

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LOWER TOWNSHIP BOARD OF EDUCATION,

Respondent,

Docket No. CO-77-193-132

-and-

LOWER TOWNSHIP ELEMENTARY TEACHERS'
ASSOCIATION,

Charging Party.

LOWER TOWNSHIP ELEMENTARY TEACHERS'
ASSOCIATION,

Respondent,

Docket No. CE-77-27-133

-and-

LOWER TOWNSHIP BOARD OF EDUCATION,

Charging Party.

SYNOPSIS

The Lower Township Board of Education and the Lower Township Elementary Teachers' Association each filed unfair practice charges against the other. The Association alleged that the Board, notwithstanding its acceptance of a tentative negotiated agreement through implementation, has refused to sign a salary guide including the formulae used to compute and distribute salaries. The Board alleged that the Association has refused to meet further with the Board's representatives concerning the disagreement over whether the salary guide for the year 1976-77 should contain computation formulae. Further, the Board alleged that the Association has wrongfully refused to reduce a negotiated agreement to writing and sign such agreement, the parties having agreed on the actual monetary impact of the salary guide and the allocation of salary increases among the employees represented by the Association. Finally, it is alleged that the Association has filed an unfair practice charge to obtain implementation of its unilateral understanding of the salary guide agreement through a Commission order, rather than negotiating in good faith to arrive at a bilateral agreement.

The Hearing Examiner found that the negotiations representatives of the Board and Association reached a tentative agreement on an 8% increase in the salary guides for the 1976-77 school year. Considering the language of the Memorandum of Understanding, the Hearing Examiner found that the parties had tentatively agreed to utilize the 1975-76 salary guides as a model for the 1976-77 guides in all structural respects, including the computation formulae at the

top of each guide. The Hearing Examiner concluded that the Board had adopted the Memorandum of Understanding when it commenced the payment of salaries as set forth in the salary guides prepared by the Association, which included the computation formulae at the top of each guide. Accordingly, the Hearing Examiner found that the Board had violated N.J.S.A. 34:13A-5.4(a)(1), (5) and (6) in refusing to reduce to writing and sign the salary guides which it had negotiated and accepted through implementation. In addition, the Hearing Examiner found that this issue was not rendered moot as a result of the Board's payment of salaries according to the Association's guide and the expiration of the 1975-77 agreement. Finally, the Hearing Examiner recommended dismissal of the Board's unfair practice charge against the Association, finding that the Board failed to prove by a preponderance of the evidence adduced at the hearing that the Association had violated the Act. The Board filed exceptions to the Hearing Examiner's Recommended Report and Decision.

The Commission held that the Board violated N.J.S.A. 34:13A-5.4(a)(1) and (5), but on grounds different from those relied upon by the Hearing Examiner. The Commission found that the Board's negotiations representatives acted in bad faith when, contrary to their obligation under the Memorandum of Understanding, they repudiated the salary guides prepared by the Association in accordance with the Memorandum, and never presented to the Board for ratification the Memorandum and the salary guides in the form which they had been negotiated -- that is, with the inclusion of computation formulae. It was further determined the Board members who participated in the negotiations voted for the acceptance of the salary guides only to the extent that it accurately represented the monetary amounts which the parties had tentatively agreed to in the Memorandum.

The Commission, contrary to the Hearing Examiner's conclusion, finds that the Board did not violate N.J.S.A. 34:13A-5.4(a)(6). The Memorandum of Understanding specifically stated that it was a tentative agreement subject to ratification by the negotiating representatives' respective principles; there being no binding agreement without such subsequent approval. The Commission concludes that the Board's subsequent conduct, in paying salaries according to the guides prepared by the Association, did not constitute an implied ratification of the Memorandum. Additionally, the Commission adopts the Hearing Examiner's conclusion that the issue in this case was not rendered moot. With regard to the Board's charges against the Association, the Commission adopts the Hearing Examiner's conclusion that the Board has failed to prove these charges by a preponderance of the evidence.

The Commission modified the Hearing Examiner's recommended remedy by ordering the Board to cease and desist from interfering with, restraining or coercing employees in the exercise of their rights under the Act by refusing to negotiate in good faith by not

abiding by terms of memoranda of understanding or other agreements reached by the parties; to post appropriate notices, supplied by the Commission and to notify the Chairman, in writing, of what steps have been taken to comply with the Commission's determinations. The Commission believed that this was the only necessary or appropriate remedy in light of the particular circumstances of this case; including the fact that the disputed "agreement" had expired, that the Board had paid all monies claimed due; that the dispute only concerned the question of whether certain percentage figures were to appear at the top of the salary guides, and that whether the now-expired 1976-77 salary guides include the disputed formulae has no binding effect upon the parties, insofar as negotiations for a successor agreement are concerned, because all issues are open for renegotiations upon the expiration of the old agreement.

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Docket No. CE-77-27-133

LOWER TOWNSHIP BOARD OF EDUCATION,

Charging Party.

Appearances:

For the Lower Township Board of Education,
Perskie and Callinan, P.A.
(John F. Callinan, Esq.)

For the Lower Township Elementary Teachers' Association,
Goldberg, Simon & Selikoff
(Joel S. Selikoff, Esq.)

DECISION AND ORDER

On January 20, 1977, an Unfair Practice Charge was filed with the Public Employment Relations Commission by the Lower Township Elementary Teachers' Association (the "Association") which charge, having been amended on February 18 and July 19, 1977, alleged that the Lower Township Board of Education (the "Board") had engaged in an unfair practice in violation of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq., (the "Act"). Specifically, the Association alleges that the Board,

notwithstanding its acceptance of a tentative negotiated agreement through implementation, has refused to sign a salary guide including the formulae used to compute and distribute salaries, thereby violating N.J.S.A. 34:13A-5.4(a) (1), (5) and (6).^{1/}

The Board, by way of answer and response to the charge of the Association, filed an Unfair Practice Charge on February 3, 1977, alleging that the Association has refused to meet further with the Board's representative concerning the disagreement over whether the salary guide for the year 1976-77 should contain certain language (i.e., computation formulae). Further, the Board alleges that the Association has wrongfully refused to reduce a negotiated agreement to writing and to sign such agreement, the parties having agreed on the actual monetary impact of the salary guide and the allocation of salary increases among the employees represented by the Association. Finally, it is alleged that the Association has filed an unfair practice charge to obtain implementation of its unilateral understanding of the salary guide agreement through a Commission order, rather than negotiating in good faith to arrive at a bilateral agreement. This totality

^{1/} These subsections prohibit 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.

of conduct, the Board alleges, violates N.J.S.A. 34:13A-5.4(b) (3), (4) and (5).^{2/}

Both charges were processed pursuant to the Commission's Rules, and it appearing to the Director of Unfair Practices that the allegations of the Charges, if true, might constitute unfair practices within the meaning of the Act, two Complaints and Notices of Hearing were issued on June 13, 1977 along with an Order Consolidating Cases. In accordance with the Notice of Hearing, a hearing was held on July 21, 1977 before Alan B. Howe, Hearing Examiner of the Commission, at which both parties were represented and were given an opportunity to present evidence, to examine and cross-examine witnesses, and to argue orally. Subsequent to the close of the hearing the parties submitted memoranda of law, the final memoranda being received on September 15, 1977. On September 22, 1977, the Hearing Examiner issued his Recommended Report and Decision,^{3/} which included findings of fact, conclusions of law, and a recommended order. The original of the Report was filed with the Commission and copies were served upon all parties. A copy is attached to this Decision and Order and made a part hereof. At the request of the Board, oral argument was held before the Commission on November 15, 1977.

^{2/} These subsections prohibit employee organizations, their representatives or agents from: "(3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit. (4) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (5) Violating any of the rules and regulations established by the commission."

^{3/} H.E. No. 78-8, 3 NJPER ____ (1977).

The Hearing Examiner found that on October 22, 1976 the negotiations representatives of the Board and Association, pursuant to a salary reopener provision in the 1975-77 collective negotiations agreement, reached a tentative agreement on an 8% increase in the salary guides for the 1976-77 school year. Considering the language of the Memorandum of Understanding, the Hearing Examiner found that the parties had tentatively agreed to utilize the 1975-76 salary guides as a model for the 1976-77 guides in all structural respects, including the computation formulae at the top of each guide. These formulae explain how the salary figures were arrived at. The Hearing Examiner concluded that the Board had adopted the Memorandum of Understanding when it commenced the payment of salaries as set forth in the salary guides prepared by the Association, which included the computation formulae at the top of each guide. Accordingly, the Hearing Examiner found that the Board had violated N.J.S.A. 34:13A-5.4(a)(1), (5) and (6) in refusing to reduce to writing and sign the salary guides which it had negotiated and accepted through implementation. With regard to Respondent's Motion to Dismiss on the ground of mootness, the Hearing Examiner, in declining to follow the Appellate Division decision in Galloway Township Board of Education v. Galloway Township Education Association, 149 N.J. Super. 353 (App. Div. 1977), found that this issue was not rendered moot as a result of the Board's payment of salaries according to the Association's guide and the expiration of the 1975-77 agreement. The Hearing Examiner concluded that ordering the execution of a salary guide agreement with computation formulae would provide continuity in the negotiations

history of the parties for 1975 through 1977.

Finally, the Hearing Examiner recommended dismissal of the Board's unfair practice charge against the Association, finding that the Board failed to prove by a preponderance of the evidence adduced at the hearing that the Association had violated the Act as alleged by refusing to negotiate with the Board.

Exceptions to the Hearing Examiner's Recommended Report and Decision were filed by the Board on October 2, 1977 and the Association submitted a brief in response.

The Commission, after a careful consideration of the record, briefs, exceptions and oral argument, accepts the Hearing Examiner's findings of fact with some modification and additions. The Hearing Examiner's conclusion of law that the Board violated N.J.S.A. 34:13A-5.4(a)(1) and (5) is accepted, but on grounds different from those relied upon by the Hearing Examiner. The Commission rejects the Hearing Examiner's finding of a violation of N.J.S.A. 34:13A-5.4(a)(6). However, the Commission accepts the Hearing Examiner's conclusions of law that the issue in this case is not moot and that the charge against the Association should be dismissed.

At the outset, we note the narrowness of the instant dispute. The parties engaged in negotiations pursuant to a reopener provision in their then current agreement. Negotiations were conducted and the parties reached a tentative agreement, subject to ratification, on an 8% salary increase. That increase has in fact been paid. However, the parties disagree over whether, at the top

of each salary guide, there should appear formulae which specify the amount by which each particular guide was increased. That is all that is involved and as a result, the parties have not signed an agreement. This litigation followed.

We shall not recite each of the exceptions filed by the Board. Several of these exceptions do have merit and have been adopted. In essence, it is the position of the Board as reflected in its exceptions, that the Memorandum of Understanding was a tentative agreement subject to ratification, that the Board never agreed to the inclusion of the formulae, and that the Board, therefore, was under no obligation to ratify the tentative agreement, given the dispute over the inclusion of the formulae.

Under the facts in this case two questions must be answered in order to determine whether the Board has violated N.J.S.A. 34:13A-5.4(a)(1), (5) and (6). First, whether at the time the Memorandum of Understanding was signed there was in fact a meeting of the minds that the salary guide would include formulae language as did the 1975-76 salary guide. Second, whether the Memorandum of Understanding, which was expressly subject to ratification by the Board and Association, was in fact ratified and adopted by the Board when it commenced paying salaries in accordance with the salary guides prepared by the Association pursuant to the Memorandum.^{4/}

^{4/} The Commission accepts the Hearing Examiner's finding that the Memorandum of Understanding was clearly adopted by the Association when it prepared the 1976-77 salary guides and submitted them to the Board for execution.

The Hearing Examiner found that the 1975-77 collective negotiations agreement contained a provision for a "salary re-opener only for 1976-77" (emphasis in the agreement itself). The Board contends that under this provision only monetary figures for a salary guide could be negotiated. The scope of negotiations under this reopener provision depends on what matters the parties included under the term "salary" in the 1975-77 agreement. Since computation formulae were included as part of the 1975-76 salary guides, it would be expected that similar formulae would be included in the 1976-77 agreement.

The Hearing Examiner further found that the Memorandum of Understanding of October 22, 1976 contained the phrase, "The structure of the 1976-77 salary guides for all categories of employees shall remain as in the 1975-76 salary guides" (emphasis supplied). The Commission, in accord with the Hearing Examiner's finding, concludes from this language that the parties had agreed to utilize the 1975-76 salary guides as a model for the 1976-77 salary guides in all structural aspects, including the computation formulae.

In interpreting contractual language words are to be given their ordinary meaning unless circumstances show that a different meaning is applicable.^{5/} The word "structure" relates to the arrangement or interrelation of all the parts of the salary guide; the

^{5/} Deerhurst States v. Meadow Homes, Inc., 64 N.J. Super. 134 (App. Div. 1960).

manner of organization or construction of the guide.^{6/} The formulae are an integral part of the salary guides in that they reflect the mathematical organization of the guides.

Even though we are satisfied the contractual language is unambiguous on its face, the Commission will examine extrinsic evidence - i.e., the situation of the parties, surrounding circumstances, and parole evidence - in view of the Board's contention that such evidence supports its interpretation of the disputed language.

The Association's witness, who was a member of its negotiating team, testified that he and another representative both specifically stated to the Board's representatives, prior to the signing of the Memorandum of Understanding, that they understood the Memorandum to mean that computation formulae would be retained for the 1976-77 salary guides. No objections were raised by the Board's representatives and one of them affirmatively approved the use of computation formulae provided they kept within the 8% guideline for each category of employee. The Board's witness, who was not an official member of the negotiating team but was an observer, stated that he could not recall whether such statements were made. Further, the Board utilized computation formulae when, in June 1976, its representatives submitted salary guide data to a fact-finder to demonstrate what economic effect various salary increases would have on the Township's tax structure. This action supports the

^{6/} Webster's New World Dictionary of the American Language, College Edition.

conclusion that the Board and its negotiations representatives^{7/} understood and accepted the use of computation formulae as an integral component of any salary guides adopted for 1976-77.

After a careful consideration of this extrinsic evidence, we conclude that it supports the finding that the parties' representatives did agree in the Memorandum of Understanding to incorporate computation formulae into the 1976-77 salary guides.

The Memorandum of Understanding stated that it was subject to ratification and that the signatories to the agreement would recommend its acceptance to their respective principles. Accordingly, under the terms of this agreement, the Board's representatives were under an obligation to present the Memorandum to the full Board for ratification and to recommend its acceptance. In violation of this obligation the Board's representatives repudiated the salary guides when they were presented by the Association,^{8/} on the grounds that they had not agreed to the inclusion of computation formulae. In addition, the Board's representatives never presented to the Board the Memorandum, and the salary guides prepared pursuant thereto, in the form which they had been negotiated - that is, with the inclusion of computation formulae. Rather, on March 2, 1977, over four months after the Memorandum had been

^{7/} The Board's negotiating team was composed of Board members exclusively.

^{8/} The Memorandum of Understanding stated that the Association's representative and the Superintendent were to jointly confer to verify the accuracy of the salary guides prepared pursuant to the monetary settlement in the Memorandum. This was done and the parties agreed on the dollar amounts of the increases.

signed, the Memorandum and salary guides were presented to the Board for a vote with the understanding that it did not provide for the use of computation formulae in the 1976-77 salary guides. Further, the Board members who participated in the negotiations voted for the acceptance of the salary guides only to the extent that they accurately represented the monetary amounts which the parties had tentatively agreed to in the Memorandum. Such actions by the Board's negotiations representatives constitute bad faith negotiating. In re Bergenfield Board of Education, P.E.R.C. No. 90, 1 NJPER 44s (1975), In re East Brunswick Board of Education, H.E. No. 76-13, 2 NJPER 204, affirmed P.E.R.C. No. 77-6, 2 NJPER 279 (1976), appeal dismissed as moot Docket No. A-250-76 (December 2, 1977).

It is on these grounds that the Commission finds that the Board violated N.J.S.A. 34:13A-5.4(a)(5) and derivatively N.J.S.A. 34:13A-5.4(a)(1).

Concerning the alleged violation of N.J.S.A. 34:13A-5.4(a)(6), the Hearing Examiner found that the Board had ratified and adopted the Memorandum of Understanding when it implemented payment of salaries as set forth in the salary guides prepared by the Association. Having concluded that the Board had accepted the tentative agreement through performance of its terms, the Hearing Examiner found that the Board had violated N.J.S.A. 34:13A-5.4(a)(5) and (6) by its refusal to sign the negotiated salary guides.

The Commission, in In re Bergenfield Board of Education, supra, and In re East Brunswick Board of Education, supra, held that, absent expressed qualifying conditions, an association may justifiably presume that a board's negotiating representatives possess apparent authority to conclude a binding agreement. The determining fact, which distinguishes the present situation from Bergenfield and East Brunswick, is that here the Memorandum of Understanding specifically states that it is a tentative agreement subject to ratification by the negotiating representatives' respective principles.^{9/} Therefore, even though the negotiators reached an agreement among themselves under the Memorandum of Understanding, there could be no binding agreement without subsequent Board ratification or approval. The question then is whether the Board, through its conduct, impliedly ratified the Memorandum.

After a careful consideration of the transcript and exhibits, the Commission declines to accept the Hearing Examiner's findings and conclusions on this question. On two occasions, in December 1976 and February 1977, the Board proposed that it would begin paying salaries according to the salary guides submitted by the Association without prejudice to the Association's claim that formulae language should also be included in the guide; this dispute over language would be left for resolution in an appropriate

^{9/} Additionally, one section of that memorandum provides that, "Should any problems arise over the application of this memorandum, Dr. S. Ranhand will retain unto himself continued jurisdiction until the fully bargained and formal agreement is duly signed by the parties."

forum. However, the Association rejected these proposals, stating that it would only agree to acceptance of the entire salary guide. The minutes of the March 2, 1977 special Board meeting, which were admitted into evidence, reveal that the Board, by ratifying and adopting only the monetary amounts of the salary guide, which were computed in accordance with the 8% settlement of the Memorandum of Understanding, thereby rejected paragraph h which, we have found, would have required the use of computation formulae. Since the Memorandum of Understanding expressly required ratification by the principals before there could be a binding agreement, and the Association would only accept ratification of the entire Memorandum and salary guides as prepared by it, there was no complete and final agreement between the parties which the Board refused to sign in violation of N.J.S.A. 34:13A-5.4(a)(6).

Having concluded that the Board, through its agents, the negotiations committee, violated the Act by refusing to negotiate in good faith with the Association in that the agents did not submit the memorandum to the full Board and did not recommend its acceptance but that the Board, given the expressed reservation that the tentative agreement was subject to ratification, did not violate the Act by refusing to reduce a negotiated agreement to writing and to sign such agreement, we shall turn to two additional issues raised by the Board and included in its exceptions.

First, the Board argues that, given the Appellate Division decision in Galloway, supra, which is binding on us, the

matter is moot because the monies have been paid by the Board and the disputed agreement has now expired.

The decision in Galloway is clearly distinguishable from the present facts. In Galloway, the Association charged that the Board had violated N.J.S.A. 34:13A-5.4(a)(5) by withholding payment of teachers' increments according to the previously existing, but expired, salary schedule during negotiations for a successor agreement. The Court held that this issue was rendered moot due to the subsequent signing of a collective negotiations agreement which resolved the issue of increment payments. The present issue is whether the Board accepted the inclusion of computation formulae language in the 1976-77 salary guides presented by the Association. This issue has not yet been resolved by the parties and to this date they have not entered into an agreement on salaries for the 1976-77 school year.

The Board's payment of the monetary amounts in the salary guides does not resolve the issue of inclusion of computation formulae. Nor does the expiration of the 1975-77 agreement render this question moot. The decision as to whether an agreement was reached for 1976-77 and what terms were included in that agreement will affect and form the basis of negotiations for the 1977-78 contract year. The Board admits this in its brief, thus undermining its own argument. Accordingly, the questions in this case are not deprived of practical significance nor are they purely academic and abstract in nature.

The second issue concerns the Board's charge against the

Association. We agree with the Hearing Examiner that the Board has not proved the charge by a preponderance of the evidence. We find that the Association had no obligation to negotiate with the Board once the memorandum was signed until such time as its terms were complied with, that is, until it was submitted to the full Board, and recommended for acceptance by the Board's negotiators. This was not done. Thus, the Association did not refuse to negotiate in violation of the Act. Nor was the Association under any obligation to sign an agreement which did not include the disputed formulae, given our conclusion that the parties' negotiators had agreed to the inclusion of these formulae. Accordingly, the Commission dismisses the Board's charge against the Association.

We have considered the entire record in this matter including the Board's exceptions. We have concluded that agents of the Board violated N.J.S.A. 34:13A-5.4(a)(5) of the Act and, therefore, derivatively N.J.S.A. 34:13A-5.4(a)(1) but that the Board did not violate N.J.S.A. 34:13A-5.4(a)(6). We must now fashion an appropriate remedy.

Because of the circumstances of this case including the fact that the disputed agreement has expired, that the Board has paid all money claimed to be due, that the dispute only concerns the question of whether certain percentage figures are to appear at the top of salary guides, and that whether the now-expired 1976-77 salary guides include the disputed formulae has no binding effect upon the parties insofar as negotiations for a successor agreement are concerned because all issues are open for renegotiation

upon the expiration of the old agreement, we believe that the only necessary and appropriate remedy is that the Board and its agents be ordered to cease and desist from interfering with, restraining or coercing employees in the exercise of their rights under the Act and from refusing to negotiate in good faith by refusing to abide by the terms of memoranda of understanding or other agreements reached by the parties and their representatives.

ORDER

Accordingly, for the reasons set forth above, the Public Employment Relations Commission hereby determines that the Lower Township Board of Education has violated N.J.S.A. 34:13A-5.4(a) (1) and (5) but not (6) by its conduct regarding negotiations with the Lower Township Elementary Teachers' Association. The Commission further determines that the Lower Township Elementary Teachers' Association has not violated N.J.S.A. 34:13A-5.4(b) (3), (4) and (5). Therefore, IT IS HEREBY ORDERED that the Lower Township Board of Education shall:

1. Cease and desist from interfering with, restraining or coercing employees in the exercise of their rights under the Act and from refusing to negotiate in good faith by refusing to abide by the terms of memoranda of understanding or other agreements reached by the parties and their representatives.

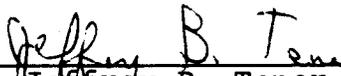
2. Post in all schools and locations where notices are normally given to employees copies of the attached notice marked "Appendix A". Copies of such notice, on forms provided by the

Commission, shall, after being signed by the Respondent's representative, be posted by Respondent immediately upon receipt thereof and maintained by it for a period of sixty (60) consecutive days thereafter. Reasonable steps shall be taken to insure that such notices are not altered, defaced or covered by any other material.

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

IT IS FURTHER ORDERED that the section of the Complaint in Docket No. CO-77-193-132 alleging a violation of N.J.S.A. 34:13A-5.4 (a) (6) and all sections of the Complaint in Docket No. CE-77-27-133 be dismissed.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Hartnett and Parcels voted for this decision. Commissioners Forst and Hurwitz abstained. Commissioner Hipp was not present.

DATED: Trenton, New Jersey
December 20, 1977
ISSUED: December 21, 1977

APPENDIX A

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 cease and desist from interfering with, restraining or coercing employees in the exercise of their rights under the Act and from refusing to negotiate in good faith by refusing to abide by the terms of memoranda of understanding or other agreements reached by the parties and their representatives.

LOWER TOWNSHIP BOARD OF EDUCATION
(Public Employer)

Dated _____

By _____

(Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with Jeffrey B. Tener, Chairman, Public Employment Relations Commission, P.O. Box 2209, Trenton, New Jersey 08625 Telephone (609) 292-6780

STATE OF NEW JERSEY
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RELATIONS COMMISSION

In the Matter of

LOWER TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

LOWER TOWNSHIP ELEMENTARY TEACHERS'
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Charging Party.

Docket Nos. CO-77-193-132
CE-77-27-133

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Lower Township Board of Education committed an unfair practice when it refused to execute 1976-77 salary guides with the computation formulae included on the guides. The Board of Education defended that the formulae was language which was beyond the scope of the reopener clause in the agreement.

The Hearing Examiner also recommends the dismissal of charges filed by the Board of Education against the Teachers' Association alleging that the Association negotiated in bad faith when it refused to meet further with the Board of Education after the salary guides with the formulae were prepared by the Association and submitted to the Board of Education.

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

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RELATIONS COMMISSION

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Appearances:

For the Lower Township Board of Education
Perskie and Callinan, P.A.
(John F. Callinan, Esq.)

For the Lower Township Elementary Teachers' Association
Goldberg, Simon & Selikoff
(Joel S. Selikoff, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on February 18, 1977 by the Lower Township Elementary Teachers' Association (hereinafter the "Charging Party" or the "Association"), which was amended July 19, 1977, alleging that the Lower Township Board of Education (hereinafter the "Respondent" or the "Board") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (hereinafter the "Act") in that the Board, notwithstanding alleged agreement to do so, has refused to reduce to writing a salary guide, including the formulae used to compute and to distribute its salaries, which is alleged to be a violation of N.J.S.A.

34:13A-5.4 (a)(1), (5) and (6) of the Act. ^{1/}

The Board by way of answer and response to the charge of the Association, filed an Unfair Practice Charge on February 3, 1977 alleging that the Association has refused to negotiate in good faith with the Board concerning the salary guide for the year 1976-77 and that the Association has wrongfully refused to reduce a negotiated agreement to writing and sign such agreement, and that the Association has filed a charge with the Commission as an alternative to bargaining in good faith, all of which is alleged to violate N.J.S.A. 34:13A-5.4 (b)(3), (4) and (5) of the Act. ^{2/}

It appearing that the allegations of the above charges, if true, may constitute unfair practices within the meaning of the Act, Complaints and Notices of Hearing were issued on June 13, 1977.

Pursuant to the Complaints and Notices of Hearing, a hearing was held on July 21, 1977 in Trenton, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Post-hearing briefs were submitted by the Charging Party and the Respondent on September 12, 1977.

Unfair Practice Charges, as amended in the case of the Association, having been filed with the Commission, a question concerning alleged violations of the Act, as amended, exists and, after hearing and after the filing and consideration of briefs by the parties, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

^{1/} These subsections prohibit 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."

^{2/} These three subsections prohibit employee organizations, their representatives or agents from:

"(3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit.

"(4) Refusing to reduce a negotiated agreement to writing and to sign such agreement.

"(5) Violating any of the rules and regulations established by the commission."

Upon the entire record the Hearing Examiner makes the following:

FINDINGS OF FACT

1. The Lower Township Board of Education is a public employer within the meaning of the Act, as amended, and is subject to its provisions.
2. The Lower Township Elementary Teachers' Association is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.
3. The 1975-77 collective negotiations agreement between the parties contained "salary reopener only for 1976-77" [emphasis by the parties].
4. The 1975-77 collective negotiations agreement set forth in Appendix A the salary guides for the classifications of employees within the negotiations unit, which salary guides included as a heading, the percentage increase or formula by which each salary guide thereunder was computed.
5. The 1974-75 collective negotiations agreement set forth in Appendix A, the salary guide for the classifications covered thereunder which did not include as a heading the formula for computation of the salary guide.
6. In June 1976, the Board prepared and presented to a Public Employment Relations Commission Fact-Finder its position on salary increases, Appendix A of which included at the top of the proposed salary guide the formula by which the salary guide was computed.
7. Negotiations on the 1976-77 salary reopener spanned the period October 2, 1975 to October 22, 1976. At the final meeting on October 22, 1976, the parties by their negotiators entered into a tentative Memorandum of Understanding with regard to salaries for 1976-77, said Memorandum of Understanding being subject to ratification by the principals.
8. The Memorandum of Understanding of October 22, 1976, provided for an 8% increase over the salary expenses for the prior year. Further, the Memorandum provided, in pertinent part, as follows in ¶ I(h): "The structure of the 1976-77 salary guides for all categories of employees shall remain as in the 1975-76 salary guides" [Emphasis supplied].

9. Thereafter, the Association prepared a salary guide for each of the classifications covered in the negotiating unit, based upon the increases in salary expense as set forth in the October 22, 1976 Memorandum of Understanding. Each of the said salary guides contained at the top thereof the formula in percentages by which the salary guide was computed.

10. The Board refused to agree to the inclusion of the computation formulae on the salary guides and as a result thereof the Association refused to negotiate further notwithstanding Board requests so to do.

11. Notwithstanding that the Board refused to agree to the inclusion of the formula heading at the top of each salary guide, the Board did in or about March 1977 commence payment of salaries based upon the salary guides as prepared by the Association. It was stipulated by the parties that the Board is paying per the Association salary guides and that the formulae prepared by the Association are correct.

12. The Board refuses and the Association insists that the formulae utilized by the Association in preparing the salary guides be included at the top of each of the respective salary guides for the classifications covered by the negotiations unit.

13. The Board has made a motion to dismiss the Association's charges, inter alia, on the ground of mootness inasmuch as (a) the Board is paying the 1976-77 salary increases per the Association's salary guides and (b) the 1975-77 contract expired on June 30, 1977.

THE ISSUES

1. Did the Board violate the Act when it refused to reduce to writing the 1976-77 salary guides, including the computation formulae, as prepared by the Association?

2. Should the Association's charges be dismissed as moot by virtue of the implementation of the 1976-77 salary guide by the Board and the expiration of the 1975-77 agreement on June 30, 1977?

3. Did the Association violate the Act when it refused to meet further with the Board after the Board refused to execute salary guides with the formulae for computing the guides incorporated therein?

DISCUSSION AND ANALYSIS

The Position of the Parties

The Charging Party contends that the Respondent Board has violated the Act, as alleged, by refusing to execute the salary guides prepared by the Association, which salary guides contain the computation or formulae by which the salary guides was calculated. The Charging Party observes that ¶ I(h) clearly states that the structure of the 1976-77 salary guides shall remain as in the 1975-76 salary guide and that this was made known to the Respondent Board prior to the execution of the Memorandum of Understanding of October 22, 1976. Finally, the Charging Party argues that the Respondent Board has also violated the Act by the failure of its negotiators to recommend to the Board the ratification of the Memorandum of Understanding as clearly provided therein. ^{3/}

It is the Respondent Board's position that it has not violated its obligation under the Act to negotiate in good faith by its refusal to execute salary guides with the computation formulae at the head thereof. The Board contends that under a "salary reopener only" provision it is not obligated to include any language in any salary agreement reached with the Association. The Board further contends that the Commission is without authority to interpret the Memorandum of Understanding. Additionally, the Board urges that the matter is moot inasmuch as the agreement has expired and negotiations are under way for a new agreement. Finally, the Respondent Board contends that the Association is guilty of unfair practices, as alleged, in having refused to negotiate with the Board after disagreement arose over whether or not the computation formulae should be included at the heading of a salary guide.

The Board Violated the Act when it
Refused to Execute the 1976-77 Salary
Guides Containing the Computation Formulae

The Hearing Examiner finds and concludes that the Respondent Board

^{3/} It is noted that the Charging Party in its brief takes no position on the charges of unfair practices filed by the Board. It is further noted that no position is taken on the Motion to Dismiss for mootness.

has violated §(a)(5) and (6) of the Act, and derivatively §(a)(1) of the Act, by refusing to execute the salary guides as prepared by the Association. It is true that the 1975-77 collective negotiations agreement contained a provision for a salary reopener only. However, it does not follow therefrom that there can be no language involved in connection with negotiations fulfilling the reopener obligation.

The Memorandum of Understanding of October 22, 1976 necessarily contains language setting forth the agreement of the negotiators which was, of course, subject to ratification by the principals. The Hearing Examiner relies on the language utilized by the parties in the said Memorandum of Understanding, in particular that contained in ¶ I(h), quoted above. The parties clearly provide that the "structure" of the salary guides for 1976-77 "shall remain as in the 1975-76 salary guides". The term "structure" coupled with the mandatory language that it "shall remain as in the 1975-76 salary guides" clearly indicates to the Hearing Examiner that the parties utilized the 1975-76 salary guides as a model for the 1976-77 salary guides in all structural respects.

An examination of the 1975-76 salary guides (Appendix A of the 1975-77 collective negotiations agreement) contains a computation formulae at the top of each salary guide. The Board claims weakly that its prior Superintendent did not have authority to include a formulae on the salary guides for 1975-76. There is no evidence before the Hearing Examiner that the Board ever repudiated the 1975-77 collective negotiations agreement, as it would have had to do if Appendix A is of no force and effect.

The Hearing Examiner also takes note that in June 1976 the Board prepared and presented to a Public Employment Relations Commission Fact-Finder its position on salary increases, Appendix A of which included at the top of the proposed salary guides the formulae of which the salary guides was computed. Obviously, the Board as recently as June 1976 was following the same format as that utilized by the parties in the 1975-76 salary guides. In so noting, the Hearing Examiner is aware of the fact that the 1974-76 collective negotiations agreement did not set forth in Appendix A the formulae

for computation of the salary guide. The Hearing Examiner concludes that the parties changed their method of presenting the salary guides with the advent of the 1975-76 salary guides.

The Memorandum of Understanding of October 22, 1976 was clearly adopted by the Association when it prepared the 1976-77 salary guides and submitted them to the Board for execution. Any contention by the Board that it has not adopted the Memorandum of Understanding is rendered academic by the fact that the Board in March 1977 commenced payment of the salaries as set forth in the salary guides prepared by the Association and it was stipulated at the hearing that the Board is so paying in accordance with the Association's salary guides and that the formulae prepared by the Association are correct.

Thus, given the mandatory language of ¶ I(h) of the Memorandum of Understanding quoted previously and the fact that the Association has prepared salary guides with formulae, which are being implemented by the Board, and the fact that the figures in formulae are correct, the Hearing Examiner sees no obstacle to concluding that the Board has violated the Act by refusing to sign the negotiated salary guides. The Board has violated §(a)(5) and (6) of the Act, specifically, by its refusal. See Bergenfield Board of Education, P.E.R.C. No. 90, 1 NJPER 44, 45 (1975). Derivatively, the Board has violated §(a)(1) of the Act. See Galloway Township Board of Education, P.E.R.C. No. 77-3, 2 NJPER 254 (1976).

The Association's Charges
are not Moot

As noted previously, the Respondent Board filed a Motion to Dismiss the Association's charges, inter alia, on the ground of mootness. The argument of mootness was based upon the fact that the 1976-77 salary guides has been implemented by the Board and further by the fact that the 1975-77 collective negotiations agreement expired on June 30, 1977.

The Board cites as authority for a holding of mootness the decision of the Appellate Division in Galloway Township Board of Education v. Galloway Township Education Association, 149 N.J. Super. 353 (App. Div. 1977). The

Hearing Examiner specifically declines to follow the holding in that case that a Commission order was moot by virtue of the expiration of a collective negotiations agreement in view of the action of the New Jersey Supreme Court on July 20, 1977, granting petitions for certification (Docket Nos. C-890 and 891, September Term 1976).

The Hearing Examiner finds and concludes that an order to execute the salary guides with the formulae thereon is not moot inasmuch as it provides continuity in the negotiations history of the parties, namely, that the parties have twice included formulae at the heading of the salary guides, these being for the salary guides for 1975-76 and 1976-77.

The Association did not
Violate the Act

The Hearing Examiner finds and concludes that the Board has failed to prove by a preponderance of the evidence adduced that the Association has violated the Act as alleged. Under the Rules of the Commission, it is incumbent upon the Charging Party to prove its case by a preponderance of the evidence. N.J.S.A. 19:14-6.8. Accordingly, the Board's charges of unfair practices will be dismissed.

Upon the foregoing and the entire record in this case, the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

1. The Respondent Board did by its refusal to execute the 1976-77 salary guides prepared by the Charging Party violate N.J.S.A. 34:13A-5.4(a) (5) and (6).
2. The Respondent Board by the aforesaid conduct did derivatively violate N.J.S.A. 34:13A-5.4(a)(1).
3. The Respondent Board's Motion to Dismiss is denied.
4. The Association did not violate N.J.S.A. 34:13A-5.4(b)(3), (4) and (5).

RECOMMENDED ORDER

Respondent, Lower Township Board of Education, is **HEREBY ORDERED**:

A. To cease and desist from:

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

2. Refusing to execute the 1976-77 salary guides as prepared by the Association with the formulae included in the headings thereof.

B. Take the following affirmative action:

1. Upon request, execute the 1976-77 salary guides prepared by the Association.

2. Post in all schools and locations where notices are normally given to employees copies of the attached notice marked Appendix "A". Copies of such notice, on forms provided by the Commission, shall, after being signed by the Respondent's representative, be posted by Respondent immediately upon receipt thereof and maintained by it for a period of sixty (60) consecutive days thereafter. Reasonable steps shall be taken to insure that such notices are not altered, defaced or covered by any other material.

3. Notify the Chairman of the Commission, in writing, within twenty (20) days from the day of receipt of the Recommended Report and Decision what steps have been taken to comply herewith.



Alan R. Howe
Hearing Examiner

DATED: September 22, 1977
Trenton, New Jersey

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

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

WE WILL, upon request, execute the 1976-77 salary guides as prepared by the Lower Township Elementary Teachers' Association.

LOWER TOWNSHIP BOARD OF EDUCATION

(Public Employer)

Dated _____

By _____ (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with Jeffrey B. Tener, Chairman, Public Employment Relations Commission, P.O. Box 2209, Trenton, New Jersey 08625 Telephone (609) 292-6780