

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

DOVER BOARD OF EDUCATION,
Respondent,

Docket No. CO-76-68-33

-and-

DOVER CUSTODIAN AND MAINTENANCE
ASSOCIATION,
Charging Party.

SYNOPSIS

On the basis of a stipulated record and briefs, the Commission finds in an unfair practice proceeding that the public employer violated its obligation to negotiate with the majority representative, and orders the public employer to negotiate in good faith concerning terms and conditions of employment for the public employer's 1975-76 school year. The majority representative was voluntarily recognized in July, 1975 but the public employer, while concededly engaging in good faith negotiations in all other respects, refused to negotiate concerning the 1975-76 school year, limiting its negotiations to terms and conditions to be effective no earlier than the 1976-77 school year. The Commission distinguishes between a bona fide negotiating position concerning the effective date of an agreement, and a refusal to discuss terms and conditions of employment to be in effect prior to the effective date of an agreement.

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Appearances:

For the Respondent, Jacob Green, Esq.
(Mr. Allen P. Dzwilewski, on the Briefs)

For the Charging Party, Goldberg, Simon & Selikoff, Esqs.
(Mr. Gerald M. Goldberg, on the Briefs)

DECISION AND ORDER

On September 10, 1975 the Dover Custodian and Maintenance Association (the "Association") filed an Unfair Practice Charge (the "Charge") with the Public Employment Relations Commission (the "Commission") charging that the Dover 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-1 et seq. (the "Act"), specifically alleging violations of N.J.S.A. 34:13A-5.4(a)(1) and (5).^{1/}

The Association contends that the Board has violated the Act by refusing to negotiate in good faith with the Association for the 1975-76 school year following July 22, 1975, the

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."

date on which the Board voluntarily recognized the Association as the exclusive negotiating representative for its custodians and maintenance workers. The Charge was processed pursuant to the Commission's Rules and, it appearing to the Commission's Executive Director that the allegations of the Charge, if true, might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on November 7, 1975.

Pursuant to the Complaint and Notice of Hearing, a hearing was held before Edmund G. Gerber, Hearing Examiner of the Commission, on December 9, 1975, at which time the parties entered into a complete stipulation of facts and waived a Hearing Examiner's Recommended Report and Decision pursuant to N.J.A.C. 19:14-6.7. Subsequently, briefs and reply briefs were filed by both parties.

The material stipulated facts, which were entered on the transcript of this proceeding, are summarized below.

The Dover Board of Education is a public employer within the meaning of the Act. The Association filed a Petition for Certification of Public Employee Representative (Docket No. RO-1033) on May 2, 1975, seeking to be certified as the exclusive representative for the purposes of collective negotiations of custodians and maintenance personnel employed by the Board. The Board voluntarily recognized the Association as the exclusive representative of "full-time custodial and maintenance employees"

on July 22, 1975 (Joint Exhibit 1 in evidence). The unit consists of the full-time employees in the following job classifications: custodian, maintenance man, head custodian, electrician, and custodian-bus driver.

The President of the Association sent an undated letter to the Assistant Superintendent of the Board, proposing four dates and times for negotiations for the 1975-76 contract year (Joint Exhibit 3 in evidence). The Assistant Superintendent, by letter dated July 29, 1975, agreed to meet on one of those dates "for the purpose of beginning discussions relative to a 1976-1977 agreement" (Joint Exhibit 4 in evidence). That date was accepted by the Association in an undated letter to the Assistant Superintendent and that letter included the following statement:

"However, I wish to correct the erroneous impression that the round of sessions beginning on August 18 is for the purpose of achieving an agreement for the 1976-1977 year.

As mentioned during events surrounding both the recent issuance of employment contracts and the P.E.R.C. recognition Activities the initial meetings are for negotiating an Agreement for the present (1975-1976) work year." (Joint Exhibit 5 in evidence)

A meeting took place on August 18, 1975 as scheduled. The Association submitted its contract proposals at that time (Joint Exhibit 6 in evidence). Those proposals related to the 1975-76 school year.

A Board spokesman pointed out that the budget for 1975-76 had already been fixed, salary contracts had been submitted, and the Board would not enter in an agreement for 1975-76.

The Board spokesman then asked if the Board was legally required to negotiate for 1975-76 and the Association spokesman said that he was not sure. The Board spokesman replied that the Board would negotiate the 1975-76 contract only if they were legally obligated to do so.

Previously, and in accordance with Board practice, on June 25, 1975 the Board sent individual contracts to unit members. All of these had been returned prior to the August 18, 1975 negotiations session and a majority of them had an attached addendum:

"This Contract is Signed without Prejudice to Any New adjustment as a result of Contract negotiations between The Dover Custodian and Maintenance Association and the Dover Board of Education." (Joint Exhibit 7-A in evidence)

The Board did not respond to these addendums.

The instant Unfair Practice Charge was filed by the Association after the August 18, 1975 meeting between the parties. Nevertheless, negotiations continued with meetings occurring on October 1 and October 28, 1975.

At one or both of the meetings, the Board requested the Association to resubmit its 1975-1976 proposals as 1976-1977

proposals so that the parties could commence negotiations with reference thereto. The Association responded that to take such action might prejudice the instant Charge.

However, the correspondence between the parties establishing those meeting dates makes it clear that the Association was prepared to negotiate for the 1976-77 school year (Joint Exhibits 8-11 in evidence).

The Board submitted written proposals to the Association covering the period July 1, 1976 to June 30, 1979 at the October 28, 1975 meeting (Joint Exhibit 14 in evidence).

An additional meeting was held November 24, 1975 at which the Association submitted proposals for the 1976-1977 contract year (Joint Exhibit 15 in evidence). The Association's position was that these proposals were interrelated with the 1975-1976 proposals.

The parties have stipulated that at each meeting the Association wished to negotiate a 1975-1976 contract and that the Board did not accede to the request of the Association to negotiate for 1975-1976. Finally, the parties agreed that their stipulation is a complete and final stipulation.

The essence of this matter relates to the question of whether the Board is obligated to negotiate with the Association subsequent to the Board's July 22, 1975 voluntary recognition of the Association for any period of time prior to July 1, 1976.

It is the position of the Association that the Board violated the Act when, subsequent to the Board's recognition

of the Association on July 22, 1975 and the Association's demands for negotiations for 1975-76, the Board refused to negotiate for 1975-76. The Association cites the language in the stipulation to support the claim that the Board refused to negotiate for 1975-76:

"Mr. Burdge then replied they would - that is the Board - would negotiate the 1975-76 contract only if they were legally obligated to do so."
(Transcript, p. 8)

The Association argues that the obligation to negotiate arises immediately upon recognition of an employee organization and that neither the statute nor the Commission's Rules limit that duty. This duty is the same whether the employee organization was recognized voluntarily by the Board as in the instant case or was certified by the administrative agency. Federal cases are cited to support these arguments.

Furthermore, the Association, again relying upon federal cases, disputes the claim of the Board that the existence of individual contracts for the 1975-76 period relieves the Board of the duty to negotiate with the Association for that period.

Regarding the claim of the Board that the Board's budget for 1975-76 has been fixed, the Association points out that the duty to negotiate does not encompass a duty to agree to specific contract proposals and concedes that the Board can reject a proposal if it is genuinely unable to agree to it due to the budgetary restrictions. Moreover, many items of negotiations are nonmonetary and negotiations with respect to such

items can occur without reference to the budget cycle.

Additionally, the Association argues that, because of the Board's willful refusal to negotiate based upon an unfounded and frivolous objection to bargaining for 1975-76, the only appropriate remedy, in addition to a bargaining order, is an award by the Commission of the benefits which the Commission determines unit personnel would have received but for the Board's refusal to negotiate. The Association is also seeking costs including reasonable attorney's fees.

The Board denies any bad faith on its part and urges that the posture of the Board on the issue of the effective date of the agreement should be viewed simply as part of its overall conduct with the Association.

The Board argues that, given the timing of the various events - recognition on July 22, 1975; first negotiating session on August 18, 1975; and the facts that the budget for 1975-76 had been fixed, that unit members had received adjustments in salaries and fringe benefits for 1975-76, and that individual contracts had already been signed by unit members covering 1975-76 - the Board was not obligated to negotiate with the Association except for 1976 and beyond. The Board points out that an Association spokesman at the August 18, 1975 negotiations session stated that he was not sure whether the Board had to negotiate for 1975-76.

The Board contends that the effective date of the agreement became an issue, with the Board seeking a July 1, 1976 date and the Association a July 1, 1975 date, and that the parties

simply took firm positions on this issue. Citing a decision of the Executive Director which was subsequently affirmed by the Commission, the Board contends that its behavior did not constitute bad faith.^{2/}

The Board points out that the Association filed the instant Charge after the very first negotiating session between the parties and that the Association could have submitted counterproposals on both economic and noneconomic items for 1975-76 after that first session. Thus, it is argued that the Association is equally responsible for the failure of the parties to reach an agreement. The Board suggests that the action of the Association in filing the instant charge could itself be indicative of bad faith on the part of the Association.

The Board also contends that its position is consistent with the Commission's Rules which establish a timetable for negotiations which, in accordance with N.J.S.A. 34:13A-5.4(e), utilizes the public employer's required budget submission date as the reference point.

Regarding the remedy sought by the Association, the Board contends that the cases cited by the Association are distinguishable on the facts and that, if anything, they support the position of the Board that such a remedy, i.e., imposition of terms by the Commission, is not proper.

^{2/} In re State of New Jersey, E.D. No. 79, 1 NJPER 39 (1975), affirmed In re State of New Jersey, P.E.R.C. No. 76-8 (1975), appeal pending (App. Div. Docket No. A-531-75).

The Commission has given careful consideration to the entire record herein including the Charge, the stipulation and the briefs and reply briefs of the parties.

Based upon this consideration the Commission finds that the term of an agreement between parties to a collective negotiations relationship including both the effective date and the termination date of such an agreement is within the scope of collective negotiations and is mandatorily negotiable. Furthermore, although this does not appear to be in dispute in the instant matter, it is found that the duty to negotiate arises immediately after proper recognition of an employee organization by a public employer or certification of an employee organization by the Commission and upon demand by the employee organization or the public employer.

The facts of this case indicate that the Board refused to negotiate with the voluntarily recognized Association upon demand for 1975-76 and would negotiate with said Association "...only if they were legally obligated to do so."

We recognize that the timing of the recognition or certification of an employee organization may well have a bearing upon the positions of the parties regarding the effective date of an agreement. We also recognize that the positions of the parties, especially on economic issues, may well be influenced by the existence of a previously established budget. However, these facts do not relieve the parties of the obligation, upon demand, to negotiate regarding the effective date of an agreement

or regarding a period of time in a fiscal year with a previously established budget.

We would also point out that the Board's argument regarding the negotiations timetable is not persuasive. Section 19:12-2.1(c) of the Commission's Rules specifically provides that:

"Nothing in this Section shall be construed to abrogate or alter obligations of parties to newly established collective negotiations relationships, whether created by recognition or certification."

Therefore, we find that the Board has violated the Act by interfering with, restraining or coercing its employees in the exercise of the rights guaranteed them by the Act in violation of N.J.S.A. 34:13A-5.4(a)(1) and by refusing to negotiate in good faith with the Association for the 1975-76 school year in violation of N.J.S.A. 34:13A-5.4(a)(5).

Regarding the remedy, we are not convinced that the action of the Board justifies the admittedly extraordinary remedy sought by the Association. The facts of this case are clearly different from those which existed in the cases cited by the Association to support its position. In this matter, the record indicates that, not only did the Board voluntarily recognize the Association, but the Board cooperated with the Association in scheduling negotiating sessions. The Board representatives participated in the scheduled meetings. The Board submitted contract proposals to the Association, albeit for the period

beginning July 1, 1976. Nevertheless, there is no evidence that the position of the Board regarding the effective date of the agreement was taken in order to destroy or otherwise subvert the Association. Thus, without determining whether any set of facts would justify the remedy sought by the Association, it is clear that the facts in this case do not in any event compel the imposition of that remedy.

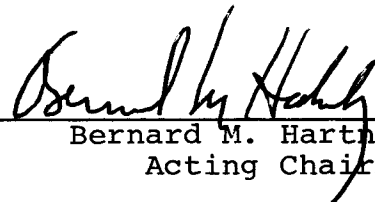
ORDER

IT IS HEREBY ORDERED that the Respondent, Dover Board of Education, shall cease and desist from interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, and

IT IS FURTHER ORDERED that the Respondent shall cease and desist from refusing to negotiate in good faith, upon request, with the Dover Custodian and Maintenance Association, concerning terms and conditions of employment for the 1975-76 school year, and

IT IS FURTHER ORDERED that the Respondent shall, upon request, negotiate in good faith with the Dover Custodian and Maintenance Association concerning terms and conditions of employment for the 1975-76 school year.

BY ORDER OF THE COMMISSION



Bernard M. Hartnett, Jr.
Acting Chairman

DATED: Trenton, New Jersey
April 27, 1976

Issued: April 28, 1976