

D.U.P. NO. 87-15

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

In the Matter of

TRENTON BOARD OF EDUCATION

Respondent,

-and-

DOCKET NO. CO-87-234

TRENTON EDUCATION ASSOCIATION

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a Complaint on an allegation that the Trenton Board of Education refused to reduce a negotiable agreement to writing and to sign such agreement where the Association presented no facts that the Addendum to the Memorandum of Agreement was not subject to ratification. A Board of Education does not have an obligation to ratify every tentative agreement presented to it by its negotiating team.

However, the Director did issue a Complaint on that portion of the charge which alleged a violation of subsection (a)(5) where the Association alleged that the Board either did not review the Addendum before it voted on it or that the Addendum was misrepresented to it.

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Appearances:

For the Respondent,
Smithson and Graziano, Esqs.
(Daniel J. Graziano, of counsel)

For the Charging Party,
Ruhlman, Butrym and Friedman, Esqs.
(Richard A. Friedman, of counsel)

REFUSAL TO ISSUE COMPLAINT

On February 19, 1987, the Trenton Education Association ("Association") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") against the Trenton Board of Education ("Board") alleging violations of subsections (a)(1), (5) and (6) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").^{1/} It is the Association's

^{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

position that the Board refused to ratify an Addendum to a Memorandum of Agreement and the Addendum concerned retroactivity of the longevity increments contained in the Memorandum of Agreement. The Association contends the Board violated the Act by failing to negotiate this provision in good faith, and by failing to reduce the agreement to writing.

The Board denies it committed an unfair practice. It points out that the agreement in question was specifically subject to ratification by the full Board. It contends that, consistent with this reservation of right, the Board knowingly and legitimately rejected the provision.

Subsequent to an exploratory conference held between the parties with a Commission staff attorney, we issued an initial determination on April 2, 1987, indicating we were not inclined to issue a complaint in this matter. The Association was then given an opportunity to present compelling reasons and/or additional facts why this determination should be reversed.

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 of employees in that unit, or refusing to process grievances presented by the majority representative; (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement;"

By letters dated April 6 and 9, 1987, the Association further expounded on its claim that the Board bargained in bad faith when it failed to ratify the Addendum to the Memorandum of Agreement. It maintains that the agreement presented to the Board for a vote was not the same agreement which was reached by the parties at the negotiating table. The Association does not dispute that the agreement embodied in the Addendum to the Memorandum of Agreement accurately reflected the negotiated provision, but rather argues "either the Addendum was not shown to the Board, or if it was shown, the Board was incorrectly told that the Addendum did not reflect the terms of the parties' agreement, when as a matter of fact, the Addendum did reflect those terms."^{2/} In addition, the Association claims the Board committed a separate unfair practice when it first agreed to take a second vote on the longevity provision and then later refused to do so.

We have carefully reviewed the charge as filed and the subsequent submissions by the Association. In the first instance, we can find nothing within the four corners of the charge to suggest that the ratification vote was unnecessary or improper. As we read the charge, it merely recites the chronological events leading up to the ratification vote (the need for which is not disputed), and then alleges only a failure to ratify. It is well settled that under these circumstances, the Board does not have an obligation to ratify

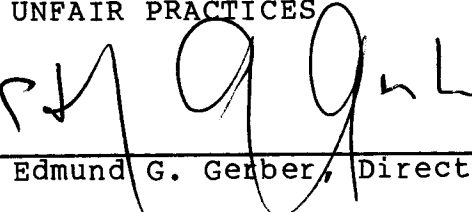
^{2/} Letter of April 9, 1987, p. 2.

every tentative agreement presented to it by its negotiating team. See Glen Rock Bd. of Ed., P.E.R.C. 82-11, 7 NJPER 454 (¶12201 1981); Borough of Wood-Ridge, P.E.R.C. 81-105, 7 NJPER 149 (¶12066 1981); Lower Township Board of Education, P.E.R.C. No. 78-32, 4 NJPER 24 (¶4013 1977).

The facts, as initially alleged and as stated in the Association's supplemental letter, do not on their face demonstrate that the Board refused to reduce a negotiated agreement to writing and sign such agreement. Accordingly, that portion of the charge alleging violation of subsection (a)(6) is denied.

However, we will issue a Complaint as to the allegation that the Board either did not review the Addendum before it voted on it or this Addendum was misrepresented to them, and further refused to take a second vote on the Addendum. These facts, if true, might constitute an unfair practice and accordingly, the charge may go forward on that portion of the charge alleging a violation of subsection (a)(5). A Complaint and Notice of Hearing in this matter is being issued under separate cover.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: April 30, 1987
Trenton, New Jersey