

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HAMILTON TOWNSHIP EDUCATION
ASSOCIATION,

Charging Party,

-and-

Docket No. CO-77-42-69

HAMILTON TOWNSHIP BOARD OF
EDUCATION,

Respondent.

SYNOPSIS

In a decision and order on motion the Commission denies the Board's motion for summary judgment dismissing the Complaint and further denies the Board's request for oral argument. The gravamen of the Association's charge was that the Board has violated the Act in unilaterally lowering the pay scale for summer work required by the Board of nurses and guidance counselors, and in that a representative of the Board had held a meeting, without representatives of the Association, in which he attempted to persuade the nurses and guidance counselors to accept the lower pay.

In its motion papers, the Board asserted that because summer employees did not have a certified or recognized majority representative, there had been no violation of the Act. The Association, by way of response, reiterated its claim that it did represent the summer employees at issue.

The Commission, in denying the Board's motion, notes that summary judgment may only be granted where there are no material issues of fact to be decided. The Commission affirms that the mere presence of conflicting factual allegations in the papers submitted by the parties relating to the Board's motion requires a denial of the motion.

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Appearances:

For the Charging Party Goldberg, Simon & Selikoff, Esqs.
(Mr. Joel S. Selikoff, of Counsel)

For the Respondent Pachman & Aron, Esqs.
(Mr. Lester Aron, of Counsel)

DECISION AND ORDER ON MOTION

This matter is presently before the Commission in the form of a motion by the Hamilton Township Board of Education (the "Board") for summary judgment dismissing the Complaint.

The above-captioned charge was filed on August 19, 1976. The Charging Party, Hamilton Township Education Association (the "Association"), alleges that it is the majority representative of a unit of all certified full-time teachers including school nurses and guidance counselors. The gravamen of the charge is that the Board violated N.J.S.A. 34:13A-5.4(a)(1) and (5)^{1/} in unilaterally

^{1/} These subsections prohibit employers from "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act and (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."

lowering the pay scale for summer work required by the Board of nurses and guidance counselors, and in that the Board, through its Director of Personnel, held a meeting without representatives of the Association in which he attempted to persuade the nurses and guidance counselors to accept the lower pay, and blamed the lower rates on the Association.

It appearing to the Director of Unfair Practice Proceedings that the allegations, if proved, may constitute unfair practices, a Complaint and Notice of Hearing was issued herein. The Board's Answer to the Complaint denies that it required summer work of nurses and guidance counselors, and denies that the Association is the certified or recognized majority representative for summer employees. Both sides agree that compensation for summer employees has never been the subject of collective negotiations between them.

In its motion papers, the Board asserts that because the summer employees do not have a certified or recognized majority representative, there has been no violation of the statute. It presents an affidavit by the Director of Personnel which asserts that the Association has been certified only for ten month employees. By way of response, the Association reiterates its claim that it does indeed represent summer employees who are in fact the same nurses and guidance counselors employed during the ten-month school calendar.

Summary judgment may only be granted where there are no material issues of fact to be decided. The motion papers and

those submitted in opposition thereto present conflicting claims as to whether the summer employees are represented by the Association as part of its certified unit. Also unresolved is the question of whether the nurses and guidance counselors have been required to perform summer work. Neither the contractual agreement between the parties nor the certification of the Association as majority representative of the unit following a recent Commission election is dispositive of these issues. Consequently, the Commission is constrained to deny the instant motion.

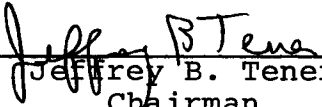
In its motion papers the Board requested that oral argument be granted. Nowhere in the Commission's Rules is there any provision for oral argument on motions to the Commission. Rather N.J.A.C. 19:14-4.1 - 4.6 envision briefs and/or affidavits. While there is nothing that prohibits oral argument, the Commission does not believe any purpose would be served by granting oral argument in this matter. The mere presence of conflicting factual allegations in the papers submitted requires denial of the motion, and oral argument would only delay the inevitable result. Therefore, the request for oral argument will be denied.

ORDER

For the foregoing reasons, the motion made by the Hamilton Township Board of Education, Respondent herein, for summary judgment dismissing the Complaint and for oral argument

thereon is hereby denied in all respects.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Forst and Parcells voted for this decision.

Commissioners Hipp and Hurwitz abstained.

Commissioner Hartnett was not present.

DATED: Trenton, New Jersey

January 26, 1977

ISSUED: January 27, 1977