

D.U.P. NO. 93-21

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

In the Matter of

MIDDLETOWN TOWNSHIP BOARD
OF EDUCATION,

Respondent,

-and-

Docket No. CO-92-375

MIDDLETOWN TOWNSHIP EDUCATION
ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on a charge filed by the Middletown Township Education Association, NJEA, against the Middletown Township Board of Education. The Director found that under all the circumstances, the Board did not violate subsections 5.4 (a)(3) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., by creating a new position combining the duties of two abolished unit positions and establishing a new salary rate without negotiating these changes with the Association, where the Board offered to negotiate about salary well in advance of the effective date of the actions but the Association failed to respond.

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

In the Matter of

MIDDLETOWN TOWNSHIP BOARD
OF EDUCATION,

Respondent,

-and-

Docket No. CO-92-375

MIDDLETOWN TOWNSHIP EDUCATION
ASSOCIATION,

Charging Party.

Appearances:

For the Respondent
Kalac, Newman, Lavender & Campbell, attorneys
(Howard M. Newman, of counsel)

For the Charging Party
New Jersey Education Association
(John Molloy, UniServ Rep.)

REFUSAL TO ISSUE COMPLAINT

On May 20, 1992, the Middletown Township Education Association, NJEA, filed an unfair practice charge against the Middletown Township Board of Education. The Association alleges that on or about April 28, 1992, the Board violated subsections 5.4 (a)(3) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.,^{1/} by creating a new position combining

^{1/} These subsections prohibit public employers, their representatives or agents from: (3) Discriminating in regard to hire or tenure of employment or any term or condition of

the duties of two abolished unit positions and establishing a new salary rate without negotiating these changes with the Association.

The Board abolished two Level 6 unit positions, Administrative Secretary to the School Business Administrator and Purchasing Assistant. It created the Purchasing Assistant/Administrative Secretary at its April 28, 1992 meeting. The new position combines the duties of the two abolished positions and is classified at Level 6, a salary range in the parties' contract.^{2/} The former Purchasing Assistant, Peggy Flowers, was placed in the new Purchasing Assistant/Administrative Secretary position, effective July 1, 1992. The former Administrative Secretary to the School Business Administrator, Nancy Thorpe, was transferred to another position.

It appears that on April 30, 1992, Assistant Superintendent Alrita Morgan wrote to the Association requesting a meeting to discuss the terms and conditions of employment for the new position. The Association did not respond to the Board's letter,

1/ Footnote Continued From Previous Page

employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act; and (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.

2/ The Board alleges that the salary was set in accordance with the salary guide previously negotiated for a Level 6 secretary, plus a stipend previously negotiated for the Purchasing Assistant.

but the Association's President told the Board that the executive committee would discuss the matter and respond. To date, the Association has not responded to the Board's request.

Subsection 5.4(a)(5) prohibits public employers from refusing to negotiate in good faith with a majority representative concerning terms and conditions of employment of employees in the representative's negotiations unit. The Association alleges that the Board violated this subsection by failing to negotiate the changes with it prior to passing the resolutions on April 28, 1992. Under all the circumstances present here, I find that the allegations of the charge do not constitute a violation.

Public employers generally have the managerial prerogative to abolish existing positions and create new ones, as well as to transfer, assign and reassign employees to meet operational needs. Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Assn., 78 N.J. 144 (1978); Ramapo-Indian Hills Ed. Assn. v. Ramapo-Indian Hills Reg. H.S. Dist. Bd. of Ed., 176 N.J. Super. 35 (App. Div. 1980); Maywood Bd. of Ed., 168 N.J. Super. 45, certif. den. 81 N.J. 292 (1974). The Board had a managerial prerogative to abolish the Administrative Secretary to the School Business Administrator and the Purchasing Assistant, and to create the Purchasing Assistant/Administrative Secretary position. See also, Piscataway Tp. Bd. of Ed., P.E.R.C. No. 88-42, 13 NJPER 823 (¶18317 1987). It also appears that the Board had the right, without negotiations, to assign Peggy Flowers to the Purchasing Assistant/Administrative Secretary position,

effective July 1, 1992. Trenton Bd. of Ed., P.E.R.C. No. 88-16, 13 NJPER 714 (¶18266 1987); City of Atlantic City, P.E.R.C. No. 85-89, 11 NJPER 140 (¶16062 1985).

While the creation and filling of a new employment position is a managerial prerogative, the initial salary paid to the new unit position is mandatorily negotiable. Belleville Ed. Ass'n v. Belleville Bd. of Ed., 209 N.J. Super. 93 (App. Div. 1986). Further, compensation for workload increases related to transfers and reassignments is generally mandatorily negotiable. Burlington Cty. College Faculty Assn. v. Bd. of Trustees, 64 N.J. 10, 14 (1973); Woodstown-Pilesgrove Bd. Ed. v. Woodstown-Pilesgrove Ed. Assn., 81 N.J. 582, 589 (1980); Byram Tp. Bd. Ed., 152 N.J. Super. 12 (App. Div. 1977); Maywood, supra.

In Monroe Tp. Bd. Ed., P.E.R.C. No. 85-35, 10 NJPER 569 (¶15265 1984), aff'g H.E. No. 84-66, 10 NJPER 400 (¶15186 1984), the Board subcontracted its cafeteria operation and did not offer to negotiate over the severable aspects of the decision such as procedural issues, notice, severance pay and recall rights. However, the union did not demand negotiations over those items; instead, it alleged that the Board had the duty to come forward and offer to negotiate prior to implementing its decision. The Commission held that since the decision to subcontract was managerial, and since the Board was not repudiating the parties' contract or altering existing terms and conditions of employment, the union had the burden of demanding negotiations on the severable aspects of the managerial decision. The Commission held:

The important point here, however, is that the Association had the obligation to request negotiations on severance pay and related matters, and the Board had the right to an opportunity to respond, before the filing of an unfair practice charge. 10 NJPER at 570.

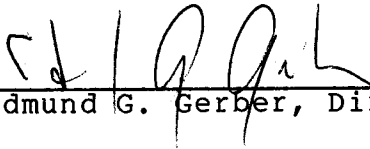
See also Trenton Bd. of Ed.

Here, after making a managerial decision, the Board offered to negotiate salary well before the Board's actual implementation of the changes in titles, duties and salary; but it appears that the Association did not respond to the Board's negotiations offer. Under these circumstances, I find that the Board's actions do not rise to the level of an unfair practice and decline to issue a complaint on this aspect of the charge. N.J.A.C. 19:14-2.3.

The Association also alleges that the Board violated subsection 5.4(a)(3). However, no facts were presented to support this allegation. Accordingly, I decline to issue a complaint on this part of the charge.

I do not believe that the Commission's complaint issuance standard has been met and decline to issue a complaint on the allegations of this charge. Accordingly, the charge is dismissed.^{3/}

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: January 14, 1993
Trenton, New Jersey

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