

P.E.R.C. NO. 95-17

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

DELRAN TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-94-194

DELRAN EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge filed by the Delran Education Association against the Delran Board of Education. The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act when it refused to negotiate with the Association pending an advisory opinion from the School Ethics Commission, a body created by the Legislature, on the extent to which certain Board members may participate in the negotiations process. The Board complied with an interim relief order and the parties executed a new collective negotiations agreement. The Commission adopts the Hearing Examiner's recommendation to dismiss the Complaint as moot.

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Appearances:

For the Respondent, John T. Barbour, P.A., attorney

For the Charging Party, Selikoff & Cohen, P.A., attorneys
(Steven R. Cohen, of counsel)

DECISION AND ORDER

On December 22, 1993, the Delran Education Association filed an unfair practice charge against the Delran Board of Education. The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1) and (5), ^{1/} when it refused to negotiate with the Association pending an advisory opinion from the School Ethics Commission, a body created by the Legislature, on the extent to which certain Board members may participate in the

^{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...."

negotiations process. The charge was accompanied by a request for interim relief.

On January 21, 1994, a Commission designee issued an interim relief order directing the Board to negotiate. I.R. No. 94-8, 20 NJPER 108 (¶25054 1994). On January 27, a Complaint and Notice of Hearing issued.

The Board complied with the interim relief order and the parties executed a new collective negotiations agreement. The parties then waived a hearing, stipulated the record, and filed briefs to the Hearing Examiner.

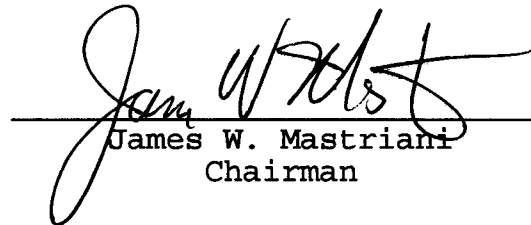
On July 12, 1994, the Hearing Examiner recommended that the matter be dismissed as moot. H.E. No. 95-3, 20 NJPER 309 (¶25155 1994). He informed the parties that exceptions were due July 25, 1994. Neither party filed exceptions.

We have reviewed the record and adopt the Hearing Examiner's recommendation to dismiss the Complaint as moot.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Klagholz, Ricci, Smith and Wenzler voted in favor of this decision. None opposed. Commissioner Bertolino abstained from consideration.

DATED: September 29, 1994
Trenton, New Jersey
ISSUED: September 30, 1994

H.E. NO. 95-3

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Charging Party.

SYNOPSIS

A Hearing Examiner recommends the Commission dismiss an unfair practice charge filed by the Delran Education Association. The Delran Board of Education declined to negotiate with the Association until the New Jersey School Ethics Commission rendered an opinion as to whether the members of the Board's negotiating team had a conflict of interest and therefore should not negotiate on behalf of the board. In an interlocutory decision, a Commission Designee had previously ordered the Board of Education to continue negotiating with the Association. That order was complied with and the parties entered into a new agreement. Accordingly it was recommended that the Commission find that the Association's charge was moot.

H.E. NO. 95-3

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Appearances:

For the Respondent
John T. Barbour, attorney

For the Charging Party
Selikoff & Cohen, attorneys
(Steven R. Cohen, of counsel)

HEARING EXAMINER'S REPORT AND RECOMMENDED DECISION

On December 22, 1993, the Delran Education Association filed an unfair practice charge with the Public Employment Relations Commission alleging that the Delran Township Board of Education violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1) and (5)^{1/} when it refused to negotiate with the Association. The unfair

^{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."

practice charge was accompanied by an Order to Show Cause and Demand for Interim Relief. The Order was executed and after a hearing on the Order,^{2/} as Commission Designee, I issued an interlocutory decision ordering the Board to negotiate with the Association.

A hearing on the unfair practice charge was scheduled for March 14, 1994. However, on March 11, 1994, the parties entered an agreement that they would waive a factual hearing and would "rely on the record established to date" with one addition: Mr. Barbour was to submit into the record a opinion letter of the School Ethics Commission pertaining to the Board's ability to negotiate with the Association. A briefing schedule was established and the parties submitted briefs by May 16, 1994.^{3/}

The record reveals that:

The Board and the Association were parties to an agreement due to expire on June 30, 1993 and were about to begin negotiations for a successor agreement when on April 2, 1993, the Association sent letters to three or four Board members stating that "the School Ethics Commission directed a member of the Pinelands Regional School Board to refrain from all negotiations, discussions and voting on

^{2/} On January 21, 1994.

^{3/} The Association, in its brief, argued that since the Respondent failed to file an answer in accordance with N.J.A.C. 19:14-3.1, the allegations of the charge should be deemed admitted. However, the Charging Party voluntarily entered into the above stipulation before the scheduled hearing date. Accordingly, as per the stipulation, I relied on the entire record from the show cause proceeding and not solely on the allegations of the charge.

the collective bargaining units involving a relative position reference docket no. CO2-B-CO4-4." (The Pineland decision discussed the conflict of interest of a Board of Education member whose wife was a teacher in the same district.) At least one letter to a Board member further stated: "While the Delran Education Association in no way questions your integrity in these matters, it must demand that you resign your appointment to the Board's negotiations committee. The Association also requires that you refrain from any discussion of these matters, as per the Commission's direction."

In response, the Board, by letter of April 26, 1993, sought an advisory opinion from the New Jersey School Ethics Commission. The Board, through its attorney, asked if a school board member may participate in negotiations for a collective negotiations agreement when the board member or a member of his/her immediate family is a member of the same state-wide employee organization, although not a member of the particular negotiations unit with which the Board is negotiating. The Board asked for opinions on all but two board members and all of the members of its negotiations team. Following this inquiry, the Board took the position that it did not want to be in violation or even have the appearance of a violation of either the School Ethics Law or the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. and declined to enter into negotiations until the School Ethics Commission rendered its decision [letter from John Barbour to Robert Glasson, October 15, 1993]. Accordingly, the Board refused to negotiate and the Association brought this action.

It is a per se unfair practice for a public employer to simply refuse to negotiate. Township of Monroe, P.E.R.C. No. 87-52, 12 NJPER 845 (¶17325 1986). On January 21, 1994, as a Commission designee, I issued an interlocutory decision stating:

This Commission will not dictate who must negotiate for the Board, although it is noted that two members of the Board do not have pending conflict of interest petitions. However, the law is clear. 5.3 of the Act provides "the designated representative of the employer shall meet at reasonable times and negotiate in good faith." It is without question that it is an unfair practice to refuse to negotiate for some nine months. The most fundamental right granted by the Act is the right of a majority representative to negotiate on behalf of its membership. Here, the Board's blanket refusal to negotiate so stifles the labor relations process that the harm which flows therefrom is irreparable.

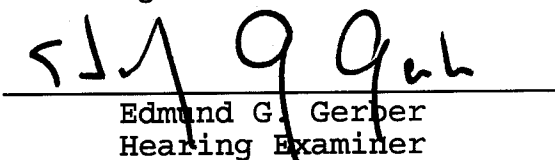
Accordingly, it is hereby ORDERED that the Board, consistent with its own concerns about any individual members conflict of interest, designate a representative to negotiate in good faith with the Delran Education Association.

I take administrative notice that the Board complied with the Order, commenced negotiations and ultimately executed a new contract.

On May 26, 1994, the School Ethics Commission responded to the Board's inquiry. It held that "a board member may not participate directly in negotiations if the member or a member of his immediate family, as that term is defined in the School Ethics Act (Act) N.J.S.A. 18A:12-21 et seq. is a member of the same statewide general union."

It is Commission policy not to exercise its judgment over moot or academic disputes. Rutgers University, P.E.R.C. No. 88-1, 13 NJPER 631 (¶18235 1985), aff'd App. Div. Dkt. No. A-174-87T7 (11/23/88). Matawan-Aberdeen Reg. Schl. Dist., P.E.R.C. No. 88-52, 14 NJPER 57 (¶19019 1987). It is apparent that this dispute has now been resolved and will never occur again. I do not believe that under these circumstances a finding of a violation and the entering of a further order is wise or appropriate. Such a formal action could have a divisive effect counter to the statutory mission of the Commission to promote permanent labor relations peace.

Accordingly, I recommend the Commission find this matter moot and dismiss the unfair practice charge.


Edmund G. Gerber
Hearing Examiner

DATED: July 12, 1994
Trenton, New Jersey