDED



NOTICE TO 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 employees in the exercise of rights guaranteed to them by the Act, particularly by refusing to implement an agreement signed by our negotiations representative and the Springfield Education Association president on October 24 and 25, 2000, respectively.

WE WILL implement the agreement signed by its negotiations representative and the Springfield Education Association president on October 24 and 25, 2000, respectively. Amounts to be paid were memorialized in guides prepared separately by the parties on or before October 23, 2000.

Docket No. CO-H-2001-218

Springfield Township Board of Education
(Public Employer)

Date:

By:

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 Street, P.O. Box 429, Trenton, NJ 08625-0429 (609) 984-7372

APPENDIX "A"

