

H.E. NO. 86-44

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

In the Matter of

DOWNE TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-86-173-101

DOWNE TOWNSHIP EDUCATION
ASSOCIATION,

Charging Party.

SYNOPSIS

Consistent with N.J.A.C. 19:14-3.1, the Hearing Examiner deems certain allegations in an unfair practice charge as true.

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ASSOCIATION

Charging Party.

Appearances:

For the Respondent, Colflesh and Burris, Esqs.
(Ralph H. Colflesh, Jr., Esq.)

For the Charging Party, Selikoff and Cohen, Esqs.
(Steven R. Cohen, Esq.)

RULING ON MOTION TO DEEM CERTAIN ALLEGATIONS AS TRUE

On January 6, 1986, the Downe Township Education Association ("Association") filed an unfair practice charge alleging that the Downe Township Board of Education ("Board") violated section 5.4(a)(1), (3) and (4) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") by giving an unfavorable evaluation to Rose Garrison, in retaliation for her exercise of protected activity. On January 24, 1986, the Director of Unfair Practices issued a Complaint and Notice of Hearing.

Paragraph 3 of the charge states:

"3. Rose Garrison is an individual employed by Respondent as a teaching staff member since September 1972, and is Charging Party's secretary and negotiations chairperson. As such, she is an 'employee' within the meaning of the Act."

Paragraph 9 of the charge states:

"9. Prior to her receipt of the November 22, 1985, teacher evaluation report, Garrison had not received a less than 'satisfactory' evaluation in her 14-year tenure with Respondent."

On February 4, 1986, the Board filed an answer to the charge.

The Board answered paragraph 3 of the charge as follows:

"3. Admitted that Rose Garrison is employed by the Respondent as a teaching staff member, and as such is an employee within the meaning of the New Jersey Employer-Employee Relations Act. As to other allegations of the Complaint, Respondent leaves the Charging Party to its proofs."

The Board answered paragraph 9 of the charge as follows:

"9. Neither admitted nor denied at this time; Respondent leaves Charging Party to its proofs."

On March 4, 1986, the Association filed a motion to deem as true its allegations in paragraphs 3 and 9 of its charge. The Association relies on N.J.A.C. 19:14-3.1, which provides that:

"...The respondent shall specifically admit, deny or explain each of the charging party's allegations set forth in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state such statement operating as a denial...[A]ny allegation not specifically denied or explained, unless the respondent shall state that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Commission, unless good cause to the contrary is shown..."

On March 12, 1986, the Board responded to the Association's motion. It admitted the allegations in paragraph 3 and it admitted that Garrison's overall evaluation ratings over the past 14 years have been "satisfactory." The Board also indicated, however, that less than satisfactory evaluative comments were made in Garrison's performance reports.

Based on the parties' submissions and consistent with N.J.A.C. 19:14-3.1, I deem as true the allegation that Rose Garrison is a teacher who has been employed by the Board since September 1972. I deem as true the allegation that she is the Association's secretary and negotiations chairperson. I deem as true the allegation that she is an "employee" within the meaning of the Act. I deem as true the allegation that, during her 14 years with the Board, she has never received a performance evaluation rating of less than "satisfactory" (prior to November 22, 1985).

This ruling does not prevent the introduction of proofs concerning specific comments made on Garrison's performance evaluations.



Richard C. Gwin
Hearing Examiner

DATED: March 20, 1986
Trenton, New Jersey