

H. E. NO. 86-14

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

In the Matter of

HOLLAND TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-85-234-144
and CO-85-260-145

HOLLAND TOWNSHIP EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Board's (Human Services) Motion to Dismiss is denied because the charge indicates that an alleged breach of contract may rise to the level of an unfair practice and the Board has raised a scope defense.

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Appearances:

For the Respondent
Cassetta & Taylor
(Raymond A. Cassetta, Consultant)

For the Charging Party, John A. Thornton, Jr. UniServ Rep.
John A. Thornton, Jr., NJEA UniServ Rep.

RULING ON MOTION TO DISMISS

On March 11, 1985 the Holland Township Education Association ("Association") filed an unfair practice charge (CO-85-234) against the Holland Township Board of Education ("Board") with the Public Employment Relations Commission ("Commission"). The Association alleges that the Board violated §§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/} by assigning

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the

(Footnote continued on next page)

teachers cafeteria duty and refusing to negotiate related compensation. The Association claims that the assignment increased workload and pupil contact time and violated the parties' collective negotiations agreement.

On April 8, 1985 the Association filed a second charge (CO-85-260) alleging that the Board violated §§5.4(a)(1), (3) and (5) by unilaterally assigning teachers additional pupil contact time and abnormal lunch periods and reducing duty-free lunch and preparation time.

On May 17, 1985 the Director of Unfair Practices consolidated the charges and a issued Complaint and Notice of Hearing.

On May 23, 1985 the Board filed a Motion to Dismiss CO-85-234, relying on in State of New Jersey, Department of Human Services, P.E.R.C. No. 84-148, 10 NJPER 15191 (1984). The Board argues that the Commission lacks jurisdiction to hear the case

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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; 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.

because the charge describes "a mere breach of contract claim."^{2/} (Board's brief at p. 2). The Board argues that, "the first two paragraphs of the charge and the summary paragraph turn on contractual interpretation and...the Board has authority to make such assignment without further negotiation [and] that the third paragraph alleges a violation of a provision of the contract which itself is a non-negotiable topic." Ibid. The Board asserts that, "there is no obligation to negotiate if [its] contract defense is correct." Ibid at p. 3.

I deny the motion.

In Human Services, the Commission adopted the NLRB's policy of refusing to issue complaints and not finding unfair practices in cases involving an employer's obligation to negotiate where all that is involved is a good faith dispute over the interpretation of an

^{2/} The Board emphasizes the fact that the Association alleges that the Board violated the contract. The charge states:

"The Board violated the agreement by refusing to negotiate compensation for additional workload incurred by the assignment of cafeteria duty to teachers.

"The Association contends that the Board violated the agreement by unilaterally increasing pupil contact and refusing to negotiate compensation related thereto.

"The agreement between the parties specifically expresses language: 'Teachers shall not be required to...' '...specifically supervision of cafeteria....' In spite of that fact, the Board on November 12, 1984, assigned teachers to do so.

"The Association began its attempt to negotiate compensation (impact) on October 30, 1984, and the Board has since that time repeatedly refused to acknowledge the Association's right to compensation."

ambiguous contract clause. 10 NJPER 422 citing In re United Telephone Co. of the West, 112 NLRB No. 103, 36 LRRM 1097 (1955).

In United Telephone the NLRB relied on the fact that:

The complaint alleges no violation of the Act other than the one arising out of the parties conflicting contract interpretations...Furthermore, the Respondent's action was in accordance with the contract as they construed it, and was not an attempt to modify or to terminate the contract.

In adopting the NLRB's standard, the Commission explained in Human Services that:

This holding does not mean...that a breach of contract is never evidence of an unfair practice or that we do not have the power to interpret collective negotiations agreements. Indeed, in Jackson we specifically held that we have such jurisdiction and that a breach of contract may also rise to the level of a refusal to negotiate in good faith. Thus, if a contract claim is sufficiently related to specific allegations that an employer has violated its obligation to negotiate in good faith, we would certainly have the authority to remedy that violation under §(a)(5).

The Commission, noting that there is no precise demarcation between a mere breach of contract claim and a refusal to negotiate in good faith, offered examples of situations in which it would entertain unfair practice proceedings under §5.4(a)(5). The first example given was where an employer has repudiated an established term and condition of employment based on its belief that a related contract clause is outside the scope of negotiations.

In CO-85-234 the Association claims the Board violated §§5.4(a)(1), (3) and (5) by increasing the workload and pupil contact time of teachers it assigned to cafeteria supervision and

by refusing to negotiate related compensation. The Association points to a contract clause which provides that teachers shall not be regularly assigned cafeteria supervision (Art. IXB1).

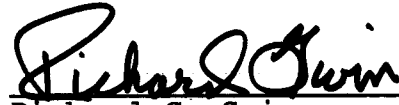
The Board defends the assignment as a non-negotiable prerogative, asserts that the contract clause cited by the Association is ultra vires, and argues that the assignment is permitted by the contract.^{3/}

I conclude that the Association has sufficiently pled a claim that may rise to the level of a refusal to negotiate in good faith. This is not to say that the Board cannot raise a contractual or scope defense to its actions. This ruling does not pass on the merits of the case nor does it address the issue of the negotiability of Article IXB1. I hold here that, where the pleadings indicate that an alleged breach of contract may rise to

^{3/} The latter defense is raised in the Board's Statement of Position to CO-85-234, which was received by the Commission April 4, 1985. The Board's contractual defense is based on Art. VII, Teaching Hours and Teaching Loads:

- B.1. The total in-school workday for all teachers will be seven (7) hours and fifteen (15) minutes.
- F.1. Every teacher shall have a duty-free lunch period.
- I. Each teacher shall have at least one preparation period per day whenever, in the opinion of the Superintendent, schedules permit. Preparation periods shall be at least twenty-five (25) minutes in length.

the level of a refusal to negotiate and where the respondent has raised a scope defense, the Commission will not dismiss the case without a hearing.



Richard C. Gwin
Hearing Examiner

Dated: September 18, 1985
Trenton, New Jersey