

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PARSIPPANY-TROY HILLS TOWNSHIP
BOARD OF EDUCATION,

Respondent,

Docket No. CI-77-11-89

-and-

YVONNE BARANOWSKI; THOMAS KNIPP;
ET AL.,

Charging Parties.

SYNOPSIS

The bus drivers employed by the Parsippany-Troy Hills Township Board of Education, filed an Unfair Practice Charge against the Board, alleging a violation of N.J.S.A. 34:13A-5.4 (a)(1) and (5). The charge alleged that the Board unlawfully deleted from a final collective negotiations agreement two items which were contained in a prior memorandum of understanding.

The Hearing Examiner found that the Board never fully ratified the memorandum of understanding and that the deletion of the two items in question from the final agreement was the result of bilateral collective negotiations between duly designated representatives of the public employees and the Board, cloaked with the apparent or actual authority of their principals to conclude an agreement. The charging parties filed exceptions and a supporting brief.

The Commission having carefully considered the entire record in this matter, accepted the Hearing Examiner's recommendation that the Board did not commit the charged unfair practices, essentially for the reasons stated by the Hearing Examiner, and therefore the Complaint was dismissed in its entirety. The Commission made no finding on the question of whether or not individual employees have standing to prosecute a charge alleging that a public employer has refused to negotiate with a majority representative of public employees concerning grievances and terms and conditions of employment.

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Charging Parties.

Appearances:

For the Respondent, Murray, Meagher & Granello, Esqs.
(Mr. Robert J. Hrebek, of Counsel)

For the Charging Parties, Mr. John W. Davis, UniServ
Representative, N.J.E.A.

DECISION AND ORDER

On September 16, 1976, the Parsippany-Troy Hills Bus Drivers and Thomas Knipp (an individual bus driver) filed an Unfair Practice Charge, Docket No. CO-77-62, with the Public Employment Relations Commission alleging that the Parsippany-Troy Hills Township Board of Education (the "Board") had committed unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. On December 17, 1976, the unfair practice charge was amended. The amended charge provided additional details regarding the alleged violations and also listed as the Charging Parties each individual bus driver.^{1/} The charge

^{1/} The caption and docket number of the charge were changed from CO-77-62 to CI-77-11-89 prior to the issuance of the Complaint. Apparently the change was prompted by receipt of a letter (Exhibit R-4 in evidence) from the majority representative of the bus drivers and other employees requesting that the case "be removed
(Continued)

alleged that the Board had violated N.J.S.A. 34:13A-5.4(a)(1) and (5)^{2/} by excluding from a newly negotiated agreement two items which had been incorporated in a memorandum of understanding which was executed by the Board and the Parsippany-Troy Hills Matron, Maintenance, Custodial, and Bus Drivers Association (the "Association").

It appearing that the allegations, if true, might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on February 9, 1977. Hearings were held on March 28 and May 1, 1977 before Edmund G. Gerber, Hearing Examiner of the Commission, at which time the parties were given the opportunity to present relevant evidence, examine and cross-examine witnesses, and to argue orally. Post-hearing briefs were submitted by both parties. On February 1, 1978, the Hearing Examiner issued his Recommended Report and Decision, which report included findings of fact, conclusions of law, and a recommended decision. The original of the report was filed with the Commission and copies were served upon all parties. A copy is attached hereto and made a part hereof.^{3/}

1/ (Continued) from further action." The preface "CO" denotes a charge filed on behalf of an employee organization whereas "CI" indicates that the charging party is an individual. Both the original charge and the amendment were signed by UniServ Representative John W. Davis, who also prosecuted the case and filed exceptions to the Hearing Examiner's Recommended Report and Decision.

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

3/ H.E. No. 78-22, 4 NJPER 100 (Para. 4045 1978).

The Hearing Examiner concluded that although the parties had signed a memorandum of understanding which included the two disputed items, the Board had only ratified the memorandum subject to clarification regarding one of the two disputed items. He concluded that the two items, which were not included in the parties' final agreement, had been deleted as a result of bilateral negotiations between the authorized representative of the Board and the Association which was the duly authorized representative of the bus drivers. It was also concluded that the parties' representatives were cloaked with the actual or apparent authority of their principals to conclude such an agreement. Further, evidence does not indicate that agreements between the parties' representatives were subject to ratification. There was no evidence introduced at the hearing to show that the Board committed an unfair practice during the course of these negotiations. Accordingly, the Hearing Examiner recommended that the Complaint be dismissed in its entirety.

On February 28, 1978, pursuant to an approved request for an extension of time, the charging parties filed exceptions and supporting brief to the Hearing Examiner's Recommended Report and Decision.

The exceptions assert that the initial memorandum of understanding constituted a final agreement, that any subsequent meetings could only be for the purpose of working out final contract language, and that the Board could not engage in any action which had the effect of changing the initial memorandum.

By letter dated March 10, 1978, the Board stated that

it would file no exceptions although it also stated that it did not wish defenses raised by the Board to be deemed waived.

We have considered the entire record in this matter and find, in agreement with and essentially for the reasons stated by the Hearing Examiner, that the Board never fully ratified the apposite memorandum of understanding; that the parties' duty designated representatives, possessed of the actual or apparent authority to bind their principals, engaged in bilateral collective negotiations, and executed a final agreement which modified that memorandum;^{4/} and that there was no evidence advanced at the hearings to show that the Board committed an unfair practice during the course of collective negotiations. Thus, we also find that the charging parties' exceptions are without merit.

As we are dismissing the entire Complaint, we find it unnecessary to address the other defenses raised by the Board. Furthermore, we wish to state explicitly that we are not adopting the Hearing Examiner's conclusion that an individual can bring a refusal to negotiate (N.J.S.A. 34:13A-5.4a(5)) charge against a public employer.

For the reasons set forth above, it is hereby ordered that the Complaint be dismissed in its entirety.

BY ORDER OF THE COMMISSION


Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Hartnett and Parcels voted for this decision. None opposed. Commissioners Graves, Hipp and Schwartz abstained.

DATED: Trenton, New Jersey
April 20, 1978
ISSUED: April 25, 1978

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BEFORE A HEARING EXAMINER OF THE PUBLIC EMPLOYMENT
RELATIONS COMMISSION

In the Matter of

PARSIPPANY-TROY HILLS TOWNSHIP
BOARD OF EDUCATION,

Respondent,

-and

Docket No. CI-77-11-89

YVONNE BARANOWSKI; THOMAS KNIPP,
ET AL.,

Charging Party.

SYNOPSIS

Yvonne Baranowski and Thomas Knipp brought this action before the Public Employment Relations Commission on behalf of all bus drivers employed by the Parsippany-Troy Hills Township Board of Education (the "Board"). They claimed that the Board committed an unfair practice when it negotiated a new contract for 1975-77 with the Parsippany-Troy Hills Matron, Maintenance, Custodial and Bus Drivers Association (the "Association"). The Association and the Board signed a memorandum of understanding on November 19, 1975. In that memorandum were two provisions which benefited bus drivers: One created the position of lead man and the other guaranteed work for bus drivers. This memorandum was never fully ratified by the Board and in July 1976 a contract was finally entered into between the parties in which these two items were deleted. The individual bus drivers claim that the Board committed an unfair practice by signing this contract without the two provisions concerning the bus drivers. In a Recommended Report and Decision a Hearing Examiner found that the deletion of the two paragraphs was the result of negotiations between the Board and the Association, which was the duly designated representative of the bus drivers, and there was no evidence introduced at the hearing to show that the Board committed an unfair practice during the course of these negotiations. Accordingly, the Hearing Examiner recommended to the Commission that they dismiss the unfair practice complaint.

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 conclusions of law.

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Docket No. CI-77-11-89

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ET AL.,

Charging Party.

Appearances:

For the Parsippany-Troy Hills Township Board of Education
Murray, Meagher & Granello, Esq.
(Robert J. Hrebek, of Counsel)

For Yvonne Baranowski, Thomas Knipp, et al.
(John W. Davis)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

On September 16, 1976, Thomas Knipp, an individual, filed this charge on behalf of all Parsippany-Troy Hills Board of Education bus drivers claiming the Parsippany-Troy Hills Board of Education (the "Board") committed an unfair practice within the meaning of N.J.S.A. 34:13A-5.4(a)(1) and (5) ^{1/} by excluding from a newly negotiated contract two items which were incorporated in the memorandum of understanding that was executed by the Board and the Parsippany-Troy Hills Matron, Maintenance, Custodial and Bus Drivers Association (the "Association"). On December 17, 1976, the unfair practice charge was amended to list

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

the charging party as Yvonne Baranowski, Thomas Knipp and all other affected bus drivers. The hearing in this matter was commenced on March 28, 1977, and concluded on the second day of hearing, May 11, 1977. Sequential briefs were submitted by both parties with the final brief received on July 28, 1977. ^{2/}

Mr. Knipp, as one of the individuals bringing this charge, testified on his own behalf. Mr. Knipp is a bus driver for the Board and was one of four members of the negotiating team for the Association for the 1975-1977 collective negotiations contract. Knipp testified that on or about September 17, 1975, the parties entered into a memorandum of agreement which incorporated terms of settlement for the two years in question. The memorandum contained two provisions which are now in issue. Item #1 states "the Board and the Association agree that any and all trips using buses, vans or substitute vehicles owned or contracted by the Parsippany-Troy Hills Board of Education shall be driven by regularly employed Parsippany-Troy Hills Board of Education bus drivers." Item #2 provides that "the Board and Association agree that the lead bus driver shall be placed on the lead man's salary guide." The agreement was ratified by all Association members and on November 13, 1975, the Board at a public meeting ratified the memorandum of agreement with the reservation that the language of Item #1 of the memorandum had to be clarified. No action was immediately taken to clarify this language and Knipp took the initiative and contacted Board members to set up a meeting to do so and in fact sent a proposal for the clarification of said language to both his other negotiating team members and individual members of the Board. However, no action was taken on the language and although the salary provisions of the memorandum were instituted in December of 1975 the final contract had not yet been drawn up in June of 1976.

^{2/} Upon the entire record in this proceeding, I find that the Board is a public employer within the meaning of the Act and is subject to its provisions. The Charging Parties are public employees within the meaning of the Act and are subject to its provisions. An unfair practice charge having been filed with the Commission alleging that the Board has engaged or is engaging in an unfair practice within the meaning of the Act, questions concerning alleged violations of the Act exist and these matters are appropriately before the Commission for determination.

Knipp went on vacation in July of 1976. Upon his return in mid-July he found that the contract between the parties had been printed. Articles I and II of the memorandum had been deleted from the contract. He thereupon approached Walter Badaraca and Jack Kelchaw, President and Vice President of the Association, respectively, and fellow members of the negotiating team, but could not get a satisfactory answer from them as to what had happened. He then approached members of the Board but again could not get what he considered a satisfactory answer to what had happened in his absence and brought this charge.

Joseph Winish is Secretary and Business Administrator to the Board. His testimony was basically in accord with that of Knipp as to those events which led up to the ultimate signing of the contract in this matter. Winish stated that on June 22 there was a meeting between himself, his labor counsel Mr. Robert Murray, and Badaraca and Kelchaw for the Association. They met in an effort to resolve the outstanding language dispute in the memorandum of understanding. Winish further testified that at that meeting an agreement was entered into between the Association representatives and himself and Bob Murray for the Board. The agreement, in its entirety, states, "Items #1 and #2 of the proposals for 1975-76 entitled 'Drivers and Trips' and 'Bus Driving Lead Men' are hereby deleted by mutual agreement." Signed for the Association by Badaraca and Kelchaw and for the Board of Education by Robert Murray. Winish stated that after this agreement was entered into he went back to the Board which approved his actions although no official ratification was taken of this new agreement.

It is not clear from the record whether or not a ratification vote was taken by the Association. However, Knipp stated that he never received any notification from the Association of a meeting to ratify this agreement nor did any of his fellow bus drivers advise him of such a meeting. As noted above the original charge filed in this case was in the name of the Parsippany-Troy Hills bus drivers. A letter was introduced into evidence by the Board signed by Kelchaw, the Vice President of the Association, and addressed to this Commission which stated, "This action [the filing of the charge] does not

have the consent of the Association" and the Association requested that it be "removed from further action."

On the basis of the facts presented, the undersigned cannot find where the Board committed an unfair practice. The Board has a duty only to negotiate with the designated employee representatives and there is no question that they did so in this case. Even though Knipp was a member of the negotiating team and an employee representative, it was the Board's understanding that the officers of the Association were the chief negotiating representatives. [Knipp characterized the president as being the "chief."] While one might question the wisdom of the Association officers in giving up two of the bus drivers' negotiated benefits simply to have the contract signed, the Board is not responsible for the actions of the Association's representatives. There is no question that the Association representatives entered into an agreement which did get the contract signed. The Charging Party argues that the amendments resulting in the contract were not binding for there was no ratification of the June 22nd agreement by the Board. However, assuming arguendo that Baranowski and Knipp as individuals have a right to raise this argument, ratification is not a condition precedent to the validity of a contract. If the Board negotiators are cloaked with apparent authority, then there is a binding contract. See In re Bergenfield, P.E.R.C. No. 90, 1 NJPER 44 (1975); In re East Brunswick, P.E.R.C. No. 77-6, 2 NJPER 279, H.E. No. 76-13, 2 NJPER 204 (1976). Similarly, the Association representatives who signed the agreement on June 22nd made no reference or reservations concerning the necessity of ratification.

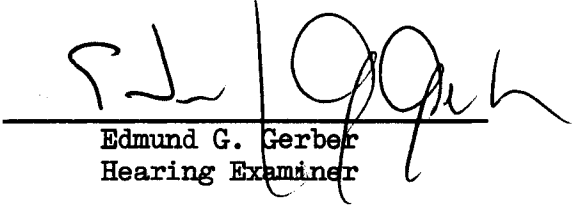
The Board raised several other defenses to this matter which are not necessary to comment on here with two exceptions. The Board questioned the right of an individual to bring a refusal to bargain charge against a public employer and maintains that only the designated representatives of a public employee may bring a refusal to bargain charge. Nowhere in the New Jersey Public Employer-Employee Relations Act is there any limitations expressed as to who may bring such an action. Since the Act was intended to protect individuals' rights as well as rights of association as a whole, ^{3/} the undersigned will not

^{3/} E.g., the right to refrain from Association activity.

recommend that the Commission dismiss the instant action on the basis of the lack of standing of the Charging Party.

The Board also alleged that this action was defective for the Charging Party did not name the Association as a co-respondent. As noted above, the Association chose not to take part in this action and, for their own reasons, Knipp, et al. chose not to name the Association as co-respondents. However, had the Board chose to, they themselves might have attempted to name the Association as a third-party respondent, but for reasons of their own the Board chose not to. Further, if either party needed the testimony of the Association officers they could have been subpoenaed. The fact that the charges alleged in the Complaint might have been easier for the Charging Party to prove (or the Board to disprove) is simply a matter of hearing strategy and is not a prima facie grounds for dismissal of the Complaint.

Accordingly, for the reasons set forth above, it is hereby recommended that the Commission dismiss the Complaint in its entirety.


Edmund G. Gerber
Hearing Examiner

DATED: Trenton, New Jersey
February 1, 1978