

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FREEHOLD BOROUGH TEACHERS  
ASSOCIATION,

Respondent,

Docket No. CE-76-9-45

-and-

FREEHOLD BOROUGH BOARD OF  
EDUCATION,

Charging Party.

SYNOPSIS

In the absence of exceptions filed by either party, the Commission adopts the findings of fact and conclusions of law of the Hearing Examiner's Recommended Report and Decision in an unfair practice proceeding. The Board of Education alleged that the Education Association had negotiated in bad faith by introducing a demand for binding arbitration into the negotiations after the parties had agreed to a ground rule that no new proposals would be made. The Hearing Examiner found, and the Commission affirms, that the Board failed to meet its burden of proof on the essential factual allegation that such an agreed upon ground rule was in existence at the time that the Association made the demand for binding arbitration. Therefore, the Complaint must be dismissed.

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Appearances:

For the Respondent, Morgan & Falvo, Esqs.  
(Peter S. Falvo, Esq. of Counsel).

For the Charging Party, DeMaio & Yacker, Esqs.  
(Vincent E. DeMaio, Esq. of Counsel).

DECISION AND ORDER

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on September 11, 1975 by the Freehold Borough Board of Education (the "Board") alleging that the Freehold Borough Teachers Association (the "Association") engaged in certain 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"). The Board alleges in its charge that the Association negotiated in bad faith by introducing a new demand (binding arbitration) into the negotiations after the parties had entered into an agreement that no new proposals would be made. The Board maintains that the alleged conduct violated N.J.S.A. 34:13A-5.4(b) (3) and (4).<sup>1/</sup>

<sup>1/</sup> N.J.S.A. 34:13A-5.4(b) (3) and (4) prohibit employee organizations, their representatives or agents from: "(3) Refusing to  
(Continued)

The Charge was processed pursuant to the Commission's Rules, and it appearing to the Commission's Executive Director<sup>2/</sup> acting as the named designee of the Commission, 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 21, 1975. In accordance with the said Notice of Hearing a hearing was convened on January 8, 1976 and was reconvened on February 25, 1976 and concluded on April 26, 1976.<sup>3/</sup> The hearing was conducted by Edmund G. Gerber, a 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,

1/ (Continued) 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."

While the Charge alleges a violation of N.J.S.A. 34:13A-5.4(b)(4), it was stated by attorneys for both parties on the record that the Board and the Association have reached agreement on all issues except that of binding arbitration and that the failure to formally sign the new agreement was a result of the disagreement over the issue of binding arbitration which is the dispute in the within Charge. The parties had reached an understanding that in accordance with the Commission's determination of the within Charge the issue of binding arbitration would either be negotiated or withdrawn as a proposal by the Association.

2/ Now Chairman, Jeffrey B. Tener

3/ At the conclusion of the February 25, 1976 session the attorney for the Board requested an additional day of hearing to permit him to call certain rebuttal witnesses. The scheduling of the final hearing was delayed due to the illness of one of the Board's proposed witnesses. When the hearing was reconvened on April 26, 1976 the witness was still unavailable as were certain other Board witnesses and both attorneys then rested their cases and the hearing was closed.

and to argue orally. At the close of the hearing both parties waived the filing of legal briefs and the record in the matter was closed.

On August 10, 1976 the Hearing Examiner issued his Recommended Report and Decision, which included findings of fact and conclusions of law. The original of the said Report was filed with the Commission and copies were served upon all parties. A copy is attached to this Decision and made a part hereof. The Hearing Examiner determined that one of the essential factual elements of the Board's case was the alleged existence of an agreement on negotiations ground rules which would have precluded the introduction of any new proposals at the time when the Association admittedly made a demand for binding arbitration. There was conflicting testimony on this issue and the Hearing Examiner found that the Board had failed to meet its burden of proof on this essential factual allegation.<sup>4/</sup> He therefore recommended that the Complaint be dismissed.

Neither party has filed exceptions to the Hearing Examiner's Recommended Report and Decision, and the time for such submission has now passed. See N.J.A.C. 19:14-7.3(a).

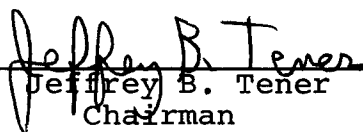
<sup>4/</sup> N.J.S.A. 34:13A-5.4(c) states, in part, that all cases in which a complaint and notice of hearing on a charge is actually issued shall be prosecuted by the representative of the charging party. Section 19:14-6.8 of the Commission's Rules reiterates this requirement and also adds that the charging party "shall have the burden of proving the allegations of the complaint by a preponderance of the evidence." N.J.A.C. 19:14-6.8.

Upon careful consideration of the entire record herein, and in the absence of exceptions to the Hearing Examiner's Recommended Report and Decision, the Commission hereby adopts the findings of facts and conclusions of law as stated by the Hearing Examiner substantially for the reasons set forth by him in the attached Report.<sup>5/</sup> The Commission therefore finds and determines that the Board has failed to prove those factual allegations of the Complaint which were essential to a finding of a violation of the Act, and the Complaint must therefore be dismissed.

ORDER

The Complaint in the within matter is hereby dismissed.

BY ORDER OF THE COMMISSION

  
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Jeffrey B. Tener  
Chairman

Commissioners Hipp and Hurwitz did not participate in this matter. Chairman Tener and Commissioners Forst, Hartnett and Parcels voted for this Decision.

DATED: Trenton, New Jersey  
September 21, 1976  
ISSUED: September 22, 1976

<sup>5/</sup> N.J.A.C. 19:14-7.3(b) provides in part: "Any exception which is not specifically urged shall be deemed to have been waived."

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FREEHOLD BOROUGH BOARD OF EDUCATION,  
Charging Party.

APPEARANCES:

For the Respondent:

Morgan & Falvo, Esqs.

By: Peter S. Falvo, Esq.

For the Charging Party:

DeMaio & Yacker, Esqs.

By: Vincent C. DeMaio, Esq.

HEARING EXAMINER'S RECOMMENDED  
REPORT AND DECISION

On September 11, 1975 an Unfair Practice Charge was filed by the Freehold Borough Board of Education ("Board") against the Freehold Borough Teachers Association ("Association") claiming that the Association violated N.J.S.A. 34:13A-5.4 (b) (3), (4) <sup>1/</sup> and engaged in an unfair practice by violating an agreement concerning the conduct of contract negotiations. Specifically, it is alleged that the Association introduced a new demand into negotiations, [binding arbitration] after the parties had entered into an agreement that no new demands would be introduced.

1/ § (3) and (4) provide in pertinent part that, "Employee organizations, their representatives or agents are prohibited 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."

It appearing to the Executive Director, Jeffrey B. Tener, that the allegations of the charge, if true, might constitute an unfair practice, a Complaint and Notice of Hearing was issued on November 21, 1975. A hearing was held on this matter pursuant to said complaint on January 8, 1976, at 1100 Raymond Boulevard, Newark, New Jersey and was reconvened on February 25, 1976 and again on April 26, 1976 at 280 Park Avenue, Freehold, New Jersey. The matter was heard before Edmund G. Gerber, Hearing Examiner for the Public Employment Relations Commission.

Both parties appeared at the hearing represented by counsel and were afforded a full opportunity to be heard, to examine, and cross-examine witnesses and to introduce relevant evidence. Both parties waived the filing of briefs. Upon the entire record in the proceedings, the Hearing Examiner finds:

1) The Freehold Borough Teachers Association is a public employee representative within the meaning of the New Jersey Employer-Employee Relations Act, as amended, and is subject to its provisions.

2) The Freehold Borough Board of Education is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, as amended, and is subject to its provisions.

3) As noted, an Unfair Practice Charge having been filed with the Commission alleging that the Freehold Borough Teachers Association has engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, a question concerning an alleged violation of the Act exists and this matter is appropriately before the Commission for determination.

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The Association is the recognized exclusive majority representative for all teachers employed by the Freehold Borough Board of Education. The Association and the Board were parties to a collective negotiations agreement

that was to expire in June, 1975. On November 19, 1974, the parties commenced negotiations for a successor agreement and at this time the Association and the Board exchanged demands. Ground rules for the negotiations were established and each side represented to the other that they had no further demands. The parties met again on December 3 and December 10. After the third meeting the negotiations stalled. The parties did not meet again until March 11, 1975, when the Association put the issue of binding arbitration on the table for the first time. The Board refused to negotiate this issue claiming a violation of the agreement of November 19 but the Association insisted that the issue of binding arbitration be included in the negotiations. Since that time the Board has refused to negotiate the issue of binding arbitration, while the Association has refused to withdraw its demands to negotiate that same issue.

The Board recognizes that binding arbitration is a mandatory subject of negotiations. They argue, however, that in light of the agreement of the November 19, 1975 the Association has acted in bad faith by changing the ground rules for negotiation. Therefore, they brought this action against the Association claiming that this violation of the ground rules constitutes a Section (b)-3 violation.<sup>2/3/</sup>

The Association does not dispute that at the November 19 meeting they stated to the Board that they had no further negotiation demands. They maintain, however, at the December 10 meeting the negotiations broke down and the Board

2/ The Association here did not file a counter charge; the parties stated on the record, however, that they have an agreement that the Association would drop its demand for binding arbitration if the Commission found that they committed an unfair practice and, conversely, the Board would negotiate over the issue of binding arbitration if the Association did not commit an unfair practice.

3/ It is noted that in the narrative of the Board's charge, which is incorporated in the complaint, it is stated that the Association threatened to strike over the issue of binding arbitration. The Board never made the argument that the strike threat constituted a separate per se refusal to negotiate. As stated by the attorney for the petitioner in his opening statement at the hearing "We are here for your determination on the issue of whether or not the issue of binding arbitration is negotiable under the circumstances". It can only be assumed by the Hearing Examiner that the petitioner did not seek a determination of this issue, therefore no determination will be made.

(footnote 3 continued on next page)



negotiators attributed this breakdown to the inexperience of the Association representatives. The Board told the Association negotiators that either the Association seek expert assistance in negotiations or the Board would have no alternative but to declare an impasse of the negotiations. An Association member asked if this meant that all agreements reached up to that point were off. The response from the Board was that "all bets were off, everything is off the table." It is the Association position that if there was an agreement on November 19, the conversation on December 10, ended any such agreement. <sup>4/</sup>

Mr. Joseph Copeland, a member of the negotiating committee for the Board, was the only witness to testify on behalf of the Board. He stated that at the December 10 meeting there was talk that the Association should seek professional help in negotiations and, further, that the parties were deadlocked over salary after just two negotiations sessions. Mr. Copeland maintained, however, that it was the Association that left the negotiation session. Further, Mr. Copeland does not recall any comments to the effect that "all bets were off."

The Association had two witnesses who were at the December 10 meeting testify. Both maintained the Board took the position that negotiations were to "start from scratch." Both witnesses demonstrated a lack of understanding of the negotiation process, and further their testimony conflicted to a degree. However, in spite of this, I found the testimony of one of them, Diane Ellison, credible. Therefore, I cannot disregard her testimony that the agreement to limit the items

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<sup>3/</sup> (continued from page 3)

Similarly there was testimony at the hearing concerning a so-called job action. This issue was not raised in the pleading nor was there any legal argument made by the parties concerning said action, therefore no determination will be made as to whether it was a per se violation.


<sup>4/</sup> The Association also argues that binding arbitration is merely a counter proposal to the existing grievance procedure clause in the contract. For reasons expressed below it is not necessary to consider this argument here.

for negotiations came to an end at the meeting of December 10. Ms. Ellison stated that the Board took the position that "there were no agreements and if the (Association) went to the New Jersey Education Association then they would start negotiating, if we didn't then it was impasse."<sup>5/</sup> As stated above Mr. Copeland testified only that he had no recollection of the conversation; he did not state that it never took place.

The existence of the agreement as of March 11 is an indispensable element of the charging party's case, and it must be proven by a preponderance of the evidence. I find that the Board has failed to meet its burden of proof,<sup>6/</sup> therefore I recommend that the Complaint be dismissed.

ORDER

For the reason cited above the complaint is dismissed in its entirety.

  
 Edmund G. Gerber  
 Hearing Examiner

DATED: August 10, 1976  
 Trenton, New Jersey

- <sup>5/</sup> It should be noted that the Association did go to the NJEA for assistance and one of their representatives was present at the subsequent negotiation session of March 11.
- <sup>6/</sup> Having found that the charging party has not proved the factual allegations of the complaint and in the absence of any legal arguments by either party, I find it unnecessary to consider the underlying legal arguments of the charging party.