

P.E.R.C. NO. 91-39

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

EGG HARBOR TOWNSHIP
BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-90-165

EGG HARBOR TOWNSHIP
EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission sustains the Director of Representation's refusal to issue a Complaint based on an unfair practice charge filed by the Egg Harbor Township Education Association against the Egg Harbor Township Board of Education. The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act when, on September 1, 1989, it unilaterally banned smoking on school premises. Smoking in school buildings outside of students' view is now preempted. The Commission determines that this dispute is moot.

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Appearances:

For the Respondent, Gelzer, Kelaher, Shea, Novy & Carr,
attorneys (Paul J. Carr, of counsel)

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

DECISION AND ORDER

On December 8, 1989, the Egg Harbor Township Education Association filed an unfair practice charge against the Egg Harbor Township Board of Education. The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1) and (5),^{1/}

^{1/} These subsections 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."

when, on September 1, 1989, it unilaterally banned smoking on school premises.

The Director of Unfair Practices held in abeyance the processing of the charge pending our decision in Livingston Bd. of Ed., P.E.R.C. No. 91-8, 16 NJPER 440 (¶21189 1990), app. pending App. Div. Dkt. No. A-18-90T5. In Livingston, we held that the Board's comprehensive smoking ban was not mandatorily negotiable.


On September 11, 1990, relying on Livingston, the Director refused to issue a Complaint. D.U.P. No. 91-10, 16 NJPER ____ (¶____ 1990). On September 25, the Association appealed. It argues that although the subject of smoking within school buildings was preempted on December 14, 1989 by N.J.S.A. 26:3D-17, smoking in designated areas before that date was mandatorily negotiable. On September 31, the Board filed a reply arguing that the negotiability of smoking within school buildings before December 14, 1989 is now moot.

Smoking in school buildings outside of students' view was mandatorily negotiable before N.J.S.A. 26:3D-17. Warren Hills Reg. H.S. Dist., P.E.R.C. No. 82-8, 7 NJPER 445 (¶12198 1981), aff'd App. Div. Dkt. No. A-5771-80T2 (11/16/82), certif. den. 92 N.J. 308 (1983); Pine Hill Bd. of Ed., P.E.R.C. No. 79-77, 5 NJPER 190 (¶10108 1979). The subject is now preempted. It would not serve the Act's purposes here to decide this past dispute where preemptive legislation has guaranteed that similar circumstances will not recur. This dispute is moot.

ORDER

The Director of Representation's refusal to issue a Complaint is sustained for the reasons stated above.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Johnson, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Reid and Bertolino abstained from consideration.

DATED: October 26, 1990
Trenton, New Jersey
ISSUED: October 26, 1990