

H.E. NO. 2016-4

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

In the Matter of
WILLINGBORO BOARD OF
EDUCATION,

Respondent,

-and-

Docket No. CO-2010-481

WILLINGBORO EDUCATION
ADMINISTRATIVE ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Commission find that the Willingboro Board of Education did not violate N.J.S.A. 34:13A-5.4a (1), (3), (5) and (7) when it set salaries for Willingboro Education Association officers Sonya Nock, Dumar Burgess and Dezoray Moore after each was promoted to principal. The Association alleged that the salaries were intentionally much lower than those granted to other administrators hired from within and outside the district, and were an abuse of the Board's discretion, a failure to negotiate in good faith, a violation of a Memorandum of Agreement between the parties, and a punitive measure to those persons serving as a leadership capacity within the Association. The Hearing Examiner found that the Association did not prove its allegations, and that Board negotiated with Nock, Burgess, and Moore over their promotional salaries without any hostility to their protected activities, setting the salaries after the parties did not reach agreement. The Hearing Examiner recommends that the Commission dismiss the charge.

A Hearing Examiner's Report and Recommended Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission, which reviews the Report and Recommended Decision, any exceptions thereto filed by the parties, and the record, and issues a decision that may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law. If no exceptions are filed, the recommended decision shall become a final decision unless the Chair or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

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Charging Party.

Appearances:

For the Respondent,
Long Marmero and Associates, LLP, attorneys
(Kathleen Bonczyk, of counsel)

For the Charging Party,
New Jersey Principals and Supervisors Association
(Wayne Oppito, of counsel)

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On June 10, 2010, and by amendment on November 1, 2010, the Willingboro Educational Administrators Association (WEAA or Association) filed an unfair practice charge with the Public Employment Relations Commission against the Willingboro Township Board of Education (Board). The Association alleges that the Board violated sections 5.4a(1), (3), (5) and (7) ^{1/} of the New

^{1/} These sections prohibit public employers, their agents or representatives from: "(1) Interfering with, restraining or (continued...)"

Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act) when, on December 21, 2009, the Board voted to approve salary increases for WEAA officers President Dezoray Moore, Vice President Dumar Burgess, and Treasurer Sonya Nock, who had been promoted to new administrative positions. The Association alleges that the subject increases were intentionally much lower than those granted to other administrators hired from within and outside the district, and were an abuse of the Board's discretion, a failure to negotiate in good faith, a violation of a Memorandum of Agreement between the parties, and a punitive measure to those persons serving as a leadership capacity within the WEAA.

The WEAA seeks an Order requiring the Board to act in good faith to provide salary adjustments for the WEAA officers that are consistent with those provided to non-officers, and that the Board be ordered to negotiate in good faith to establish new

1/ (...continued)
coercing employees in the exercise of the rights guaranteed to them by this act; (3) Discriminating against employees with regard to hire, tenure of employment or any term or condition of employment to encourage or discourage employees from the exercise of the rights guaranteed 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; (7) Violating any of the rules and regulations established by the commission."

minimum starting salaries for WEAA positions, as required by the Memorandum of Agreement between the parties.

On April 25, 2011, the Deputy Director of Unfair Practices issued a Complaint and Notice of Hearing (C-1)^{2/}. On May 2, 2011, the Board filed an Answer to the Complaint (C-2)^{3/}. The Board denies having violated the Act and requests that the Complaint be dismissed.

On February 13, 2013, a hearing was conducted at which the parties examined witnesses and placed documents into the record. After several extensions to permit the parties to pursue settlement discussions, briefs and reply briefs were filed by July 1, 2013. Based on the record, I make the following:

FINDINGS OF FACT

1. The Willingboro Township Board of Education ("Board" or "District") is a public school district which is an employer within the meaning of the Act (1T9). The Willingboro Education Administrator's Association (WEAA) is an employee organization

^{2/} The transcript of the proceedings is referred to as 1T. Commission exhibits are referred to as "C-", Charging Party's exhibits are referred to as "CP-" and Respondent's exhibits are referred to as "R-".

^{3/} In addition to the Board's Answer, both the Board and the Association incorporated their investigatory position statements into their briefs by reference and placed them into the record at hearing (N.J.A.C. 19:14-3.1, 3.2, CP-1; R-3).

within the meaning of the Act, which represents educational administrators employed by the Board (1T9).

2. The Willingboro school district includes several pre-K-4 elementary schools, an upper elementary school (grades 5 and 6), a middle or "quasi junior high" school (grades 7 and 8) and a high school (1T27, 1T53, 1T75).

3. The Board and WEAA have been parties to several collective negotiations agreements. On June 25, 2008, the Board and the WEAA entered into a Memorandum of Agreement effective July 1, 2007 through June 30, 2010. The Memorandum of Agreement continued all provisions of the parties' 2004-2007 collective agreement and provided, inter alia, a 4.5% salary increase to base for the contract periods July 1, 2008 through June 30, 2009, and July 1, 2009 through June 30, 2010, for WEAA unit members.

The Board paid the increase for the 2008 through 2009 period, and on December 21, 2009, the Board voted to approve the 4.5% salary increase for 2009-2010 period, retroactive to July 1, 2009 (C-1, C-2)^{4/}.

^{4/} In its charge, the Association alleges that the Board did not pay the 4.5% increase for 2009-2010 until after the WEAA filed an unfair practice charge. This fact remains in dispute and is not clarified by the record. I therefore make no finding of fact concerning this allegation. The Association also presented CP-1, its rebuttal to the Board's investigatory Statement of Position (R-3). Though some of the facts therein are undisputed between the parties, much of CP-1 is argument unsupported by any corroborating testimony. I have not found any facts based upon CP-1 that
(continued...)

4. The salary guides attached to the administrators' contract were considered outdated (1T35; C-1). The Memorandum of Agreement proposed that the parties develop a "mutually agreed upon, mutually beneficial" Appendix reflecting minimum base salaries and current WEAA positions, during the first half of the 2008-2009 school year (C-1).

Sonya Nock

5. Sonya Nock has been the treasurer of the WEAA since September 2008 (1T16).

Nock started in Willingboro as an assistant principal at the high school in January 2004. In 2006, after a reorganization, she transferred to the upper elementary school as assistant principal (1T15). Nock's base salary as upper elementary assistant principal was \$94,153, not including negotiated increments which had not been paid for two or three years (1T16, 1T30). Negotiations for her salary at the upper elementary school concluded at the end of the 2008-2009 school year (around June 2009) (1T17). The 4.5% contractual increase when Nock was promoted to that position brought her salary up to \$98,389 (1T17).

In February 2009, Nock was promoted to principal at an elementary school (1T19, 1T25). Nock was approached by a

4/ (...continued)
are in dispute or not supported by testimony which permits a credibility determination.

district consultant and the human resources director asking if she would be willing to support the district in its reorganization initiative by accepting the principal position, as the then-principal was accepting a different role the very next day (1T26). Although she had held a comparable position at a charter school for a year and a half before joining the Willingboro district, and had five years experience as an assistant principal, this was Nock's first principal position (1T25, 1T36). Nock accepted the position and assumed full responsibility as an elementary principal immediately (1T26). After her promotion to elementary principal, her salary remained the same (1T17).

Dumar Burgess

6. Dumar Burgess was vice-president of WEAA for the 2008-2009 school year and became president in 2010 (1T41).

Burgess has been employed by the Willingboro Board of Education for 14 years (1T39). Burgess became an assistant principal at the upper elementary school in September 2004; once that school was restructured he moved to the middle school (1T39, 1T53). Burgess became an elementary principal in March 2009 (1T19, 1T39, 1T40, 1T74). This was Burgess' first principal position (1T51).

In 2008-2009 Burgess' salary as a middle school assistant principal was \$91,072 (1T41). His salary was not adjusted when he became an elementary principal in March 2009 (1T41).

Dezoray Moore^{5/}

7. Dezoray Moore was WEAA president in December 2009 (1T20).

Moore was promoted from middle school assistant principal, to elementary principal in or around February 2009 (1T35, 1T54).

8. As of March 2009, Nock, Burgess and Jade Yezzi, a math supervisor who had been promoted to an elementary school principal position in March 2009, were the only three employees who had been promoted without any salary adjustments (1T19, 1T35, 1T51, 1T74). Yezzi was not a WEAA officer and had no prior building administrator experience at the time of her promotion (1T51, 1T52).

Burgess testified that he, Nock and Moore were "baffled" as to why they had not received the contractual 4.5% increase upon their March 2009 promotions, when they would have received that increase had they stayed in their prior positions (1T42, 1T56). I credit Burgess' testimony.

10. Dr. Thomas McMahon was the Superintendent of Schools in Willingboro prior to December 2009 (1T19, 1T42).^{6/} Burgess,

5/ Moore did not testify.

6/ The record is unclear as to Superintendent McMahon's tenure in the District. He did not testify.

Moore and an NJPSA field representative met with McMahon several times to discuss salary increases commensurate with the promotions^{7/}. According to Burgess, McMahon stated that District management was still working out salary and that he did not want to give the newly promoted principals an increase until each principal salary had been formally agreed upon, and that the issue could be worked out if the WEAA created salary guides (1T20, 1T42, 1T43). Burgess believed that negotiations to resolve the issue would take place once McMahon accepted the updated salary guides (1T55). WEAA presented several draft guides, created by the NJPSA field representative and WEAA unit members, to McMahon on several occasions and each time McMahon said that he didn't agree with them and asked WEAA to revise them (1T21, 1T43). After McMahon did not accept the WEAA's revised guides, Burgess felt they were "running in circles" and asked McMahon to negotiate salary with each new principal directly, as had been done in the past, including when Burgess had moved from a teacher to assistant principal (1T55, 1T56).

11. In or around December 2009, McMahon left the district and was succeeded by Dr. David Hespe as Interim Superintendent (1T43). Sometime in December 2009, Nock emailed a letter to Hespe requesting a meeting to discuss her concerns regarding the

^{7/} NJPSA is the New Jersey Principals and Supervisors' Association, an umbrella organization serving WEAA.

salary adjustments (1T20, 1T21). Nock did not receive a response from Hespe (1T20, 1T21). Burgess also sent correspondence on behalf of WEAA, but initially received no written response from Hespe or district human resources director Terrell Everett (1T45).

12. In or around December 2009, Burgess, Moore, and Everett met with Hespe and requested that he negotiate the principals' salary for their new positions (1T44). Hespe said they were trying to put together a "package deal" (1T56). Burgess testified that WEAA again asked if they could negotiate salary for each principal, "the same process that was followed "naturally" in the District. It wasn't honored." (1T56). I credit Burgess' testimony.

13. On December 15, 2009, the Board's counsel, Alan Schnirman, wrote to WEAA's counsel, David Nash, attaching a list of salaries Schnirman had received from Hespe. Schnirman stated that he was forwarding the list to Nash with an eye toward canceling the negotiation session scheduled for that evening if Nash and WEAA accepted the list of salary adjustments enclosed.

The list provided in pertinent part:

Step One - Adjustments to 08-08 base to Reflect
New Positions (Retro to Date of appointment will
be provided)

Burgess
09 Base Actual \$91,072.00
09 New Base Position Change \$94,500.00
09-10 Salary 4.5% increase \$98,752.50

Yezzi

09 Base Actual \$72,994.00
09 New Base Position Change \$93,500.00
09-10 Salary 4.5% increase \$97,707.50

Nock

09 Base Actual \$94,153.00
09 New Base Position Change \$97,000.00
09-10 Salary 4.5% increase \$101,365.00

Moore

09 Base Actual \$94,044.00
09 New Base Position Change \$95,000.00
09-10 Salary 4.5% increase \$99,275.00

The parties apparently did not reach any agreement as a result of Schnirman's letter.

14. At its public meeting on December 21, 2009, the Willingboro Board of Education approved and ratified salaries for 28 WEAA administrators for the 2009-2010 school year, including the following, in pertinent part:

Walker, Chrystal,	\$ 76 650.75
Williams, Sharon	\$ 75,762.50
Burgess, Dumas	\$ 98,752.50
Yezzi, Jade	\$ 97,707.50
Nock, Sonya	\$101,365.00
Berkley, Joanne,	\$101,365.00
Brown, Ellis	\$106.067.50
Moore, Dezoray	\$ 99,275.00

(R-1). The salaries the Board adopted for Moore, Burgess and Nock mathematically reflected a 4.5% increase on the salaries they had each earned before and since their February/March 2009 promotions (1T19, 1T37, 1T41, 1T64). Both Nock and Burgess would

have received the same 4.5% increase if they had remained in the respective assistant principal positions (1T37, 1T41).

15. Nock's understanding was that the Board had authorized a base salary for her elementary school principal position of \$97,000 (1T18, 1T25). This base salary was less than what she had received as a vice principal at the upper elementary school (\$98,389) (1T18). After her vice principal salary of \$98,389 was merged with the 4.5% increase, her salary as elementary school principal was \$101,365. This was a net increase of \$2,976 over the salary Nock received as upper elementary assistant principal (1T19, 1T37).

16. Other WEAA members whose salary was also approved at this time were Chrystal Walker, WEAA secretary, who was promoted to supervisor of fine arts (1T31, 1T49); Ellis Brown, an assistant principal promoted to principal of grades 9 and 10 at the high school (1T35, 1T56-1T57); Jade Yezzi, who was not a WEAA officer and had no prior building administrator experience at the time of her promotion; and Joann Berkley, who was already serving as middle school principal at Levitt Middle School (1T35, 1T51, 1T52, 1T74, 1T75). Berkley and Nock received the same base salary; Berkley was not a WEAA officer (1T53).

17. Neither Nock nor Burgess attended the December 21 Board meeting. Nock was aware that the matter of her salary was before the Board but did not attend because it was not common practice

for employees or administrators to speak at public board meetings; Burgess did not attend due to family obligations, and because the administrators did not want to suggest a rift with the school district (1T24, 1T60, 1T61-1T62). Nock felt she had already communicated her concerns at length in her email to Hesper and since she had not been invited to speak, that nothing further was required of her at that time (1T25). Nock did not see the \$97,000 base salary determined for the principal position as an "increase"; she felt that because she was already serving in the principal position, she accepted the \$97,000 base salary "involuntarily" and planned to continue following up on the issue (1T27). Nock did not attempt to decline the principal position after learning of the \$97,000 base salary (1T27). Neither Nock nor Burgess filed a grievance over the salary issue or to claim discrimination due to their WEAA activities (1T32, 1T54, 1T57). Nock believed that filing the unfair practice charge was a form of grievance on those issues (1T33).

18. Burgess understood from conversations with Terrell and Hesper that if the new principals decided to revoke their acceptance of the positions, they would not simply be able to return to their own positions because those had been filled; they would essentially be giving up their jobs (1T64). Some of the affected WEAA members felt that they had not had the opportunity to negotiate and possibly decline the new positions in favor of

remaining in their former positions without as many responsibilities (1T65). Feeling that the situation was not moving toward resolution, they then decided to file an unfair practice charge (1T22, 1T56).

19. Hespe was Interim Superintendent for approximately one year (probably leaving between February and June 2010); the district had two more interim superintendents after Hespe left (1T22, 1T46).

20. Dr. Ronald Taylor is the Superintendent of the Willingboro Board of Education. He became the Interim Superintendent in January 2011, and the permanent superintendent effective March 1, 2011 (1T46, 1T68-1T70). Dr. Taylor holds a Doctorate of Education and a Masters in School Administration, served as a principal for six years, and has been employed in educational administration for 12 years (1T70-1T71).

21. Taylor testified that in his experience, high schools and middle schools are larger than elementary schools - with larger staffs and more after-school and weekend activities (1T73). High school or middle school principals also traditionally have more assistant principals under them to help to guide and evaluate staff (1T73). A high school principal also has "added pressure" due to the need to prepare students for college and career (1T73). By contrast, elementary schools have greater parent participation and support than the middle grades and high schools

(1T73). Therefore, the duties and responsibilities of high school and middle school principals are typically greater than those of elementary school principals (1T78). I credit Taylor's testimony, and infer that, in his opinion, the high school and middle school environment is considered more challenging than elementary schools; therefore, an elementary school principalship may be considered less challenging than an assistant or vice principal position at a middle or high school.

ANALYSIS

In sum, the Association alleges that by establishing the starting salaries for WEAA officers Nock, Burgess and Moore at its December 21, 2009 Board meeting, the Board abused its discretion by intentionally and punitively providing minimal salary adjustments, in violation of N.J.S.A. 5.4a(1) and (3). Specifically, the WEAA alleges: the salary adjustment provided to Moore was only 1% higher than the salary she previously received as Assistant Principal; Burgess' salary was only 3.8% higher and Nock's was only 3% higher; and that the Board provided significantly larger salary adjustments for other administrators promoted from within the district who were not WEAA officers, with an average salary increase of more than 20% for two other administrators who were promoted to principal positions during this time period. Moreover, the Association alleges, the "salary adjustments that were made were barely above outdated minimum

starting salaries in the prior collective bargaining agreement between the WEAA and Board that have not been adjusted, and which the district has refused to negotiate in good faith in order to set new minimum starting salaries", in violation of the terms of the Memorandum of Agreement, and N.J.S.A. 5.4a(1), (5) and (7).^{8/}

For the reasons that follow, I find that the Association did not carry the burden of proving its allegations, and recommend that the Commission dismiss the Complaint.

The Board did not violate N.J.S.A. 5.4a(1) or 5.4a(3) by setting salaries for Moore, Burgess and Nock.

In Bridgewater Tp. v. Bridgewater Public Works Ass'n, 95 N.J. 235 (1984), the New Jersey Supreme Court created a test to be applied in analyzing whether a charging party in a 5.4a(3) case has met its burden of proof. Under Bridgewater, no violation will be found unless the charging party has proved, by a preponderance of the evidence, that conduct protected by the Act was a substantial or motivating factor in the adverse action.

^{8/} This charge was filed on June 10, 2010 and amended in November, 2010. In order for this, or any charge, to be viable, the proofs must be based upon events that occurred within six months of the initial filing of the charge - that is, between December 10, 2009 and June 10, 2010. N.J.S.A. 34:13A-5.4(c). The record herein contains facts related to the parties' negotiations' history on the salary issue from February/March 2009 through the Board's action at its meeting on December 21, 2009. For the clarity of the record and full and fair litigation of the issues, I have analyzed all the relevant facts, including events occurring as far back as February 2009 and through the date the charge was filed.

This may be done by direct or circumstantial evidence showing 1) that the employee engaged in activity protected by the Act, 2) that the employer knew of this activity, and 3) that the employer was hostile toward the exercise of the protected activity. Id. at 246.

If a charging party satisfies those tests, then the burden shifts to the employer to prove that the adverse action would have occurred for lawful reasons even absent the protected conduct. Id. at 242. The burden will not shift to the employer, however, unless the charging party proves that anti-union animus was a motivating or substantial reason for the employer's actions.

The decision on whether a Charging Party has proved hostility in such cases is based upon consideration of all the evidence, including that offered by the employer, as well as the credibility determinations and inferences drawn by the hearing examiner. UMDNJ - Rutgers Medical School, P.E.R.C. No. 87-87, 13 NJPER 115, 116 (¶18050 1987).

An employer independently violates 5.4a(1) if its action tends to interfere with an employee's statutory rights and lacks a legitimate and substantial business justification. Orange Bd. of Ed., P.E.R.C. No. 94-124, 20 NJPER 287 (¶25146 1994); Mine Hill Tp. P.E.R.C. No. 86-145, 12 NJPER 526 (¶17197 1986). Proof of actual interference, intimidation, restraint, coercion or

motive is unnecessary. The tendency to interfere is sufficient.
Mine Hill Tp.

If I find that the Board's determination of Nock, Burgess and Moore's salaries was not based upon protected activity, which in this case is limited to their positions as Association officers, then the 5.4a(3) charge must be dismissed.

In this case, as in most 5.4a(3) cases, the Charging Party succeeded in proving the first two Bridgewater elements, but not the last. The Charging Party proved that Nock, Burgess, and Moore were involved in protected activity as WEAA officers, and there is no dispute that the Board was aware of their protected activity. However, the Charging Party failed to prove that the Board was hostile to the exercise of that activity or that the Board's decision to determine their respective salaries was in any way affected by that activity.

The record reflects that the Association negotiated with successive superintendents McMahon and Hespe over the salary issues. There is no indication in the record that either McMahon or Hespe were resistant or hostile to those negotiations. In fact, the record is simply devoid of any evidence of hostility directed toward Moore, Nock or Burgess because of their protected activity as Association officers.

The Association submitted some proofs intended to prove its claim that the Board violated the Act in setting salaries for

Nock, Burgess and Moore. However, to the extent I can ascertain the relevance of those proofs, they are not persuasive of the Association's claims. The Association asserts that Administrator Jade Yezzi, along with Burgess and Nock, was one of only three administrators who did not receive a salary increase after being promoted, but does not establish the relevance of the facts concerning Yezzi's salary to the charge. The Association also presents evidence that Chrystal Walker, WEAA secretary, was promoted and her salary determined at the December 2009 meeting; but the charge raises no issue with Walker's salary. Moreover, the Association points out that Nock and Joann Berkley, a middle school principal, received the same base salary, and Berkley was not an Association officer. These facts, without more, do not support an inference that Moore, Nock and Burgess, were treated differently because of their protected activity. Similarly, the Association did not provide any evidence to support its allegation that starting salaries provided to administrators hired from inside and outside the district and the stipends provided to teachers for various functions were larger than the adjustments provided to the named WEAA officers for their promotions.

Based upon examination of all the proofs presented on behalf of WEAA, I am unable to ascertain any nexus between the Board's

actions in determining salaries for Nock, Burgess and Moore and their protected activities as Association representatives. Since I have found no 5.4a(3) violation, I need not analyze whether the employer violated 5.4a(1), derivatively or independently, in this context.

Therefore, I find that the Board did not violate N.J.S.A. 5.4a(1) or (3) in setting salaries for Dezoray Moore, Dumas Burgess or Sonya Nock at its December 21, 2009 Board meeting.

The Board did not violate 5.4a(1) or 5.4a(5) in setting salaries for Moore, Burgess and Nock.

N.J.S.A. 34:13A-5.3 authorizes a majority representative to negotiate terms and conditions of employment on behalf of all unit employees. Salary is a mandatorily negotiable term and condition of employment that was most evidently in the legislative mind. Englewood Bd. of Ed. v. Englewood Teachers Ass'n, 64 N.J. 1, 6-7 (1973). Section 5.3 further provides that a public employer has a duty to negotiate before changing working conditions, by requiring proposed new rules or modifications of existing rules governing working conditions to be negotiated with the majority representative before they are established. Unilateral action undermines the employment relationship and violates the terms and goals of the Act. Middletown Tp., P.E.R.C. No. 98-77, 24 NJPER 28, 29-30 (¶29016 1997), aff'd 334 N.J. Super. 512 (App. Div. 1999), aff'd 166 N.J. 112 (2000).

N.J.S.A. 34:13A-5.4a(5) makes it an unfair practice for a public employer to refuse 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.

Moreover, as set forth above, an employer independently or derivatively violates 5.4a(1) if its action tends to interfere with an employee's statutory rights and lacks a legitimate and substantial business justification. Orange Bd. of Ed., Mine Hill Tp., infra.

However:

[i]t is important to note the very important distinction between the obligation to negotiate and the absence of any obligation to agree. The fact that a particular subject is a term and condition of employment means that it must be negotiated when proposed but neither the employer nor majority representative is obligated to agree to such a proposal. Hard bargaining is not inconsistent with a good faith desire to reach agreement.

See Byram Tp. Bd. of Ed. and Byram Ed. 152 N.J. Super. 12 (1977)

(fact that the Association proposed an agency shop provision during the term of the existing agreement did not require the Board to agree as part of negotiations; the obligation to negotiate does not entail the obligation to agree or to concede);

State of New Jersey and Council of New Jersey State College

Locals, E.D. No. 79, 1 NJPER 39, affirmed P.E.R.C. No. 76-8

(affirmed for the reasons stated in the Executive Director's decision, Appellate Division Docket No. A-531-75, May 17, 1976). See also Middlesex Board of Education and Middlesex Administrators Association, P.E.R.C. No. 94-31, 19 NJPER 544 (¶24257 1993); CWA and Mercer County Superintendent of Elections, P.E.R.C. No. 85-32, 10 NJPER 561 (¶15262 1984) (obligation to negotiate over a proposal does not entail any obligation to agree; superintendent was only required, upon demand, to negotiate in good faith over possible agreement to binding arbitration of disciplinary disputes); N.J. Sports and Exposition Authority and L.I.U. Local 734, P.E.R.C. No. 88-14, 13 NJPER 710 (¶18264 1987); Wayne Board of Education and Wayne Education Association, P.E.R.C. No. 81-106, 7 NJPER 151 (¶12067 1981); In re Township of Weehawken, P.E.R.C. No. 79-39, 5 NJPER 42, (¶10027 1979).

As a corollary, the Commission has recognized that an employer or employee representative may take a hard line in negotiations so long as it does so with a sincere intent to reach agreement instead of a pre-determined intention to avoid agreement. Hamilton Township Board of Ed. and Hamilton Township Administrators and Supv. Assn., P.E.R.C. No. 87-18, 12 NJPER 737 (¶17276 1986), aff'd NJPER Supp.2d 185 (¶163 App. Div. 1987), certif. denied 111 N.J. 600 (1988); Ocean County College, P.E.R.C. No. 84-99, 10 NJPER 172 (¶15084 1984); State of New

Jersey, E.D. No. 79, 1 NJPER 39 (1975), aff'd 141 N.J. Super. 470 (App. Div. 1976) (obligation to negotiate requires negotiation with an open mind and until impasse over proposals). If the parties cannot reach an agreement and negotiate in good faith to impasse, the employer may then act unilaterally. UMDNJ and UMDNJ Council of AAUP Chapters, P.E.R.C. No. 2010-12, 35 NJPER 330 (¶113 2009), clarified in P.E.R.C. No. 2010-98, 36 NJPER 245 (¶90 2010).

The Association alleges that in setting the salaries before the Association felt the parties had reached final agreement, the Board acted unilaterally, exceeded its discretion, and failed to negotiate in good faith as required by N.J.S.A. 34:13A-5.4a(5).

The record herein reflects that Moore, Burgess and Nock, as Association representatives, requested negotiations with the Board over the issue of salaries beginning shortly after their promotions in February and March 2009. They began negotiations with Superintendent McMahon, who requested that the Association draft salary guides, but despite several drafts, the parties did not reach agreement prior to the conclusion of McMahon's tenure in or around December 2009. After McMahon left the district, Moore, Burgess and Nock continued negotiating with new Superintendent Hespe. Hespe proposed salaries through counsel in December 2009, then when the parties didn't reach agreement, the Board implemented salaries, which included a 4.5% contractual

increase, at its December 21, 2009 meeting. In short, when the parties negotiated but did not reach agreement, the Board proceeded to act, in a manner which in fact met its contractual responsibilities. These facts do not support a conclusion that the Board negotiated without the good faith intent to reach agreement.

The record does not reflect whether the parties continued to negotiate between the time the Board acted at its December 2009 meeting and the date the charge was filed, but there is no suggestion in the record that the Board refused to negotiate further.

Therefore, I find that the Association has not proven that the Board violated 5.4a(1) or (5) of the Act in setting salaries for Moore, Burgess and Nock. Finally, the Association presented no evidence supporting a finding of a 5.4a(7) violation, so I recommend that allegation be dismissed as well.

CONCLUSION

The Willingboro Board of Education did not violate N.J.S.A. 34:13A-5.4a(1),(3),(5),or(7) when it determined principal salaries for Association officers Sonya Nock, Dumas Burgess and Dezoray Moore at its December 21, 2009 Board meeting.

RECOMMENDED ORDER

I recommend the Complaint be dismissed.

/s/ Patricia T. Todd
Patricia T. Todd
Hearing Examiner

DATED: August 11, 2015
Trenton, New Jersey

Pursuant to N.J.A.C. 19:14-7.1, this case is deemed transferred to the Commission. Exceptions to this report and recommended decision may be filed with the Commission in accordance with N.J.A.C. 19:14-7.3. If no exceptions are filed, this recommended decision will become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further. N.J.A.C. 19:14-8.1(b).

Any exceptions are due by August 21, 2015.