D.U.P. NO. 86-23

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

In the Matter of

WAYNE BOARD OF EDUCATION,

Respondent,

-and-

DOCKET NO. CO-86-226

WAYNE EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Director declines to issue a complaint with respect to Charging Party's allegations that the Respondent Board violated N.J.S.A. 34:13A-5.4(a) (1), (5) and (6), when its negotiating committee declined to submit a tentative draft of contract language to the full Board for ratification.

The Director finds that (1) the Board's negotiators were not given authority to consumate a final agreement; (2) the Board's negotiations committee was not obligated to submit the negotiators' recommended draft to the full Board; and (3) there was no "meeting of the minds" between the full Board and the Association on contract language for the two merged collective negotiations units.

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Appearances:

For the Respondent
Aron, Salsberg & Rosen, Esqs.
(Lester Aron, of counsel)

For the Charging Party
New Jersey Education Association
(Thomas Ziccardi, UniServ Rep.)

REFUSAL TO ISSUE COMPLAINT

On February 24, 1986, an Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") by the Wayne Education Association ("Association"). In its charge, the Association alleges that the Wayne Board of Education ("Board") engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically §§ 5.4(a)(1), (5) and (6).[1/]

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

N.J.S.A. 34:13A-5.4(c) sets forth in pertinent part that the Commission shall have the power to prevent anyone from engaging in any unfair practice, and that it has the authority to issue a complaint stating the unfair practice charge.[2/] The Commission has delegated its authority to issue complaints to me and has established a standard upon which unfair practice complaints shall be issued. The standard provides that a complaint shall issue if it appears that the allegations of the charging party, if true, may constitute unfair practices within the meaning of the Act[3/] and the Commission's rules provide that I may decline to issue a complaint where appropriate. [4/]

1/ Footnote Continued From Previous Page

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; (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

2/ N.J.S.A. 34:13A-5.4(c) provides: "The Commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice ... Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof, shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice charged and including a notice of hearing containing the date and place of hearing before the Commission or any designated agent thereof..."

3/ N.J.A.C. 19:14-2.1.

4/ N.J.A.C. 19:14-2.3.

On March 18, 1986, the assigned staff agent held an exploratory conference to allow the parties to more fully explain their respective positions and to proffer additional factual assertions and documentation in support thereof. Based upon the allegations contained in the charge and the facts proffered at the conference, it appears that the Commission's complaint issuance standard has not been met. Accordingly, for the reasons stated below, I have determined not to issue a complaint in this matter.

The Board and the Association were parties to a collective negotiations agreement for the period July 1, 1982 through June 30, 1985, which covered all certificated employees of the Board of Education. The Board and the Association were also parties to an agreement covering secretarial and clerical employees with an expiration date concurrent with that of the professional unit contract. The parties negotiated for successor agreements during late fall of 1984 and through spring and summer of 1985. One of the items sought and ultimately obtained by the Association was the consolidation of the secretaries' collective negotiations unit with the unit of certificated personnel. In September 1985, the parties, with assistance from a Commission mediator, reached a tentative agreement for 1985-86, 1986-87 and 1987-88 school years on the key issues in dispute. On September 11, 1985, the parties signed a memorandum of understanding which memorialized the terms of the settlement, subject to ratification by both parties.

Thereafter, the parties met to construct salary guides in accordance with the memorandum of understanding and on October 29, the Board ratified the memorandum of understanding together with the salary guides. After the memorandum was signed on September 11, 1985, the parties recognized that certain language items needed to be resolved prior to the execution of a comprehensive collective negotiations agreement. Specifically, certain terms of the teachers' agreement and the secretaries' agreement, e.g., grievance procedures, were at variance with one another and the parties needed to negotiate acceptable language merging the varied provisions into a single contract. Initially, this process was undertaken by the Board's labor counsel and the NJEA uniserv representative. Later, however, the language negotiations were given to local negotiators to resolve. The Superintendent and assistant Superintendent met with the Association's president and its chief negotiator to negotiate said contract language. These negotiators eventually agreed to a mutually acceptable draft contract which was initialed by the Superintendent and the Association's president. This final draft was then reviewed by the Board's labor counsel and the uniserv representative at a joint meeting on November 25, 1985.

It is undisputed that neither the Superintendent nor the Association president had the authority to bind their respective principals to the negotiated agreement. Rather, both parties' negotiators were aware that the Superintendent would take the final contract draft back to the Board's labor counsel, the Board's

negotiations committee and, ultimately, to the full Board for review; and the Association's president would take the final contract draft to the Association uniserv representative and, ultimately, to the full membership for ratification.

The Association membership ratified the agreement[5/] and the Superintendent took the final contract draft back to the Board negotiations committee for its approval and that committee's recommendation to the full Board. However, the Board negotiations committee objected to certain language items and declined to present the final draft agreement to the full Board for its approval and execution. Instead, the Board negotiations committee notified the Association of its objections and suggested that negotiations continue concerning the outstanding disputed language.

Since that time, the parties' principal representatives have had discussions concerning the disputed language items and each side has proposed alternate contract language. In February, 1986, the Association broke off dialogue with the Board's representatives and filed the instant charge.

* * *

The Association argues that the Board's failure to execute the contract is a violation of the Act or, alternatively, the Board negotiations committee's failure to recommend the final draft to the

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5/ The salary guides reflecting the new salaries for 1985-86 have been implemented, although it is not clear when this occurred.

full Board for its execution after the document was initialed by its delegated spokesperson, the Superintendent, amounts to an indicia of bad faith negotiations.

A prerequisite to finding that the Board refused to sign a negotiated agreement is that the parties must have reached a "meeting of the minds" on the terms of such an agreement. See In re Passaic Valley Water Commission, P.E.R.C. No. 85-4, 10 NJPER 487 (¶15219 1984); In re Mt. Olive Board of Education, P.E.R.C. No. 84-73, 10 NJPER 34 (¶15020 1983); and In re Borough of Wood-Ridge, P.E.R.C. No. 81-105, 7 NJPER 149 (¶12066 1981); In re Borough of Matawan, P.E.R.C. No. 86-87, 12 NJPER 135 (¶17052 1986), In re Long Branch Board of Education, P.E.R.C. No. 86-97, 12 NJPER 204 (¶17080 1986). Here, there was no meeting of the minds between the full Board and the Association on the contract language covering the merged units.

There are numerous cases which have held that a party is bound by an agreement reached by its agent if the agent had actual or apparent authority to conclude the agreement. Where a party's representatives are fully authorized, work within the general guidelines set forth by their principal and reach an agreement containing no conditions precedent (e.g., the need for ratification), the principal who refuses to execute such an agreement negotiated by an agent thus clothed violates section 5.4(a)(6). See Bergenfield Bd. of Ed., P.E.R.C. No. 90, 1 NJPER 44 (1975); East Brunswick Bd. of Ed., P.E.R.C. No. 77-6, 2 NJPER 279

(1976), mot. for recon. den., P.E.R.C. No. 77-26, 3 NJPER 16 (1977); Long Branch Bd. of Ed., P.E.R.C. No. 77-70, 3 NJPER 302 (1977), mot. for recon. den. P.E.R.C. No. 78-6, 3 NJPER 314 (1977), Camden Fire Dept., P.E.R.C. No. 82-103, 8 NJPER 309 (¶13137 1982), and South Amboy Bd. of Ed., P.E.R.C. No. 82-10, 7 NJPER 448 (¶12200 1981). See also Boro of Wood-Ridge, supra. While the Board's negotiations committee delegated the drafting of contract language to the Superintendent and the assistant Superintendent, they were not given the authority to consumate the final agreement. The Association acknowledges that the Superintendent fully apprised the Association leadership that the draft of the final contract would have to be reviewed by the Board's full negotiations committee; if they found it acceptable, they would then recommend the contract to the Board for execution.

In this case, the parties' agents (the Superintendent and the assistant Superintendent; and the Association's president and the chief negotiator) had reached a tentative agreement. These agents were neither actually nor apparently authorized to bind their respective principals. In fact, quite the opposite was true: both parties knew that the agent of the other side was not empowered to bind the principal and that any agreement reached by the agents was subject to ratification by each of the principals (the full Board of Education and the Association's membership). Thus, I find that since there was no meeting of the minds between the principals (the Board and the Association) on the outstanding contract language

items and because the Superintendent clearly lacked the authority to bind the Board, there can be no (a)(6) violation.

The Association also alleges that once the Board negotiations committee delegated the task of drafting contract language to the Superintendent, the committee's rejection of the resulting language negotiated between the Superintendent and the Association president constitutes an act of bad faith negotiations. Thus, the Association alleges that the Board is guilty of violating N.J.S.A. 34:13A-5.4(a)(5). While an employer may violate § (a)(5) if its negotiators fail to recommend ratification to the principals after negotiating a tentative agreement, here, the negotiator (Superintendent) did recommend the tentative contract to the Board negotiations committee; they then declined to accept it and recommend it to the full Board. As has already been noted, the Superintendent fully apprised the Association that he did not have the authority to bind even the Board's negotiations committee but could only take the draft contract back to the committee for their review. Because this recommendation process was clearly known to all sides at the outset, there is no basis for concluding that the Board committee was obligated to automatically accept the Superintendent's recommendation and to then recommend that draft to the full Board. All that has happened here is that, by mutual consent, the parties created a two-stage ratification process; there is nothing inherently improper in such a process. The parties simply failed to achieve an agreement.

In summary, based upon the facts presented herein, I cannot find that the Board has refused to sign a negotiated agreement or that the Board refused to negotiate in good faith. Therefore, I decline to issue a complaint in this matter and the charge is hereby dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Edmund G. Gerber, Director

DATED: June 19, 1986
Trenton, New Jersey