

D.U.P. NO. 87-3

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

SALEM BOARD OF EDUCATION,

Respondent,

-and-

DOCKET NO. CO-86-333

SALEM TEACHERS ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint based on the Association's allegations that the Board refused to negotiate over distribution of residual funds in the 1985-86 school year. The Director held, consistent with the previous decision in Roselle Park Board of Education, D.U.P. No. 86-22, 12 NJPER (¶ _____ 1986), that the Teacher Quality Employment Act ("TQEA") preempts the Board's obligation to discuss that issue.

Further, the Director did not merit the Association's argument that the above reasoning did not apply because the Board had at one time in the negotiations process agreed to negotiate over the 1985-86 allocation. It was held that the Board did not somehow waive the preemptive effect of the TQEA by this action, and that prior to coming to a binding agreement with the Association, the Board was free to back out of the negotiations at any time.

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

SALEM BOARD OF EDUCATION,

Respondent,

-and-

DOCKET NO. CO-86-333

SALEM TEACHERS ASSOCIATION,

Charging Party.

Appearances:

For the Respondent

Davis, Reberkenny and Abramowitz, Esqs.
(William Davis, of counsel)

For the Charging Party

Selikoff and Cohen, P.A.
(Joel S. Selikoff, of counsel)

REFUSAL TO ISSUE COMPLAINT

On June 3, 1986, the Salem Teachers Association ("Association") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") alleging that the Salem Board of Education ("Board") violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically subsections 5.4(a)(1) and (5)^{1/} when it refused to

^{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; and (5) Refusing to

discuss 1985-86 salary guide allocation of residual monies received by the Board as a result of the implementation of N.J.S.A. 18A:29-5, et. seq., the Teacher Quality Employment Act ("TQEA"). The charge also alleges that the Board's negotiating committee acted in bad faith when it first agreed to discuss the 85-86 residual monies issue (and indeed reached a memorandum of agreement thereon) and then reversed that decision. The Association further contends that subsequent to reaching the memorandum of agreement, the Board's negotiating committee refused to recommend it to the full Board.

N.J.S.A. 34:13A-5.4(c) states, in pertinent part, that the Commission shall have the power to prevent anyone from engaging in any unfair practice, and that it has the authority to issue a complaint stating the unfair practice charge.^{2/} The Commission has delegated its authority to issue complaints to the Director and has established a standard upon which an unfair practice complaint.

1/ Footnote Continued From Previous Page

negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment

2/ N.J.S.A. 34:13A-5.4(c) states: "The Commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice ... Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof, shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice charged and including a notice of hearing containing the date and place of hearing before the Commission or any designated agent thereof...."

may be issued. The Commission rules further provide that when this standard has not been met, the Director may decline to issue a complaint.^{3/}

In the instant case, the initial dispute centers around residual monies received by the Board in the 1985-86 school year and the Board's refusal to discuss allocation of these funds in 1985-86. Pursuant to the TQEA, the Board received funds from the State to compensate for additional amounts needed to raise all teachers on the salary guide to a minimum of \$18,500. The State calculated these amounts, pursuant to the statute, based on the salary guide submitted for the 1984-85 school year. As a result of previously negotiated incremental raises built into the salary guide for 1985-86, the funds received by the Board exceeded the amount actually needed in 1985-86 to bring the affected teachers up to \$18,500. Thus, in Salem, this created a residual fund which the Association contends should be incorporated into a revised 1985-86 salary guide.

The Board argues that it is not obligated to revise the 1985-86 guide, nor to negotiate at all with the Association over the distribution of this residual money in the 1985-86 school year. It bases its argument on the language of the TQEA which states as follows:

Nothing in the act shall be construed to require the reopening of any signed contract in effect for the 1985-86 school year.

^{3/} N.J.A.C. 19:14-2.3

On June 18, 1986, we issued Roselle Park Board of Education and Roselle Park Education Association, D.U.P. No. 86-22, 12 NJPER ____ (¶ _____ 1986), which addressed the residual monies issue. With regard to the Board's refusal to bargain, we stated as follows:

After careful consideration,... I determine that the Legislature's specific direction that nothing shall require the reopening of a signed contract in effect for 1985-86, preempts the employer's duty to negotiate concerning those affected terms and conditions of employment. Thus, I find that the Roselle Park Board of Education is not obligated to discuss with the Association distribution of the residual monies received from the State for the 1985-86 school year. This determination is based on the express language of the statute which speaks only to the 1985-86 school year. Accordingly, nothing in this decision should be construed to comment on distribution of residual monies for any years beyond 1985-86.^{4/} That issue was not presented or considered in the instant charge.

Based on the foregoing, I decline to issue a complaint concerning the Charging Party's (a)(5) allegations regarding negotiation of distribution of the residual monies in the 1985-86 school year.

The same reasoning must be applied here. In the instant case, the Salem Board has now flatly refused to discuss allocation of residual funds for the 1985-86 school year. As set forth above, it has been previously held that this does not constitute a violation.

^{4/} Similarly, this decision does not address what the Board is to do with these residual monies, but see Point Pleasant Beach Bd. of Ed. v. Point Pleasant Ed. Assn., I.R. No. 86-20, 12 NJPER ____ (¶ _____ 1986).


The Association attempts to distinguish this case by virtue of the fact that at one point in the negotiations process the Board had agreed to discuss the 1985-86 residual funds issue, and indeed signed a tentative memorandum of agreement on the subject. However, as the memorandum of agreement itself states, the Board negotiating committee did not have the authority to bind the full Board.

The TQEA has preempted the obligation to negotiate the allocation of residual funds in the 1985-86 school year. The agreement of the Board to negotiate did not somehow waive the pre-emptive effect of the TQEA and, prior to coming to a binding agreement with the Association, the Board was free to back out of the negotiations at any time. Based on the holding in Roselle Park, I decline to issue a complaint in this matter.

ORDER

The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: July 29, 1986
Trenton, New Jersey