

P.E.R.C. NO. 87-39

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RED BANK BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-85-192-135

RED BANK TEACHERS ASSOCIATION,

Charging Party.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission, finds that the Red Bank Board of Education violated the New Jersey Employer-Employee Relations Act when it repudiated an agreement with the Red Bank Teachers Association to negotiate over evaluation procedures as part of a settlement of an unfair practice charge.

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In the Matter of

RED BANK BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-85-192-135

RED BANK TEACHERS ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Reussile, Mausner, Carotenuto, Bruno & Barger, Esqs. (Martin M. Barger, Esq.)

For the Charging Party, Klausner & Hunter, Esqs. (Stephen B. Hunter, Esq.)

DECISION AND ORDER

On February 1, 1985, the Red Bank Teachers Association ("Association") filed an unfair practice charge against the Red Bank Board of Education ("Board"). The charge alleges that the Board violated subsections 5.4(a)(1) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq, when it

^{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 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."

adopted a new evaluation document, an Intensive Assistance Plan ("I.A.P."), and implemented new evaluation procedures without first negotiating with the Association.

On May 14, 1985, the Director of Unfair Practice issued a Complaint and Notice of Hearing. The Board then filed an Answer asserting that it lawfully implemented the I.A.P.s and had no obligation to negotiate before doing so.

On January 6, 1986, the day the hearing was supposed to commence, the parties agreed to settle the case and a related Commissioner of Education proceeding. In relevant part, the Association agreed to withdraw its charge if the Board agreed to negotiate new evaluation procedures.

The Association later reported, however, that the Board had refused to negotiate and requested resumption of the proceedings.

On March 12, Hearing Examiner Richard C. Gwin convened a hearing. At the outset, the Association amended its charge to allege that the Board violated subsections 5.4(a)(1) and (5) by repudiating the January 6 settlement agreement. The Association then moved for summary judgment on these allegations, but the Hearing Examiner denied the motion because the Board had not had an opportunity to answer the amendment or respond to the motion. The Hearing Examiner then took testimony on the allegations in the original charge.

On March 20, the Board filed an Answer to the amended charge. It admits that it had agreed to meet, but denies it had agreed to negotiate.

On April 27, the Hearing Examiner conducted a hearing on the allegations in the amended charge. Following the superintendent's testimony, the Association moved for summary judgment and enforcement of the settlement agreement. The parties argued orally and waived their right to file briefs. The Hearing Examiner then granted the motion.

On June 11, 1986, the Hearing Examiner issued his report explaining why he granted summary judgment. H.E. No. 86-63, 12 NJPER 503 (¶17189 1986). See N.J.A.C. 19:14-4.8(e). He found that the Board had agreed to negotiate over evaluation procedures as part of a settlement of the original unfair practice charge and that it had later repudiated this agreement.

The Hearing Examiner served his report on the parties and informed them the exceptions, if any, were due on or before June 24. Neither party filed exceptions or requested an extension of time.

I have reviewed the record. The Hearing Examiner's findings of fact (pp. 4-5) are accurate. I adopt and incorporate them here. Under all the circumstances of this case, I also adopt the Hearing Examiner's conclusions of law. Acting pursuant to authority delegated to me by the full Commission, in the absence of exceptions, I enter the following order.

ORDER

The Public Employment Relations Commission orders the Red Bank Board of Education to:

I. Cease and desist from:

A. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed by the Act by repudiating the January 6, 1986 settlement agreement with the Association; and

B. Refusing to negotiate in good faith with the Association about evaluation procedures, in repudiation of the January 6, 1986 settlement agreement.

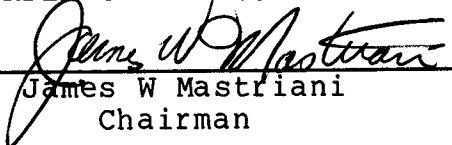
2. Take the following affirmative action:

A. Negotiate over evaluation procedures with the Association;

B. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice on forms to be provided by the Commission shall be posted immediately upon receipt thereof and, after being signed by the Respondent's authorized representative, shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials; and

C. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply herewith.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

DATED: Trenton, New Jersey
October 15, 1986

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL NOT interfere with, restrain or coerce employees in the exercise of the rights guaranteed by the Act by repudiating the January 6, 1986 settlement agreement with the Association.

WE WILL NOT refuse to negotiate in good faith with the Association about evaluation procedures, in repudiation of the January 6, 1986 settlement agreement.

WE WILL negotiate over evaluation procedures with the Association.

RED BANK BOARD OF ASSOCIATION

(Public Employer)

Dated _____

By _____ (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, Trenton, NJ 08608, (609) 292-9830.

H.E. NO. 86-63

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RED BANK BOARD OF EDUCATION,

Respondent,

- and -

Docket No. CO-85-192-135

RED BANK TEACHERS ASSOCIATION,

Charging Party.

SYNOPSIS

The Hearing Examiner finds that the Board violated 5.4(a)(1) and (5) when it refused to negotiate the issue of evaluation procedures with the Association, contrary to a settlement agreement to do so. As a remedy, the Hearing Examiner recommends enforcement of the agreement.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

H.E. NO. 86-63

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RED BANK BOARD OF EDUCATION,

Respondent,

- and -

Docket No. CO-85-192-135

RED BANK TEACHERS ASSOCIATION,

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Appearances:

For the Respondent,
Reussile, Mausner, Carotenuto, Bruno & Barger, Esqs.
(Martin M. Barger, Esq.)

For the Charging Party,
Klausner & Hunter, Esqs.
(Stephen B. Hunter, Esq.)

HEARING EXAMINER'S
RECOMMENDED REPORT AND DECISION

On February 1, 1985, the Red Bank Teachers Association ("Association") filed an unfair practice charge against the Red Bank Board of Education ("Board") alleging violations of subsections 5.4(a)(1) and (5)^{1/} of the New Jersey Employer-Employee Relations

^{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

Footnote Continued on Next Page

Act, N.J.S.A. 34:13A-1 et seq. ("Act"). The Association alleged that the Board adopted a new evaluation document, an Intensive Assistance Plan ("I.A.P."), and implemented new evaluation procedures, without first negotiating with the Association.

On May 14, 1985, the Director of Unfair Practices issued a Complaint and Notice of Hearing.

On May 21, 1985, the Board filed an answer asserting that the I.A.P.'s were lawfully implemented and generally denying that it had any negotiations obligation.

After several postponements occasioned by the parties' requests, a hearing was scheduled for January 6, 1986. Prior to opening the record on January 6, the parties met and agreed to settle the issues raised in the Association's charge. In exchange for the Association's commitment to withdraw its unfair practice charge, the Board agreed, among other things, to meet and negotiate the issue of evaluation procedures. I was later contacted by the Association and told that the Board had subsequently refused to negotiate the issue.

I convened a hearing on March 12, 1986. On that date, the Association amended its charge to allege that the Board violated subsections 5.4(a)(1) and (5) by refusing to negotiate the issue of

1/ Footnote Continued From Previous Page

conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

evaluation procedures, contrary to the agreement of January 6, 1986. The Association moved for summary judgment on its amended charge seeking enforcement of the agreement reached January 6, 1986. I denied the motion because the Board did not have an opportunity to respond to the motion or to file an answer to the amended charge.^{2/} The remainder of the first day of hearing was spent taking testimony from an Association witness on the original charge.

On March 20, 1986, the Board filed an answer to the amended charge asserting generally that it agreed to meet, but not necessarily negotiate with the Association on the issue of evaluation procedures.

I convened a second day of hearing on April 17, 1986. The Association called Dr. Joan D. Abrams, the Superintendent of Schools. At the conclusion of Dr. Abrams' testimony, the Association again moved for summary judgment seeking enforcement of the settlement agreement. The parties both presented argument on the motion and waived their right to file briefs.

I granted the motion. Because the ruling resolves the complaint in its entirety, N.J.A.C. 19:14-4.8(e) requires that I prepare a hearing examiner's recommended report and decision. My ruling, as it appears on the record, was based on the following:

^{2/} The parties requested that, rather than transfer the motion to the Commission for a ruling, I take testimony on the amended charge at a later date. It was agreed that, should the Association desire to renew its motion after all relevant testimony was taken, I would make a ruling at that time.

FINDINGS OF FACT

"1. On January 6, 1986, the date originally scheduled as the first day of hearing in this matter, representatives of the Board and the Association met at the Commission's offices and entered into discussions about settling the issues raised by the Association's charge. [T p. 17] ^{3/}

"2. The result of those discussions was an agreement by the Board to negotiate the issue of evaluation procedures in consideration for the Association's agreement to withdraw the instant unfair practice charge and a related proceeding. Also part of that agreement was a commitment to take certain actions relative to a teacher. Those commitments have been fulfilled and are no longer at issue in this proceeding. [T pp. 18, 20, 31, 32, 40, 41]

"3. Neither party reserved, on January 6, 1986, the right to ratify that agreement. [T pp. 31, 32, 40, 41]

"4. In early February the Association presented a proposal to the Board. [CP-13]

"5. A meeting between the Association and the Board was scheduled for March 3, 1986.

"6. A few hours before the meeting began, the Board's negotiations committee met with the Board's negotiator and the Superintendent of Schools. At this meeting the chairman of the

^{3/} The "T" cites refer to the transcript of the testimony taken on April 17, 1986.

Board's negotiations team indicated that he was unwilling to negotiate the issue of evaluation procedures because the issue had been discussed in the last rounds of the parties' contract negotiations and because the Association had refused a Board offer made at that time to establish a committee to deal with the issue. [T pp. 21, 33-35]

"7. At the meeting between the Board and the Association on March 3rd, Mr. Rogin, the Board's negotiator, indicated that the Board refused to negotiate the issue of evaluation procedures with the Association. The Board did not discuss or reject the proposal submitted by the Association, it simply refused to negotiate. [T pp. 33, 39]

"8. The Board does not assert that the agreement reached on January 6, 1986, was ultra vires, (and I add parenthetically that an agreement to negotiate evaluation procedures, even mid-contract, is not ultra vires).

"9. The Board has indicated that it does not intend to produce any other witnesses to the issues raised in the Association's amended charge pertaining to the alleged violation of the settlement agreement reached on January 6, 1986, nor does the Board dispute the testimony of Dr. Abrams which forms the basis for this list of uncontroverted findings." [T pp. 52, 53]

DISCUSSION

The Association characterized its motion as a summary judgment motion seeking enforcement of a settlement agreement. When

the Association moved for summary judgment on March 12, 1986, I denied the motion because the Board had no chance to respond. I pointed out that a summary judgment motion is filed with the Chairman, who decides either to submit the motion to the Commission for a ruling or to refer it to the hearing examiner for consideration. N.J.A.C. 19:14-4.8(a). The Commission rules permit the moving as well as the responding party an opportunity to file briefs, affidavits and supporting documents. N.J.A.C. 19:14-4.8(b) and (c). A ruling on a motion for summary judgment is typically based on those documents. N.J.A.C. 19:14-4.8(d).

Here, the parties agreed that, in order to avoid the delay which may have resulted from obtaining affidavits, filing briefs and transferring the case to the Commission, they would proceed by taking testimony on the amended charge, with the understanding that a decision on it could result in a resolution of the entire matter. My ruling was based on the parties' pleadings, the uncontroverted testimony of Dr. Abrams and the representation by the Board that it had no other evidence to submit on the amendment. The parties argued orally. The Board did not object to the form of the motion when it was renewed at the conclusion of Dr. Abrams' testimony, nor did it assert that it was prejudiced by the failure to litigate the merits of the original charge. Both parties waived their right to file briefs. My ruling, though couched in terms of a ruling on a motion for summary judgment, could be characterized as a typical hearing examiner's decision, based on a complete record on the amended charge.

In granting the motion, I applied the standards set forth in N.J.A.C. 14-4.8(d). I concluded that no genuine issues of material fact existed. This conclusion was based on the credible, uncontroverted testimony of Dr. Abrams, the Superintendent of Schools, and the assertion by the Board that it had nothing further to present on the issues raised in the amended charge.

The distilled, uncontroverted facts are that, to settle an unfair practice charge, the parties agreed to meet and negotiate the issue of evaluation procedures and the Board subsequently refused to do so. I held, as a matter of law, that the Association was entitled to the relief it sought - enforcement of the settlement agreement. The remainder of this decision explains my legal conclusion.

In order to prove a violation of the duty to negotiate in good faith, the moving party must show 1) that the underlying issue is mandatorily negotiable and 2) that the respondent had an obligation to negotiate but did not. My ruling rests on the assumption that the settlement agreement of January 6, 1986, necessarily created an obligation on the Board to negotiate.

Generally, a compromise agreement is a contract and, like other contracts, requires a definitive offer and acceptance, consideration, and parties possessing the capacity and authority to enter the agreement. See 15A Am. Jr. 2d. Compromise and Settlement, §1. The record reveals that, in consideration for the Association's commitment to withdraw its charge, representatives of the Board,

without reserving any right of ratification, agreed to negotiate the issue of evaluation procedures. The consideration is obvious: in return for the Board's promise to negotiate evaluation procedures, it could avoid the time, cost and inconvenience of litigating an unfair practice charge.

New Jersey courts do not, as a rule, inquire into the adequacy of the consideration underlying a compromise fairly and deliberately made. Honeywell v. Bubb, 130 N.J. Super. 130, 136 (App. Div. 1974). "The necessary elements of a valid contractual compromise are the bona fides of the dispute and consideration and the reality, not the unknown and undetermined substantiality of the claim." Meola v. Gorga, 27 N.J. Super., 390, 394 (App. Div. 1953) (citations omitted). However, because the compromise agreement here involves a public employer and has implications reaching beyond the interests of a plaintiff and a defendant in a civil law suit, I approach the issue of the terms of the agreement with caution.

The Board agreed to negotiate evaluation procedures. Its initial alleged refusal to do so was the gravamen of the original unfair practice charge. It is well settled that the issue is mandatorily negotiable. Bethlehem Twp. Bd. of Ed., 92 N.J. 38, (1982); Ocean Twp. Bd. of Ed., P.E.R.C. No. 85-123, 11 NJPER 378 (¶16137 1985) aff'd Docket No. A-4753-84T1 (4/9/86); Garfield Bd. of Ed., P.E.R.C. No. 85-49, 10 NJPER 639 (¶15307 1984). In entering the agreement, the Board did not forfeit any right attendant to its status as a governmental entity. Nothing compels the Board to

surrender or even discuss any managerial prerogative. The agreement merely requires the Board to negotiate, not capitulate. In re Byram Twp. Bd. of Ed. v. Byram Twp. Ed. Assn., 152 N.J. Super. 12, 30 (App. Div. 1977). I see no offense to public policy. cf. Borough of East Rutherford, P.E.R.C. No. 82-51, 7 NJPER 12307 (1981).

To the contrary, settlement of litigation ranks high in New Jersey's public policy and courts will be very reluctant to set such agreements aside. e.g., Jannarone v. W.T. Co., 45 N.J. Super. 472 (App. Div. 1961) certif. denied sub nom. Jannarone v. Calamoneri, 35 N.J. 61 (1961). "Barring fraud or other compelling circumstances, our courts strongly favor the policy that settlement of litigation be attained and agreements thereby reached, be honored." Honeywell v. Bubb, 130 N.J. Super. at 136. Moreover, it is the statutory mission of this agency to encourage and facilitate the prompt resolution of labor relation's disputes. N.J.S.A. 34:13A-2 and 6. To this end, the Commission has adopted rules specifically granting its hearing examiners the discretion and authority to assist the parties in reaching amicable settlements on unfair practice issues at all stages of the process. N.J.A.C. 19:14-1.6(c); N.J.A.C. 19:14-6.2; N.J.A.C. 19:14-6.3(a)(7).

The deference given settlement agreements is demonstrated by two Commission cases. In In re Borough of Hawthorne, P.E.R.C. No. 82-37, 7 NJPER 12268 (1981), the Commission affirmed a hearing examiner's decision granting a motion to dismiss an unfair practice charge because the underlying dispute (the alleged retaliatory

transfer of a patrol officer) had been settled by the parties in previous contract negotiations. The hearing examiner decision was based, in substantial part, on the swell of public policy favoring settlement. In In re North Brunswick Township Board of Education, P.E.R.C. No. 82-107, 8 NJPER 13141 (1982) ("North Brunswick") the Commission affirmed a hearing examiner's decision denying an education association's motion to set aside a settlement agreement. The agreement provided that the parties would conduct one negotiations session concerning an alleged increase in work load and that the Association would withdraw its unfair practice charge. Again, the hearing examiner emphasized Appellate Division cases setting forth a strong policy of honoring settlement agreements.

It is this policy favoring settlement agreements, endorsed by the Courts, the Legislature and the Commission, together with the fact that the issue of evaluation procedures is mandatorily negotiable, that forms the basis of my conclusion that the agreement of January 6, 1986 did create an obligation on the Board to negotiate. To hold otherwise would dilute the value of such agreements and be counterproductive to the process of resolving labor relations disputes.

The only remaining question is whether the Board refused to negotiate. The Board voluntarily entered an agreement to negotiate a mandatory subject. When it met with the Association, however, it stated that it would not negotiate. This is not give and take or hard bargaining. This is a refusal to negotiate in its purest form.

The only reason offered by the Board for its refusal to negotiate was that it had raised the issue in a previous round of contract negotiations.^{4/} The Board argues that the Association would somehow be getting a second bite of the apple if the Board had to negotiate the issue now. The Board's argument may or may not be a defense to the original charge. The parties' contract covers a three year term from 1984-87. The record is unclear on the timeframe between the parties' last round of negotiations and the alleged change in evaluation procedures. There is nothing on the record to suggest that a change was contemplated by the parties while they were in negotiations. The record does clearly reflect, however, that on January 6, 1986, the Board agreed to negotiate the issue. This constitutes a new beginning for the counting of apple bites.

Based on the above, I conclude that the Board violated sections 5.4(a)(1) and (5) of the Act when it refused to negotiate the issue of evaluation procedures with the Association contrary to the settlement agreement of January 6, 1986. I further conclude that the appropriate remedy is enforcement of the agreement. Accordingly, I recommend that the Commission deem the Association's

^{4/} The Board does not assert that the terms of the settlement agreement are uncertain. In North Brunswick, the Commission rejected the argument that an agreement to negotiate a mandatory subject should be set aside because its terms were uncertain. Compare Union County Board of Chosen Freeholders, H.E. No. 82-18, 8 NJPER 2 (¶13001 1981).

original unfair practice charge to be withdrawn and issue an order that the Board negotiate the issue of evaluation procedures with the Association.

RECOMMENDED ORDER

For the reasons set forth above, IT IS HEREBY ORDERED:

A. That the Respondent, Red Bank Board of Education, shall cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed by the Act by repudiating the settlement agreement reached on January 6, 1986 with the Association.

2. Refusing to negotiate in good faith with the Association about the issue of evaluation procedures, contrary to the settlement agreement of January 6, 1986.

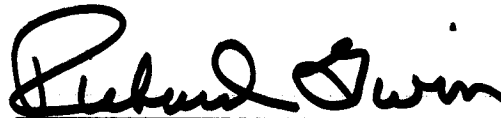
B. The Respondent, Red Bank Board of Education take the following affirmative action:

1. Negotiate the issue of evaluation procedures with the Association.

2. Post in all places where notices to employees are customarily posted, copies of the attached Notice marked as Appendix "A." Copies of such notice, on forms to be provided by the Commission, shall be posted immediately upon receipt thereof, and, after being signed by the Board's authorized representative, shall be maintained by it for a period of at least sixty (60) consecutive days. Reasonable steps shall be taken by the Board to ensure that such notices are not altered, defaced or covered by other material.

3. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Board has taken to comply herewith.

It is hereby further ORDERED that the Association's original unfair practice charge is deemed to be withdrawn, consistent with the settlement agreement entered by the parties on January 6, 1986.



Richard, C. Gwin
Hearing Examiner

DATED: June 11, 1986
Trenton, New Jersey

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL NOT interfere with, restrain or coerce our employees in the exercise of the rights guaranteed by the Act by failing to honor the settlement agreement made with the Association on January 6, 1986.

WE WILL NOT refuse to negotiate in good faith with the Association about the issue of evaluation procedures as required by the settlement agreement of January 6, 1986.

Red Bank Board of Education

(Public Employer)

Dated _____

By _____ (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with James W. Mastriani, Chairman, Public Employment Relations Commission, 495 W. State Street, Trenton, New Jersey 08625 (609) 292-9830.