P.E.R.C. NO. 77-61

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MATAWAN REGIONAL BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-77-8-68

MATAWAN REGIONAL TEACHERS' ASSOCIATION,

Charging Party.

SYNOPSIS

In an unfair practice proceeding the Commission grants the Board's motion for summary judgment. An Unfair Practice Charge had been filed by the Association alleging that the Board had refused to negotiate and to otherwise adhere to an arbitration award rendered with reference to a dispute concerning alleged contract violations relating to the hours of employment of certain employees represented by the Association. The Commission, relying upon past precedent established in the case of In re State of New Jersey (Stockton State College), P.E.R.C. No. 77-31, 3 NJPER ___ (1976), concluded that this matter should more appropriately be brought as a proceeding to confirm and enforce an arbitration award pursuant to N.J.S.A. 2A:24-7. The Commission therefore orders that the Board's motion for summary judgment be granted and that the complaint in this matter be dismissed.

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Appearances:
For the Respondent, Gerald L. Dorf, P.A.
(Mr. David A. Wallace, of Counsel)

For the Charging Party, Rothbard, Harris & Oxfeld, Esqs.
(Mr. Emil Oxfeld, of Counsel)

DECISION ON MOTION FOR SUMMARY JUDGMENT

An Unfair Practice Charge was filed with the Public Employment Relations Commission by the Matawan Regional Teachers' Association (the "Association") on July 14, 1976 alleging that the Matawan Regional Board of Education (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-5.4(a)(5).[1/] Essentially, the charge alleges that the Board has refused to negotiate and to otherwise adhere to the award of an arbitrator.

The charge was processed pursuant to the Commission's Rules and it appearing to the Commission's Director of Unfair Practices that the allegations of the charge, if true, might

1/ That subsection prohibits public employers, their representatives and agents from "(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."

constitute an unfair practice within the meaning of the Act, a Complaint and Notice of Hearing was issued on December 10, 1976.

Thereafter, on February 28, 1977 the Board filed a motion for summary judgment and brief in support of the motion. On March 28, 1977, the Association filed a brief in opposition to the Board's motion and on March 31, 1977 the Board submitted a letter reply.

For the purposes of the instant motion, the essential facts as alleged by the Association are accepted by the Board.[2/] These facts are that the Board did increase the hours of employment[3/] of certain employees represented by the Association both in September 1974 and September 1975; that, pursuant to the parties' negotiated grievance procedure, an arbitrator determined that the Board had violated the collective negotiations agreement between the parties; and that the Board has refused to negotiate the impact of the increased work time as directed by the arbitrator.[4/] The arbitrator's award was issued on April 14, 1976.

2/ The Association asserts that there is a disputed fact of importance relating to the date of the occurrence of the unfair practice. We have accepted the position of the Association for the purposes of this decision, i.e., the violation commenced in April 1976.

3/ It is undisputed that hours of employment are terms and conditions of employment which are mandatorily negotiable. See Englewood Bd. of Ed. v. Englewood Teachers Assn., 64 N.J. 1 (1974).

4/ The arbitrator's award is attached to the charge. Although the charge also alleges that the Board has refused to change the schedule pursuant to the arbitrator's award, the decision and award do not direct the Board to change the schedule. The decision and award of the relevant grievance is as follows: "The grievance is sustained to the extent of directing the (Continued)

The Association's charge is not based upon the increases in hours which took place in September 1974 and September 1975. It concedes that these dates fall outside of the six months period for the filing of a charge.[5/] Rather, it is the alleged refusal of the Board to comply with the award of the arbitrator which forms the gravamen of this charge, i.e., the refusal of the Board to negotiate as ordered. The instant charge was filed within six months of the issuance of that award and is therefore timely as it relates to the failure of the Board, conceded for the purposes of the instant motion, to comply with the arbitrator's award.

The Board makes several arguments in support of its motion. First, it seeks dismissal of the Complaint based on the fact that the charge was filed beyond the six months period. However, as indicated above, the Association limits its charge to an allegation that the Board has failed to negotiate as ordered by the arbitrator, and that refusal constitutes the statutory violation. This alleged non-compliance did occur within six months of the filing of the charge. Therefore, we reject this argument of the Board.

The Board's second contention is that a contractual violation is not the same as a statutory violation and that an arbitrator's decision and award in 1976 that the contract was

4/ (continued) parties to negotiate the impact of the increased time which the special education teachers have been required to work over and above five hours since the 1974-1975 school year."

5/ See N.J.S.A. 34:13A-5.4(c).

violated in 1974 and 1975 does not mean that the Act was violated in 1976. The Board points out that the Association could have but did not seek to litigate the alleged statutory violations in 1974 and 1975 but instead grieved the alleged contractual violations. The Board argues that the failure to comply with an arbitrator's award intended to remedy a contractual violation does not constitute an independent unfair practice under N.J.S.A. 34:13A-5.4(a) but is rather a question to be litigated in a judicial proceeding pursuant to N.J.S.A. 2A:24-1 et seq. for the enforcement of such awards.

The last argument of the Board is really related to and supportive of the second argument. The Board correctly points out that this Commission has previously adopted a policy of deferring to arbitration where the dispute between the parties originates from an alleged violation of the contract and/or can reasonably be expected to be fully resolved under the parties' grievance/binding arbitration procedures. See In re Board of Education of East Windsor Regional School District, E.D. No. 76-6, 1 NJPER 59 (1975); In re City of Camden, E.D. No. 76-13, 1 NJPER 65 (1975); In re City of Trenton, P.E.R.C. No. 76-10, 1 NJPER 58 (1975); In re State of New Jersey (Stockton State College), P.E.R.C. No. 77-31, 3 NJPER ____ (1976).[6/]

6/ The Commission has adopted this policy in recognition of and to further strengthen the public policy favoring the resolution of disputes through the parties' mutually agreed upon grievance/arbitration process. N.J.S.A. 34:13A-5.3 provides in its last paragraph: "Public employers shall negotiate written policies setting forth grievance procedures by means (Continued)

The Board argues that if the Commission were now to accept jurisdiction of an unfair practice charge which alleges as the improper conduct non-compliance with an arbitrator's award it would be inconsistent with the Commission's own policy on deferral to the grievance/arbitration process. We agree.

In the case of In re State of New Jersey (Stockton State College, supra, this Commission stated that non-compliance with an arbitrator's award does not mean that deferral is inappropriate. Arbitrator's awards are judicially enforceable, see N.J.S.A. 2A:24-1 et seq., and judicial enforcement of an arbitrator's award is a part of the arbitration process to which we have deferred, supra, at pages 12 and 13 of the slip opinion. We specifically adopted that portion of the Hearing Examiner's Recommended Report and Decision which discussed this point:

> "The undersigned concurs with the position taken in the private sector by the National Labor Relations Board and sustained recently by the United States Court of Appeals (District of Columbia Circuit) that a Respondent's unwillingness to comply with an arbitration award, coupled with a Charging

6/ (Continued) of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decisions affecting them, provided that such grievance procedures shall be included in any agreement entered into between the public employer and the representative organization. Such grievance procedures may provide for binding arbitration as a means for resolving disputes. Notwithstanding any procedures for the resolution of disputes, controversies or grievances established by any other statute, grievance procedures established by agreement between the public employer and the representative organization shall be utilized for any dispute covered by the terms of such agreement." The underlined sentence was added by Chapter 123, P.L. 1974 indicating the Legislature's continued preference for the parties' grievance/arbitration process as the favored method for resolving employer-employee disputes.

Party's reluctance to seek judicial enforcement of that award, does not constitute grounds for refusing to defer to said award. In this regard the NLRB has stated the following:

> 'In its formulation of the Spielberg standards the Board did not contemplate its assumption of the functions of a tribunal for the determination of arbitration appeals and the enforcement of arbitration awards. If the Board's deference to arbitration is to be meaningful it must encompass the entire arbitration process including the enforcement of arbitral awards. It appears that the desirable objective of encouraging the voluntary settlement of labor disputes through the arbitration process will best be served by requiring that the parties to a dispute, after electing to resort to arbitration, proceed to the usual conclusion of that process -- judicial enforcement -- rather that permitting them to invoke the intervention of the Board.'

In sustaining the Board's conclusion in this regard a federal court concluded:

> 'We agree with the Board that the employer's recalcitrance following arbitration does not preclude deferral to the award. The policy established by Spielberg is to withhold Board processes where private methods of settlement are adequate. In this case, the arbitration process has foundered, but it has not proven inadequate. The union may yet obtain compliance with the award by means of a suit for its enforcement. As long as the remedy of judicial enforcement is available the force of the Spielberg doctrine is not diminished by one party's disregard for the arbitral award.' (footnotes omitted).

In the Matter of State of New Jersey (Stockton State College, H.E. No. 77-5, 2 NJPER 297 at pages 31-32 of slip opinion, 2 NJPER 297 at 305." 7/

7/ The omitted footnotes refer to the case of Malrite of Wisconsin, Inc. (NLRB decision, 80 LRRM 1593 at 1594 (1972)) enforced by the United States Court of Appeals (District of Columbia Circuit) sub nom IBEW Local 715 v. NLRB (Malrite of Wisconsin Inc.) 85 LRRM 2823 (1974) at pg. 2825.

Based upon the above discussion we conclude that this matter should more appropriately be brought as a proceeding to confirm and enforce an arbitrator's award pursuant to N.J.S.A. 2A:24-1 et seq., specifically N.J.S.A. 2A:24-7.[8/] Therefore, in accordance with our policy of favoring the arbitration process and consistent with the requirements of N.J.S.A. 2A:24-1 et seq., it is hereby ordered that the Board's motion for summary judgment is granted and the Complaint in this matter is hereby dismissed.

BY ORDER OF THE COMMISSION

Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Forst and Hartnett voted for this decision.
Commissioners Hipp and Hurwitz abstained.
Commissioner Parcells was not present.
DATED: Trenton, New Jersey
May 12, 1977
ISSUED: May 13, 1977

8/ The Commission does recognize that the specific allegation of non-compliance, i.e., refusal to negotiate, is a subject which normally would fall within the jurisdiction of this Commission. See N.J.S.A. 34:13A-5.4(a)(5) and (b)(3). However, the fact that the arbitrator ordered this particular remedy rather than some other form of relief does not alter the situation that the Association is basically seeking to force the Board to comply with the arbitrator's award.