

P.E.R.C. NO. 87-16

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEWARK TEACHERS UNION, LOCAL 481
AMERICAN FEDERATION OF TEACHERS,
AFL-CIO,

Respondent,

-and-

Docket Nos. CI-85-104-81
CI-85-76-80 & CI-85-107-82

SUSAN JACKSON, ROBERTA SINGLETARY,
AND CAROL RANKIN,

Charging Parties.

SYNOPSIS

The Public Employment Relations Commission grants summary judgment and dismisses unfair practice complaints filed by Susan Jackson, Roberta Singletary and Carol Rankin against the Newark Teachers Union. The complaint alleged the Newark Teachers Union violated the New Jersey Employer-Employee Relations Act when it failed to negotiate a separate and higher wage rate for the title of senior school clerk. The Commission, however, finds that a disparity in wages is insufficient to establish that the Newark Teachers Union breached its duty of fair representation to these employees.

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SUSAN JACKSON, ROBERTA SINGLETARY,
AND CAROL RANKIN,

Charging Parties.

Appearances:

For the Respondent, Kirschner, Walters & Willig, Esqs.
Sidney H. Lehmann, Esq.

For the Charging Parties, Susan Jackson, Roberta Singletary
and Carol Rankin, pro se

DECISION AND ORDER

On December 3, 1984, March 12, 1985 and March 18, 1985,

Susan Jackson, Roberta Singletary and Carol Rankin filed unfair
practice charges and amended charges against the Newark Teachers
Union, Local 481, AFT, AFL-CIO ("NTU"). The charges, as later
amended, allege that NTU violated subsections 5.4(b)(2), (3), (4) and
(5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A.

^{1/} These subsections prohibit employee organizations, their
representatives or agents from: "(2) Interfering with,
restraining or coercing a public employer in the selection of
his representative for the purposes of negotiations or the
adjustment of grievances; (3) Refusing to negotiate in good
faith with a public employer, if they are the majority
representative of employees in an appropriate unit concerning
terms and conditions of employment of employees in that unit;

34:13A-1 et seq. ("Act"). The charges' gravamen is that NTU breached the duty of fair representation it owed the three charging parties, senior school clerks employed by the Newark Board of Education, when it failed to negotiate a separate and higher wage rate for the title of senior school clerk as compared with the title of school clerk.

On November 25, 1985, the Director of Unfair Practices consolidated the charges and issued a Complaint and Notice of Hearing. NTU then filed an Answer incorporating its previous statements of position and denying it had breached its duty of fair representation or otherwise violated the Act.

On March 21, 1986, NTU filed a motion to dismiss and the scheduled hearing was postponed. After it was determined that this motion was really in the nature of a motion for summary judgment, the Chairman referred it to Hearing Examiner Stuart Reichman. The charging parties did not file opposing papers.

On July 30, the Hearing Examiner granted summary judgment. H.E. No. 87-9, 12 NJPER 628 (¶17237 1986) (copy attached). He found that the charges were untimely and that their allegations, even if true, would not establish that NTU breached its duty of fair representation or otherwise violated the Act.

1/ Footnote Continued From Previous Page

(4) Refusing to reduce a negotiated agreement to writing and to sign such agreement; (5) Violating any of the rules and regulations established by the commission."

On August 4, NTU submitted a letter urging adoption of the Hearing Examiner's recommendations and a copy of its brief supporting its motion.

On August 11, the charging parties filed exceptions. They contend that their charges were timely since they filed them within six months of receiving permanent appointments as senior school clerks and that NTU deliberately avoided negotiating separate salaries for senior school clerks. They attach to their exceptions several documents which had not been part of the record.

On August 18, NTU submitted a response. It notes that the charging parties did not respond to the motion and objects to their introducing documents now. It argues that these documents, which concern matters from 1977 through 1980, confirm the untimeliness of the charges. It also asserts that if the Commission finds that the charging parties could not file their charges until they received permanent appointments then they do not have standing to contest NTU's conduct during negotiations prior to 1985.

We have reviewed the record.^{2/} The Hearing Examiner's findings of fact (pp. 5-6) are accurate. We adopt and incorporate them.

Pursuant to N.J.A.C. 19:14-4.8(d), summary judgment may be granted "[i]f it appears from the pleadings, together with the

^{2/} We agree with NTU that the documents attached to the charging parties' exceptions should not be considered part of the record.

briefs, affidavits and other documents filed, that there exists no genuine issue of material fact and the movant or cross-movant is entitled to its requested relief as a matter of law...." A motion for summary judgment is to be granted with extreme caution, the moving papers are to be considered in the light most favorable to the party opposing the motion, all doubts are to be resolved against movant and the summary judgment procedure is not to be used as a substitute for a plenary trial. Baer v. Sorbello, 117 N.J. Super. 182 (App. Div. 1981); Essex Cty. Educ. Services Comm., P.E.R.C. No. 83-65, 9 NJPER 19 (¶14009 1982). Applying these standards, we agree with the Hearing Examiner that summary judgment is appropriate.

The charges' gravamen is that NTU breached its duty of fair representation to the senior school clerks when it failed to negotiate separate and higher wage rates for their title as opposed to school clerk. Separate salaries were not contained in the 1982-1985 collective negotiations agreement between the Board and NTU, although they are contained in the 1985-1988 contract. Upon her April 1981 provisional appointment as senior school clerk, and her receipt of compensation for that position, Susan Jackson had standing to litigate the fairness of NTU's representation and the absence of a separate salary for senior school clerk in the 1982-1985 contract; her December 3, 1984 charge was untimely pursuant to the six month statute of limitations set forth in N.J.S.A. 34:13A-5.4(c). Roberta Singletary and Carol Rankin did not receive provisional appointments, and their permanent appointments became effective on January 21, 1985. We will assume, without deciding, that the date of their permanent appointments is the

operative date for triggering the statute of limitations and determining standing to contest the absence of a separate wage rate for senior school clerk in the 1982-85 contract. In any event, the record does not contain any evidence which would establish that NTU breached its duty of fair representation. In marked contrast to City of Union City, P.E.R.C. No. 82-65, 8 NJPER 98 (¶13040 1982), there is not the slightest indication that NTU discriminatorily refused to negotiate raises for senior school clerks. A breach of the duty of fair representation is not established by merely proving a disparity in wages. Id. See also Belen v. Woodbridge Bd. of Ed., 142 N.J. Super. 486 (App. Div. 1986); Hamilton Tp. Ed. Ass'n, P.E.R.C. No. 79-20, 4 NJPER 476 (¶4215 1978). Accordingly, summary judgment is appropriate on this issue.

The Hearing Examiner's rulings on the other allegations have not been questioned. We adopt his analysis (pp. 12-15) of these issues.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hipp, Johnson, Smith and Wenzler voted in favor of this decision. Commissioner Reid was not present.

DATED: Trenton, New Jersey
September 25, 1986
ISSUED: September 26, 1986

STATE OF NEW JERSEY
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PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEWARK TEACHERS UNION, LOCAL 481,
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Respondent,

-and-

DOCKET NOS. CI-85-76-80
CI-85-104-81
CI-85-107-82

SUSAN JACKSON, ROBERTA SINGLETARY,
AND CAROL RANKIN,

Charging Parties.

SYNOPSIS

A Hearing Examiner for the Public Employment Relations Commission recommends that the Motion for Summary Judgement made by Respondent Newark Teachers Union, Local 481, be granted and the complaint be dismissed in its entirety. The Hearing Examiner found that the unfair practice charge was not filed timely. The Hearing Examiner also found that even if the charge was timely, the Charging Parties failed to allege facts which, if true, would establish that the Respondent breached its duty of fair representation. Additionally, the Hearing Examiner found, as a matter of law, either no violation of other subsections of the Act alleged to have been violated, or a lack of standing on the part of the Charging Parties to assert a violation.

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 Respondent,
Kirschner, Walters & Willig
Sidney H. Lehmann, Esq.

For the Charging Parties
Susan Jackson, Roberta Singletary &
Carol Rankin pro se.

RECOMMENDED REPORT AND DECISION
ON MOTION FOR SUMMARY JUDGEMENT

Unfair Practice Charges were filed with the Public Employment Relations Commission ("Commission") by Susan Jackson, Roberta Singletary and Carol Rankin on December 3, 1984, March 12, 1985 and March 18, 1985, respectively. Susan Jackson filed amendments to her Charge on December 31, 1984 and October 31, 1985. Carol Rankin amended her Charge on November 12, 1985. Each Charging Party is employed by the Board of Education of the City of Newark and included

in a negotiations unit represented by the Respondent, Newark Teachers Union ("NTU"). Susan Jackson's initial Charge (CI-85-76) alleged violations of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically §5.4(b)(2), (3), (4) and (5).^{1/} Ms. Jackson's December 31, 1984 amendment alleged that the unfair practices occurred within six months from the date of the initial filing. On October 31, 1985 Ms. Jackson amended her Charge so as to additionally allege a violation of §5.4(b)(1)^{2/} of the Act. Roberta Singletary's Unfair Practice Charge (CI-85-104) alleges violations of §5.4(b)(3) and (4). Ms. Singletary has not filed an amendment to her Charge. Carol Rankin's Unfair Practice Charge (CI-85-107) alleges violations of §5.4(b)(3) and (4). On November 12, 1985 Ms. Rankin amended her original Charge to additionally allege violations of §5.4(b)(1), (2) and (5) of the Act. The gravamen of the Charging Parties contention is that the NTU has failed to negotiate a

^{1/} These subsections prohibit employee organizations, their representatives or agents from: "(2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances; (3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit; (4) Refusing to reduce a negotiated agreement to writing and to sign such agreement; (5) Violating any of the rules and regulations established by the commission."

^{2/} This subsection prohibits employee organizations, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act."

separate and higher wage rate for the title of Senior School Clerk as compared with the title of School Clerk.

It appearing that the allegations of the Unfair Practice Charges, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing were issued on November 25, 1985. Simultaneously, the Director of Unfair Practices issued an order consolidating the individual charges filed by the Charging Parties.

On December 3, 1985, the NTU filed its Answer indicating that it wished to rely upon its statements of position previously filed in response to each of the individual unfair practice charges. By way of answer, the NTU takes the position that it has not refused to negotiate salaries for employees serving in titles at issue in this case. The NTU contends that the collective agreement contains specific provisions covering salary, benefits and other working conditions for employees serving in job classifications relevant to this proceeding.

The hearing in this matter was initially scheduled for February 13 and 14, 1986. By mutual agreement of the parties the hearing was rescheduled to March 25, 26 and April 9, 1986. On March 21, 1986, the NTU filed a Motion to Dismiss, and the scheduled hearing dates were cancelled. On July 9, 1986, it was determined that the Motion to Dismiss filed by the NTU was more accurately in the nature of a Motion for Summary Judgement. Pursuant to N.J.A.C. 19:14-4.8(a) the Motion was referred to the Chairman of the Commission for further

disposition. On July 11, 1986, Chairman James W. Mastriani referred the motion to me for response.

It is well settled under the law of this State that in the granting or denying of a motion for summary judgement, all inferences of doubt are drawn against the moving party and in favor of the party opposing the motion. Additionally, in considering the instant motion for summary judgement, no credibility determinations may be made. The motion must be denied if material factual issues do exist. A motion for summary judgement must be granted with extreme caution, and the summary judgement procedure is not to be used as a substitute for a plenary trial. Baer v. Sorbello, 117 N.J. Super 182 (App. Div. 1981); In re Essex County Educational Services Comm., P.E.R.C. No. 83-65, 9 NJPER 19 (¶ 14009 1982).

However, the New Jersey Supreme Court established in Judson v. Peoples Bank and Trust Co. of Westfield, 17 N.J. 67 (1974) that where the party opposing the motion does not submit any affidavits or documentation contradicting the moving party's affidavits or documents, the moving party's facts may be considered as true, and there would necessarily be no material factual issue to adjudicate unless per chance, it was raised in the movant's pleadings. See also, In re City of Atlantic City, H.E. No. 86-36, 12 NJPER 160 (¶ 17064 1986), aff'd. P.E.R.C. No. 86-121, 12 NJPER 376 (¶ 17145 1986); In re CWA, Local 1037, AFL-CIO, H.E. No. 86-10, 11 NJPER 621 (¶ 16217 1985), aff'd. P.E.R.C. No. 86-78, 12 NJPER 91 (¶ 17032 1985). The Court in Judson, supra held that:

...if the opposing party offers no affidavits or matter in opposition, or only facts which are immaterial or of an insubstantial nature...he will not be heard to complain if the court grants summary judgement, taking as true the statement of uncontradicted facts and the papers relied upon by the moving party, such papers themselves not otherwise showing the existence of an issue of material fact. Judson v. Peoples Bank and Trust Co. of Westfield, 17 N.J. at 75.

Upon application of the standard set forth above, and in reliance upon the record papers filed by the parties in this proceeding to date, I make the following:

FINDINGS OF FACT

Charging Parties Susan Jackson, Roberta Singletary and Carol Rankin are employees within the meaning of the Act and subject to its provisions. The Newark Teachers Union, Local 481, American Federation of Teachers, AFL-CIO, is an employee representative within the meaning of the Act and subject to its provisions.

Senior School Clerk is a title included in the classified service of Civil Service. All three Charging Parties are serving in a senior school clerk position on either a provisional or permanent basis.

In correspondence dated June 19, 1980, Morris Ianni, Director of Local Government Services, Department of Civil Service, advised one Angelo J. Genova, Esq., that senior school clerk positions were being established for the Newark Board of Education. In April 1981, Susan Jackson was provisionally appointed to a senior school clerk position. In June 1984, Ms. Jackson took and passed a Civil Service administered senior school clerk examination, however,

she has never been permanently appointed to that position. Roberta Singletary also took the senior school clerk examination in June 1984. Pursuant to information contained in an employee status form appended to her charge, Ms. Singletary was permanently appointed to the senior school clerk position on January 21, 1985. Carol Rankin took the senior school clerk examination in May 1984, was notified of the results in July 1984, and was permanently appointed to that position on January 21, 1985.

Attached to the charges of Ms. Jackson and Ms. Singletary are Department of Civil Service promotional announcements dated January 1, 1982 for the senior school clerk position. The announcements indicate a starting salary for the position of \$9,922. This is the exact same starting salary shown in the collective agreement for the 1981-82 school year for the position of school clerk.

The collective agreement between the Newark Board of Education and the NTU for the period of July 1, 1985 through June 30, 1988 provides for a \$150 salary differential between the positions of school clerk and senior school clerk.

ANALYSIS

N.J.S.A. 34:13A-5.4(c) provides, in relevant part, the following:

...no complaint shall issue based upon any unfair practice occurring more than 6 months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the 6 months period shall be computed from the day he was no longer so prevented.

It is apparent from the face of her charge that Susan Jackson was aware that there was no salary differential between the school clerk and senior school clerk positions in April 1981, when she was initially provisionally appointed to the senior school clerk position. Roberta Singletary and Carol Rankin took the senior school clerk examination in June 1984. In July 1984, Ms. Rankin was notified of the results of the examination.^{3/} It is usual practice for the Department of Civil Service to either send promotional announcements to all eligible individuals or, at least, to have the employer post such promotional announcements in places where such personnel notices are customarily posted.^{4/} The fact that this process was utilized in this case is borne out by the fact that Ms. Jackson and Ms. Singletary appended a Civil Service promotional announcement to their charges. Therefore, it may be readily determined that even the operative dates most favorable to the Charging Parties set the running of the 6 month period of limitations for the filing of an unfair practice charge at April

3/ Having taken the examination at the same time as Carol Rankin, it is logical to assume that Roberta Singletary received the Civil Service Notification of Eligibility for the senior school clerk position at the same time. In any event, Roberta Singletary's file establishes that as of March 1, 1984 she was aware that the salary for school clerks and senior school clerks were the same. The file included a Civil Service Promotional Announcement dated March 1, 1984 showing a salary for the senior school clerk at the same level as the 10 month school clerk position in the NTU collective agreement covering school years 1981-1985.

4/ I take administrative notice of this fact.

1981 for Ms. Jackson, and July 1984 for Ms. Singletary and Ms. Rankin; the dates the Charging Parties became aware of the salary for senior school clerks and acquired some interest in the position. See, In re Neptune Township Bd/Ed., P.E.R.C. No. 81-101, 7 NJPER 143, (¶ 12062 1981); In re New Jersey Department of Human Services, P.E.R.C. No. 85-48, 10 NJPER 638 (¶ 15306 1984). However, Ms. Jackson did not file her charge until December 3, 1984, and Ms. Singletary and Ms. Rankin did not file their charges until March 12 and 18, 1985, respectively. In each instance, the Charging Parties have filed their charges beyond the permissible period of limitations as established by §5.4(c) of the Act. Charging Parties have made no allegations that they were prevented in any way from filing their charges. See, New Jersey Turnpike Authority v. Kaczmarek, 77 N.J. 329 (1978). Accordingly, I find the unfair practice charges filed by each of the charging parties to be untimely filed and recommend that the Commission dismiss the charges filed in this matter in their entirety.

Even assuming, for the sake of argument, that the charges filed in this matter are timely, I still find, as a matter of law, that the charges should be dismissed. My reasons follow:

Charging Parties Jackson and Rankin allege that the NTU has breached its duty of fair representation by failing to have negotiated a higher salary for the senior school clerk position as compared with that of the school clerk. Charging Parties have expressed no additional statements of fact pertinent to this claim.

The Commission has previously addressed the standards to be applied in cases alleging the breach of the majority representatives

duty of fair representation. In In re City of Union City, P.E.R.C. No. 82-65, 8 NJPER 98, 99 (¶ 13040 1982) ("Union City"), the Commission stated the following:

In the specific context of a challenge to a union's representation in negotiating a collective agreement, the United States Supreme Court has stated:

Inevitably differences arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees. The mere existence of such differences does not make them invalid. The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion. Ford Motor Co. v. Huffman, 346 U.S. 330, 338 (1953); see also Humphrey v. Moore, 375 U.S. 335 (1964).

Union City is instructive in terms of the instant case. In 1978 FMBA, Local 12 entered into negotiations for a successor agreement with the City. During the course of the negotiations, Local 12 never sought a salary increase for Wesley Spell, a member of the negotiations unit. The facts showed that in 1973 Spell had received a salary increase some four times larger than other unit members. In presenting its final offer in interest arbitration, Local 12 requested increases for all of its members except for Spell and one other title. Obviously, Spell was dissatisfied with the outcome of the negotiations and met with City officials. In the

meeting Spell was told that Local 12 didn't negotiate on his behalf. In finding that Local 12 breached its duty of fair representation, the Commission stated:

...that Local #12 violated its duty of fair representation when it deliberately and insidiously refused to propose a raise for Spell's position in its final offer. While a breach of the duty does not rise from mere disparities in wage increases or decreases, see, e.g., Belen v. Woodbridge Board of Education, [142 N.J. Super 486 (App. Div. 1976)]...; In re Hamilton Township Education Ass'n., [P.E.R.C. No. 79-20, 4 NJPER 476 (¶ 4215 1978)]..., a breach does exist when, as here, the exclusive representative makes a deliberate decision in bad faith to cause a unit member economic harm. City of Union City, 8 NJPER at 100.

Under authority of Union City, I must conclude that the NTU did not breach its duty of fair representation. In this case, the salary levels for school clerks and senior school clerks had been the same since the inception of the senior school clerk position in 1980. Knowing that the school clerk and senior school clerk salaries were the same, Charging Parties responded, nonetheless, to the Civil Service promotional announcement and sought appointment to senior school clerk positions. Subsequent to appointment to the senior school clerk positions, Charging Parties assert that the NTU breached its duty of fair representation by not having previously negotiated a higher salary for the senior title. The charges are absolutely devoid of any facts indicating that the NTU deliberately and insidiously refused to propose a raise for their position. Charging Parties do not allege a single fact from which one may even imply that the NTU made a deliberate decision in bad faith to cause

them economic harm. In fact had the Charging Parties set forth facts alleging union negligence, poor judgement, or even ineptitude, such elements, standing alone, are not enough to make out a breach of the duty of fair representation. See, Union City at 101, n.7.

On the contrary, the NTU points out that in negotiations for the successor agreement, proposals for higher salaries for senior school clerks were made and achieved.^{5/} Moreover, the NTU asserts that since the unfair practice charges were filed in mid-term of the agreement, its failure to seek negotiations on a matter which would benefit only the Charging Parties does not breach its duty of fair representation. The NTU concludes that

...to allow every dissatisfied person to challenge the validity of certain contracts without showing a strong indication of a breach of the duty to fairly represent, would create havoc in the field of labor law...Township of Springfield, D.U.P. No. 79-13, 5 NJPER 15, 16, 17 (¶ 10008 1979), quoting McGrail v. Detroit Federation of Teachers, 82 LRRM 2623 (Mich. Cer. Ct. 1973)(emphasis added).

Thus, the NTU asserts, and I find, that the Charging Parties have not specifically alleged facts showing arbitrary, discriminatory, or bad faith conduct in connection with the majority representatives conduct. Hamilton Twp. Bd. of Ed., D.U.P. No. 82-24, 8 NJPER 199 (¶ 13083 1982); Vaca v. Sipes, 386 U.S. 171 (1967).

^{5/} NTU points out in its brief that such proposals were made prior to the issuance of the complaint in this matter.

Accordingly, under the particular facts in this case, I find, as a matter of law, that the NTU has not violated §5.4(b)(1) of the Act since it has not breached its duty to fairly represent the Charging Parties.

Charging Parties Jackson and Rankin allege a violation of §§5.4(b)(2) and (3). Ms. Jackson contends that these subsections of the Act were violated when the President of NTU established a steering committee which, allegedly, was selected without Charging Parties knowledge and not in accordance with democratic procedures. Ms. Jackson states in her charge that "we are of the opinion that the majority of school clerks are not aware of the functions of this committee." Ms. Rankin's initial charge did not cite subsection (b)(2) but was later amended to include it. However, in amending her charge to cite the additional subsection, Ms. Rankin did not also include any supplemental statements of fact. Ms. Singletary also cites subsection (b)(3); she does not cite subsection (b)(2).

Subsection (b)(2) of the Act prohibits employee organizations, their representatives or agents, from interfering with, restraining or coercing a public employer in the selection of his representative, for the purposes of negotiations or the adjustment of grievances. Assuming without deciding that Charging Parties have standing to assert the claim that the employee organization violated subsection (b)(2), merely a facial reading of their charges shows that Charging Parties have failed to allege any facts that even remotely imply that the NTU has interfered with,

restrained or coerced the Newark Board of Education in the selection of its representatives. Consequently, I find that the allegation that subsection (b)(2) was violated must be dismissed. Moreover, I find the selection of individuals by the NTU President to serve on a steering committee, to be an internal union matter, which on its face, does not constitute a violation of the Act.

I also find that the allegation that subsection (b)(3) of the Act was violated must be dismissed. The Commission has long held that individual employees do not have standing to allege a violation of subsection (b)(3). See, In re Trenton Board of Ed., D.U.P. No. 81-26, 7 NJPER 406 (¶ 12179 1981). See also, New Jersey Bus Operations, D.U.P. No. 86-4, 11 NJPER 546 (¶ 16191 1985); In re Hamilton Twp. Bd. of Ed., D.U.P. No. 82-24, 8 NJPER 199 (¶ 13083 1982); In re Twp. of Cherry Hill, D.U.P. No. 81-19, 7 NJPER 286 (¶ 12128 1981); In re Council of New Jersey State College Local, D.U.P. No. 81-8, 6 NJPER 531 (¶ 11271 1980); In re Hamilton Twp. Ed. Ass'n., H.E. No. 79-10, 4 NJPER 381 (¶ 4171 1978), aff'd. P.E.R.C. No. 79-20, 4 NJPER 476 (¶ 4215 1978). Under the facts of this case, it is appropriate to apply this holding here as well.

The Charging Parties alleged a violation of §5.4(b)(4). However, as previously noted, the gravamen of the Charging Parties claim is that the NTU refused to negotiate a salary for the senior school clerk position. Obviously, if no negotiations were conducted, no negotiated agreement could come into existence, reduced to writing and signed. Consequently, on the basis of the facts alleged by the Charging Parties, no violation of subsection

(b)(4) could have occurred. In any event, Charging Parties do not have standing to press a claim against the NTU alleging a violation of subsection (b)(4). In re Council of New Jersey State College Locals, supra. Accordingly, I find that the allegation claiming that the NTU violated §5.4(b)(4) must be dismissed.

Charging Parties Jackson and Rankin alleged that the NTU violated §5.4(b)(5) of the Act. However, neither Ms. Jackson nor Ms. Rankin specify the rule or regulation established by the Commission alleged to have been violated. Accordingly, I find that the allegation claiming that the NTU violated subsection (b)(5) of the Act be dismissed.

On the basis of the particular facts in this matter, I make the following:

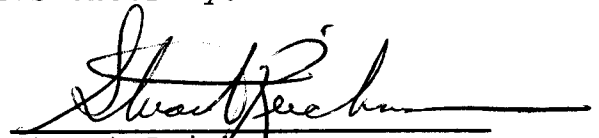
CONCLUSIONS OF LAW

(1) Respondent Newark Teachers Union, Local 481, AFT, AFL-CIO, did not violate N.J.S.A. 34:13A-5.4(b)(1), (2), (3), (4) or (5).

(2) The Motion for Summary Judgement made by Respondent Newark Teachers Union, Local 481, is granted.

RECOMMENDED ORDER

I recommend that the Commission ORDER that the complaint issued in this matter be dismissed in its entirety.


Stuart Reichman
Hearing Examiner

DATED: July 30, 1986
Trenton, New Jersey