

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MOUNT OLIVE TOWNSHIP BOARD OF
EDUCATION,

Respondent,

Docket No. CO-77-145-118

-and-

EDUCATION ASSOCIATION OF MOUNT
OLIVE, INC.,

Charging Party.

SYNOPSIS

In an unfair practice proceeding initiated by the Association the Commission, in agreement with the Hearing Examiner, concluded that the Association had failed to prove by a preponderance of the evidence that there had been a meeting of the minds between the two parties and therefore that no contractual agreement had been reached by them. The Association filed exceptions to the Hearing Examiner's Recommended Report and Decision. Both the Commission and the Hearing Examiner held that the memorandum of understanding signed by the parties was ambiguous and that in the past salary increases had been computed on the basis urged by the Board as opposed to that urged by the Association. In the absence of a clear change in this past practice regarding the method of calculation of salary increases, the Commission agrees that the parties have failed to reach an agreement and that the Board has not violated the Act by refusing to negotiate with the Association or by refusing to reduce a negotiated agreement to writing. Accordingly, the Complaint is dismissed in its entirety.

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Charging Party.

Appearances:

For the Respondent, Metzler Associates
(Mr. Stanley C. Gerrard, Consultant)

For the Charging Party, Greenberg and Mellk, Esqs.
(Mr. Arnold M. Mellk, of Counsel)

DECISION AND ORDER

On December 1, 1976, the Education Association of Mount Olive, Inc. (hereinafter the "Association") filed an Unfair Practice Charge with the Public Employment Relations Commission alleging that the Mount Olive Board of Education (hereinafter the "Board") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, (hereinafter the "Act").^{1/}

The charge alleged that the Board had violated N.J.S.A. 34:13A-5.4 (a) (5) and (6).^{2/}

It appearing that the allegations of the charge, if true,

^{1/} N.J.S.A. 34:13A-1, et seq.

^{2/} Those subsections prohibits public employers, their agents or representatives from: "(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.

might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on May 10, 1977.

A hearing was held before Commission Hearing Examiner Alan R. Howe on July 7, 1977. Both parties were given the opportunity to examine witnesses, present evidence and argue orally. Post-hearing briefs were filed by both parties. The Hearing Examiner issued his Recommended Report and Decision (hereinafter the "Report")^{3/} on September 16, 1977. A copy of the Report is annexed hereto and made a part hereof.

Timely exceptions were filed by the Association on September 20, 1977.

The focal point of this matter is the interpretation of the "Memo of Understanding" executed on March 31, 1976 by James R. Powell, chief negotiator for the Board, and by Anton Schulzki, chief negotiator for the Association.

The Hearing Examiner concluded that the two chief negotiators had been vested with apparent authority to bind their principals without subsequent ratification. Neither party excepted to this aspect of the case and we adopt the findings of fact and conclusions of law of the Hearing Examiner with respect thereto.^{4/}

The Hearing Examiner also found, however, that there had been no "meeting of the minds" between the parties and, therefore, that no contractual agreement had been reached by the parties. Thus, he concluded that the Board had not violated the provisions of N.J.S.A. 34:13A-5.4(a) (5) and (6) and he recommended that the

^{3/} H.E. No. 78-6, 3 NJPER 284 (1977).

^{4/} See N.J.A.C. 19:14-7.3(b).

complaint be dismissed in its entirety.

The Association's exceptions and letter brief go to this latter aspect of the case. As stated, this case turns upon the question of whether there was a meeting of the minds between the parties. The Association contends that it did prove by a preponderance of the evidence that the method of calculation of the salary increase urged by the Association was that which the parties had meant and understood when the two chief negotiators executed a memorandum of understanding on March 31, 1976. This memorandum was the end product of negotiations for a successor agreement between the Board and the Association which commenced in August 1975 and concluded on March 31, 1976. The memorandum covered a wide variety of subjects including, but not limited to, involuntary transfers and reassignments, substitutes, non-teaching duties, voluntary transfers and reassignments, salary, maternity leave, faculty meetings and grievance procedure.

The provision which has caused the instant controversy reads:

"Salary

The Board agrees to raise its 1975-76 budget for teachers salaries by five (5%) per cent for the 1976-77 school year. Such increase shall include the increment in the salary schedule."

The Association has interpreted this to mean that the actual number of dollars produced by the five per cent increase would be calculated by adding five per cent to the 1975-76 budget for teachers' salaries and that this amount was to be paid to the teachers. Relying on past practice, the Board has argued that the

increase was to be applied to the amount actually expended for teachers' salaries during 1975-76. Using the Association's method would result in a somewhat larger increase because the budgeted figure is greater than the amount actually expended by the Board for teachers' salaries.

Having the burden of proof, the Association presented its chief negotiator, Anton Schulzki. On direct examination, Mr. Schulzki testified that the increase was to be applied to the 1975-76 budget for teachers' salaries.^{5/} On cross-examination, however, it was elicited from Mr. Schulzki that no figures were specifically mentioned.^{6/}

We agree with the Hearing Examiner that the pertinent portion of the memo is ambiguous. It calls for the Board to increase its 1975-76 budget for teachers' salaries by five per cent for 1976-77. It does not state that teachers' salaries are to be increased by the amount of money generated by that increase and Mr. Schulzki's testimony that specific figures were not mentioned by the parties is damaging to the Association's case. Additionally, the uncontroverted testimony of the district that, going back to 1965, the agreed upon percentage increases had always been based upon the increases in actual salary expenses as opposed to the budgeted figures undermines the Association's contention.^{7/} This past practice makes it imperative that any change in the intended method of calculation of the salary increase would have to have

^{5/} Transcript, p. 53.

^{6/} Transcript, p. 72-73.

^{7/} Transcript, pp. 116-117.

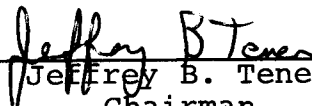
been clearly and unambiguously set forth. It was not.

Therefore, we agree with the Hearing Examiner that the Association has failed to prove by a preponderance of the evidence that the parties had reached a meeting of the minds when they executed the March 31, 1976 memo of understanding.

ORDER

Accordingly, for the reasons set forth above, it is hereby ordered that the Association's complaint be dismissed in its entirety.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Forst, Hartnett and Parcels voted for this decision. Commissioner Forst voted against this decision. Commissioners Hipp and Hurwitz abstained.

DATED: Trenton, New Jersey
November 15, 1977
ISSUED: November 17, 1977

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

In the Matter of
MOUNT OLIVE TOWNSHIP BOARD OF EDUCATION,
Respondent,

-and-

Docket No. CO-77-145-118

EDUCATION ASSOCIATION OF MOUNT OLIVE,
Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission dismiss charges of unfair practices filed by the Education Association of Mount Olive against the Mount Olive Township Board of Education. The Hearing Examiner found the Association failed to prove by a preponderance of the evidence that the Board of Education had agreed that a negotiated 5% salary increase be based upon the figures in the prior year's budget. The Board of Education had contended that the salary increase was based upon a percentage of the actual salary expenses for the prior year.

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/or conclusions of law.

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Appearances:

For the Mt. Olive Township Board of Education
Metzler Associates
(Stanley C. Gerrard, Consultant)

For the Education Association of Mt. Olive
Greenberg & Mellk, Esqs.
(Arnold M. Mellk, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on December 1, 1976, by the Education Association of Mt. Olive (hereinafter the "Charging Party" or the "Association"), alleging that the Mt. Olive Township Board of Education (hereinafter the "Respondent" or the "Board") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (hereinafter the "Act"), in that the Board refused to implement the salary provisions of a Memo of Understanding, dated March 31, 1976, and to reduce the provisions thereof to a written signed agreement, which was alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(5) and (6) of the Act. ^{1/}

^{1/} These two subsections prohibit employers, representatives or their agents from:

"(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 by the majority representative.

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

It appearing that the allegations of the charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on May 10, 1977.

Pursuant to the Complaint and Notice of Hearing, a hearing was held on July 7, 1977, in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Post-hearing briefs were submitted by the Charging Party and Respondent on August 26, 1977 with the right to file reply briefs by September 12, 1977. ^{2/}

An unfair practice charge having been filed with the Commission, a question concerning alleged violations of the Act, as amended, exists and after hearing, and after the filing and consideration of briefs by the parties, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

Upon the entire record, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. Mt. Olive Township Board of Education is a public employer within the meaning of the Act, as amended, and is subject to its provisions.
2. The Education Association of Mt. Olive is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.
3. Negotiations for a successor agreement for the 1976-77 school year commenced on or about October 1, 1975 and concluded on or about March 31, 1976, with the execution on the latter date of a Memo of Understanding.
4. The chief negotiator for the Board was at all times a representative consultant from Metzler Associates and the chief negotiator for the Association was Anton Schulzki. Both chief negotiators for the respective parties were at all times authorized to enter into a Memo of Understanding binding their respective principals without the necessity of ratification by the said principals.
5. A Memo of Understanding was duly executed by the chief negotiators for the parties on March 31, 1976.

2/ Only the Charging Party filed a reply brief.

6. The salary provision of the said Memo of Understanding, of March 31, 1976, provides on page 6 as follows: "The Board agrees to raise its 1975-76 budget for teacher salaries by five (5%) percent for the 1976-77 school year. Such increase shall include the increment in the salary schedule. The Teachers Association shall develop a salary guide which must be ratified by a general meeting of the Teachers Association."

7. The chief negotiator for the Association, Anton Schulzki, did not on March 31, 1976 obtain from the chief negotiator for the Board an agreement that the negotiated 5% increase in salary hereinbefore referred to, was in fact \$143,543.85, this being 5% of the \$2,870,877 as set forth under "Instruction" and "Health Services" in the 1975-76 Board's budget.

8. The Board and the Association have negotiated a series of collective negotiations agreements dating back to 1965.

9. The wage or salary settlement in prior negotiations has always been based upon the percentage increase in salary expenditures over those in the prior contract year and have never been based upon a percentage increase over the prior year Board budget.

THE ISSUES

1. Were the chief negotiators for the Board and the Association clothed with apparent authority to bind their respective principals without subsequent ratification by the said principals?

2. Was there a "meeting of the minds" of the respective parties with respect to the method of calculation of the salary increase of 5% as set forth in the Memo of Understanding dated March 31, 1976?

DISCUSSION AND ANALYSIS

The Positions of the Parties

It is the position of the Charging Party that both chief negotiators were vested with authority to bind their respective principals without subsequent ratifications by the principals and, further, that the respective

principals became bound by the provisions of the Memo of Understanding on March 31, 1976, as agreed to by their chief negotiators. It is the further position of the Charging Party that, pursuant to the provisions of page 6 of the Memo of Understanding, the Board is bound to make payment of a salary increase to members of the negotiating unit based upon a 5% increase over the 1975-76 Board budget [the aggregate net sum of said increase being \$143,543.85].

It is the position of the Respondent Board that its chief negotiator was not vested with authority to bind the Board but only to submit to the Board the result of the negotiations for subsequent ratification by the Board. It is the further position of the Respondent Board that there was no agreement reached whereby the 5% increase was to be calculated based on the 1975-76 budget; rather, the said 5% increase was to be calculated based upon an increase in salary expenditures over the prior year.

The Chief Negotiators were Vested
with Apparent Authority to Bind Their
Principals Without Subsequent Ratification

It is the opinion of the Hearing Examiner that each of the chief negotiators was vested with apparent authority to bind their principals to the provisions of a collective negotiations agreement without subsequent ratification of their actions and conduct by the respective principals. In support of this conclusion the Hearing Examiner relies upon prior Commission decisions in the cases of Bergenfield Board of Education, P.E.R.C. No. 90, 1 NJPER 44 (1975) and East Brunswick Board of Education, P.E.R.C. No. 77-6, 2 NJPER 279 (1976). See also, Restatement of Agency, §8.

In so concluding with respect to the Respondent Board's negotiator, the Hearing Examiner relies upon the evidence offered by the Charging Party that at each negotiations session the spokesman for the Board was a consultant representative from Metzler Associates, who never indicated to the Association's negotiators that his actions and conduct in negotiations were subject to ratification by the Board and, further, that the Memo of Understanding dated March 31, 1976, does not indicate in any respect that the actions of the chief negotiator for the Board were tentative and/or subject to ratification by the Board. Finally, there was at least one Board member present at each negotiating session.

With respect to the authority of the chief negotiator for the Association, and his authority to bind the Association without subsequent ratification, the Hearing Examiner relies upon the provisions of Article V, Section 4, of the Constitution of the Association, which clearly vests in the negotiations committee the power to make binding decisions for the Association.

There was No "Meeting of the Minds"

Moving next to the issue of whether or not a binding agreement was reached with respect to the salary provisions on page 6 of the Memo of Understanding of March 31, 1976, the question is whether or not there was in fact a "meeting of the minds" or mutual assent of the parties with respect to how the 5% negotiated salary increase was to be calculated.

It is clear that under the Commission's Rules, the Charging Party has the burden of proving the allegations in the Complaint by a preponderance of the evidence. N.J.A.C. 19:14-6.8. Thus, the Charging Party, to succeed on the allegations in its Complaint with respect to the method of calculation of the 5% salary increase, must prove by a preponderance of the evidence that there was a "meeting of the minds" with respect to the method of calculation at the time when the Memo of Understanding was reduced to writing on March 31, 1976. It is the opinion of the Hearing Examiner that the Charging Party has failed to prove by a preponderance of the evidence that there was such a "meeting of the minds."

The Hearing Examiner is of the view that the language of the first sentence on page 6 of the Memo of Understanding is ambiguous and that parol evidence is therefore admissible. ^{3/} The Association's evidence in this respect was limited to testimony on direct examination by Mr. Schulzki regarding figures, under "Instruction" and "Health Services" in the Board's 1975-76 budget. On cross-examination Mr. Schulzki admitted that there was no agreement reached on March 31, 1976 that the calculation of the 5% increase in salary was based on the above figures in the 1975-76 budget. The Board's evidence in regard to the meaning of the disputed language on page 6 was that over the years, going back to 1965, the negotiated salary increase was always based upon the percentage of

3/ Restatement of Contracts, §§231, 233, 238; Corbin on Contracts, §579; Wigmore on Evidence (3rd Ed.), §2417.

increase in salary expense over the salary expenditures for the prior year; the prior year budget figures were never utilized.

The Hearing Examiner concludes that there was no "meeting of the minds" on March 31, 1976 between the chief negotiators for the parties with respect to the method of calculation of the 5% salary increase for the 1976-77 school year. ^{4/}

Upon the foregoing, and upon the entire record in this case, the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

1. There was no "meeting of the minds" and, therefore, no contractual agreement was reached by the chief negotiators for the parties on March 31, 1976, with respect to the method of calculation of the 5% increase in salaries for the 1976-77 school year.
2. The Respondent Board has not violated the provisions of N.J.S.A. 34:13A-5.4(a)(5) of the Act.
3. The Respondent Board has not violated N.J.S.A. 34:13A-5.4 (a)(6) of the Act.

RECOMMENDED ORDER

The Respondent, Mt. Olive Township Board of Education, has not violated N.J.S.A. 34:13A-5.4(a)(5) and (6), and it is **HEREBY ORDERED** that the Complaint be dismissed in its entirety.



Alan R. Howe
Hearing Examiner

DATED: September 16, 1977
Trenton, New Jersey

^{4/} Restatement of Contracts, §§19, 20; Corbin on Contracts, §§9, 107.