

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SPOTSWOOD BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-84-19-35

SPOTSWOOD CAFETERIA EMPLOYEES
ASSOCIATION,

Charging Party.

SPOTSWOOD CAFETERIA EMPLOYEES
ASSOCIATION,

Respondent,

-and-

Docket No. CE-84-20-131

SPOTSWOOD BOARD OF EDUCATION,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission denies the Board's Motion to Dismiss the Association's amended charge alleging a violation of subsection 5.4(a)(6) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. However, the Hearing Examiner grants the Motion with regard to an alleged 5.4(a)(7) violation. The Association never set forth any Commission rule or regulation alleged to have been violated.

A Hearing Examiner's decision on a Motion to Dismiss which does not finally resolve the issues in the Complaint shall not be appealed directly to the Commission except by special permission of the Commission pursuant to N.J.A.C. 19:14-4.6.

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Appearances:

For the Board

Golden, Shore, Zahn & Richmond, Esqs.
(John B. Wolf, of Counsel)

For the Association

Klausner & Hunter, Esqs.
(Stephen E. Klausner, of Counsel)

INTERLOCUTORY DECISION ON
MOTION TO DISMISS AMENDED COMPLAINT

An Unfair Practice Charge (CO-84-19-35) was filed with the Public Employment Relations Commission ("Commission") on July 25, 1983 by the Spotswood Cafeteria Employees Association ("Association") alleging that the Spotswood Board of Education ("Board") has engaged in unfair practices within the meaning of subsections 5.4(a)(1), (3) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A.

34:13A-1 et seq. ("Act"). ^{1/} Subsequently, on March 14, 1984 the Board filed a charge against the Association (CE-84-20-131) alleging that the Association engaged in unfair practices within the meaning of subsections 5.4(b)(3), (4) and (5) of the Act. ^{2/}

Thereafter, on April 24, 1984, the Charges were consolidated and a Complaint and Notice of Hearing was issued. The hearing commenced on May 17, 1984 and resumed on May 18 and June 21, 1984. Further hearings are scheduled for July 24 and 25, 1984.

Prior to the third day of hearing the Association filed an amendment to CO-84-19-35 alleging a violation of 5.4(a)(6) and (7) of the Act. ^{3/} At the hearing on June 21, the Board objected to the Amendment, and on June 26, it submitted a formal Motion 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; (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage 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 conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

^{2/} These subsections prohibit employee organizations, their representatives or agents 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; (5) Violating any of the rules and regulations established by the commission."

^{3/} The Association's amendment actually listed 5.4(a)(5) rather than (a)(6). However, the Association communicated that its intent was to file an (a)(6) and not an (a)(5) Charge in that amendment.

The alleged subsections in the amendment provide that public employers, their representatives or agents are prohibited from: "(6) Refusing to reduce a negotiated agreement to writing and to sign such agreement; (7) Violating any of the rules and regulations established by the commission."

Dismiss the Amendment. As an alternative to the Motion to Dismiss the Board requested that it be given additional time to file an Answer to the Amendment.

The Association in the Amended Charge alleged that the parties had negotiated and ratified a new collective agreement, and it asserted that the Board in preparing the collective agreement excluded a work hours guarantee clause that had been included in the preceding agreement. The Association seeks to require the Board to sign an agreement which includes the alleged work hours clause. However, the Association did not allege any facts concerning an (a)(7) charge.

The Association's Amendment is essentially the antithesis of the Board's CE Charge. The Board in its Charge seeks to compel the Association to sign an agreement which does not include a work hours guarantee. The Board asserted that the Association had rejected a package offer which had included the work hours guarantee, and that it subsequently reached an agreement which did not include that clause.

The Board's primary objection to the Amendment seems to be that it will complicate and lengthen the processing of the matters already in hearing. The Association argued that the Amended Charge involves the same issues raised in the CE case, and that it would be pursued as a separate matter if dismissed herein.

Having considered the parties' positions regarding this matter the undersigned denies the Motion to Dismiss with regard to the (a)(6) allegation. First, the Amended Charge, on its face, appears to be timely, and second, it concerns the same issues raised in the

CE Charge. It makes far more sense and provides for greater administrative efficiency to consolidate that matter with the present matters rather than to risk the need for a separate hearing on the same facts that will be litigated in CE-84-20-131. The undersigned, however, will grant the Board's request for additional time to file an amended answer. 4/

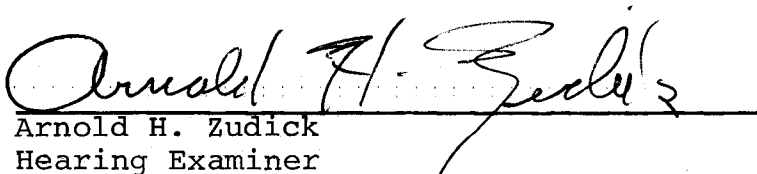
However, the Motion to Dismiss is granted with respect to the (a)(7) allegation. The Association failed to set forth any Commission rule or regulation alleged to have been violated.

ORDER

For the above-stated reasons, it is hereby ORDERED that:

1. The 5.4(a)(7) allegation in the Amended Charge is dismissed.
2. The Motion to Dismiss the 5.4(a)(6) allegation of the Amended Charge is denied.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


Arnold H. Zudick
Hearing Examiner

Dated: July 12, 1984
Trenton, New Jersey

4/ The amended answer shall be due no later than July 24, 1984.