

D.U.P. NO. 86-16

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

In the Matter of

CLARK BOARD OF EDUCATION,

Respondent,

-and-

DOCKET NO. CO-86-272

CLARK EDUCATION ASSOCIATION,

Charging Party.

Synopsis

The Director of Unfair Practices has declined to issue complaints in six cases. Six different school boards increased the minimum salary for all teachers employed by the respective boards to \$18,500 in compliance with N.J.S.A. 18A:29-5 et seq., the Teacher Quality Employment Act. The Charging Parties argued that the increases in salary effectively reduced the differentials negotiated for certain teachers with either advanced degrees and/or greater length of service and thereby unilaterally altered the terms and conditions of employment of said teachers. The Director found, however, that the Legislature's setting of a minimum salary for teachers coupled with the Legislature's admonition that nothing shall require the reopening of contracts effectively preempted the employers' duty to negotiate concerning those effected terms and conditions of employment.

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Appearances:

For the Respondent

Pachman and Glickman, Esqs.

(Steven S. Glickman, of counsel)

For the Charging Party

New Jersey Education Association

(Ronald Harvey, UniServ Representative)

REFUSAL TO ISSUE COMPLAINT

On March 26, 1986, the Clark Education Association ("Association") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") alleging that the Clark Board of Education ("Board") violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically subsections 5.4(a)(5) and (7) when it "...modified the 1985-86 salary guide."^{1/}

^{1/} These subsections prohibit public employers, their representatives or agents from: "(5) Refusing to negotiate in

N.J.S.A. 34:13A-5.4(c) states 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 an unfair practice complaint may be issued. The standard provides that a complaint shall issue if it appears that the allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act and that formal proceedings regarding the complaint should commence to afford the parties an opportunity to litigate relevant legal and factual issues.^{3/} The Commission's rules also provide that I may decline to issue a complaint.^{4/}

1/ Footnote Continued From Previous Page

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."

2/ N.J.S.A. 34:13A-5.4(c) states: "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 April 30, 1986, a Commission staff agent conducted an exploratory conference concerning the matters and allegations raised in the Unfair Practice Charge. The Association alleges that in November 1985, the Board violated subsections 5.4(a)(5) and (7) when it "unilaterally modified the 1985-86 teachers' salary guide" included in the parties' 1984-87 collective negotiations agreement (The agreement was executed in January 1985). The Association argued that the Board effectively reduced the differentials negotiated for teachers with Masters degrees and eliminated certain step increases for teachers with undergraduate degrees in the 1985-86 school year when it increased the minimum salaries for all teachers to \$18,500, pursuant to N.J.S.A. 18A:29-5 et seq., the "Teacher Quality Employment Act" ("TQEA").

The Board denies that it unilaterally changed any terms and conditions of employment and asserts that it complied with the TQEA by raising all negotiated salaries on the guide to \$18,500.

For the reasons stated below, I find that the Commission's complaint issuance standard has not been met.

The executed 1984-87 agreement contains salary guides for all teachers for each of the academic years covered by the contract. On the 1985-86 guide, the only teachers who were earning less than \$18,500 were teachers without advanced degrees on the first four steps of the guide. Teachers with Masters degrees earn a minimum of \$18,500.

On September 9, 1985, the Legislature enacted N.J.S.A. 18A:29-5 to "establish a minimum salary for teaching staff members and provide funding for salaries...." The TQEA states that, "the minimum salary of a full-time teaching staff member in any school district...shall be \$18,500..." N.J.S.A. 18A:29-5, as amended by L. 1985 c. 321 §3. The legislation also states that, "Nothing in the act shall be construed to require the reopening of any signed contract in effect for the 1985-86 school year," N.J.S.A. 18A:29-5. Similarly, the TQEA further prohibits recomputing salary guides which are indexed to a ratio between the minimum salary and all other ranges.

In State v. State Supervisory Employees Association, 78 N.J. 54 (1978), the Court delineated certain statutory requirements concerning negotiable terms and conditions of employment. The Court stated:


...the adoption of any specific statute or regulation setting or controlling a particular term or condition of employment will preempt any inconsistent provision of a negotiated agreement governing that previously unregulated matter. In short, the parties must negotiate upon and are free to agree to proposals governing any terms and conditions of public employment which have not been set, and thus preempted, by specific statutes or regulations. 78 N.J. at 81.

The Court also declared non-negotiable all proposals which affect rights established by "mandatory" or "imperative" statutes (i.e., "those enactments which set up a particular scheme which 'shall' be handled as directed.") Id at 81-82.

From both a literal and contextual reading (in light of State Supervisory Employees Association) of the TQEA, I determine that the Legislature's setting of a minimum salary for teachers and its specific admonition that nothing shall require the reopening of signed contracts in effect for 1985-86, preempt the employer's duty to negotiate concerning those affected terms and conditions of employment. Specifically, employers are not required to negotiate changes in salary guides of executed agreements where the changes resulted exclusively from the upgrading of teacher salaries to comply with the statute (TQEA). In this case, the Board did not unlawfully change any negotiated term and condition of employment of any teacher earning \$18,500 or more when it upgraded teacher salaries for 1985-86; it merely complied with the TQEA.

Accordingly, I decline to issue a complaint concerning Charging Party's (a)(5) allegations. I also decline to issue a complaint concerning the (a)(7) allegation because the Association offered no facts which could establish that the Board violated any of the Commission's rules.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: June 5, 1986
Trenton, New Jersey